

By: Shapleigh

S.B. No. 953

A BILL TO BE ENTITLED

AN ACT

relating to contracting issues of state agencies.

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

SECTION 1. Section 2155.004(a), Government Code, is amended to read as follows:

(a) A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who participated, to any extent, ~~[received compensation from the agency to participate]~~ in preparing the specifications or request for proposals on which the bid or contract is based.

SECTION 2. Section 2155.077(b), Government Code, is amended to read as follows:

(b) Except as provided by Subsection (d) and subject to Chapter 2262, the commission shall bar a vendor from participating in state contracts under Subsection (a) for a period that is commensurate with the seriousness of the vendor's action and the damage to the state's interests.

SECTION 3. Section 2155.144(d), Government Code, is amended to read as follows:

(d) The ~~[Subject to Subsection (c), the]~~ agency shall ~~[may]~~ consider all relevant factors in determining the best value, including:

(1) all start-up, [any] installation, transition, monitoring, and administrative costs;

- 1           (2) the delivery terms;
- 2           (3) the quality and reliability of the vendor's goods  
3 or services;
- 4           (4) the extent to which the goods or services meet the  
5 agency's needs;
- 6           (5) indicators of probable vendor performance under  
7 the contract such as past vendor performance, the vendor's  
8 financial resources and ability to perform, the vendor's experience  
9 and responsibility, and the vendor's ability to provide reliable  
10 maintenance agreements;
- 11           (6) the impact on the ability of the agency to comply  
12 with laws and rules relating to historically underutilized  
13 businesses or relating to the procurement of goods and services  
14 from persons with disabilities;
- 15           (7) the total long-term cost to the agency of  
16 acquiring the vendor's goods or services, including the cost of  
17 replacing the vendor's goods or services if the vendor fails to  
18 fulfill its obligations under the contract and the local economic  
19 impact of any state employee job loss associated with the  
20 procurement;
- 21           (8) the cost of any employee training associated with  
22 the acquisition;
- 23           (9) the effect of an acquisition on agency  
24 productivity;
- 25           (10) the acquisition price; and
- 26           (11) any other factor relevant to determining the best  
27 value for the agency in the context of a particular acquisition.

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

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

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

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

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

SECTION 5. Section 2262.002, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller on a case-by-case basis may exempt a state agency from the requirements of this chapter.

SECTION 6. Sections 2262.051(a) and (b), Government Code, are amended to read as follows:

(a) In consultation with the attorney general, the Department of Information Resources, ~~[the comptroller]~~ and the state auditor, the comptroller ~~[commission]~~ shall develop or periodically update a contract management guide for use by state agencies. Participation by the state auditor under this subsection is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

(b) The comptroller ~~[commission]~~ may adopt rules necessary to develop or update the guide.

SECTION 7. Section 2262.052, Government Code, as amended by Chapters 309 (H.B. 3042) and 785 (S.B. 19), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 2262.052. COMPLIANCE WITH GUIDE. (a) Each state agency shall review, adopt, and comply with the contract management guide.

(b) Subject to the legislative audit committee's approval of including the work described by this subsection in the audit plan under Section 321.013(c), the state auditor shall:

(1) periodically monitor compliance with this section;

(2) report any noncompliance to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives;

and

(D) the team; and

(3) assist, in coordination with the attorney general and the comptroller, a noncomplying state agency to comply with this section.

(c) The comptroller may on a case-by-case basis exempt a state agency from complying with the contract management guide.

SECTION 8. The heading to Section 2262.053, Government Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

SECTION 9. Section 2262.053, Government Code, is amended by

amending Subsections (a), (b), and (d) and adding Subsections (e), (f), and (g) to read as follows:

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

(b) The training must provide the contract manager with information regarding how to:

(1) fairly and objectively select and negotiate with the most qualified contractor;

(2) establish rates and prices that are cost-effective and that reflect the cost of providing the service;

(3) include provisions in a contract that hold the contractor accountable for results;

(4) form, monitor, oversee, and enforce a contract;

(5) make payments consistent with the contract;

(6) comply with any requirements or goals contained in the contract management guide; and

(7) use and apply contract planning and procurement skills and advanced sourcing strategies, techniques, and tools.

(d) The comptroller ~~[Texas Building and Procurement Commission]~~ shall administer the training program under this section.

(e) The comptroller shall certify contract managers who have completed the contract management training required under this section and keep a list of those contract managers.

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

3        (g) A state agency or educational entity may develop  
4 qualified contract manager training to supplement the training  
5 required under this section. The comptroller may incorporate the  
6 training developed by the agency or entity into the training  
7 program under this section.

8        SECTION 10. Subchapter B, Chapter 2262, Government Code, is  
9 amended by adding Section 2262.0535 to read as follows:

10       Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The  
11 comptroller or a private vendor selected by the comptroller shall  
12 adapt the program developed under Section 2262.053 to develop an  
13 abbreviated contract management and oversight program for training  
14 the members of the governing bodies of state agencies. The training  
15 may be provided together with other required training for members  
16 of state agency governing bodies.

17       (b) All members of the governing body of a state agency  
18 shall complete at least one course of the training developed under  
19 this section. This subsection does not apply to a state agency that  
20 does not enter into any contracts.

21       SECTION 11. Section 2262.054, Government Code, is amended  
22 to read as follows:

23       Sec. 2262.054. PUBLIC COMMENT.       The comptroller  
24 ~~[commission]~~ by rule may establish procedures by which each state  
25 agency is required to invite public comment by publishing the  
26 proposed technical specifications for major contracts on the  
27 Internet through the information service known as the Texas

1 Marketplace or through a suitable successor information service.

2 The guide must define "technical specifications."

3 SECTION 12. Subchapter B, Chapter 2262, Government Code, is  
4 amended by adding Sections 2262.055 through 2262.068 to read as  
5 follows:

6 Sec. 2262.055. FEES FOR TRAINING. The comptroller shall  
7 set and collect a fee from state agencies that receive training  
8 under this subchapter in an amount that recovers the comptroller's  
9 costs for the training.

10 Sec. 2262.056. CONTRACT MANAGEMENT STAFF; WORKLOAD  
11 MEASURES. Each state agency shall:

12 (1) identify appropriate staffing levels necessary to  
13 perform the contract management duties and activities required  
14 under this chapter; and

15 (2) develop workload measures and standards for the  
16 contract management staff.

17 Sec. 2262.057. STATE AGENCY REPOSITORY. Each state agency  
18 shall maintain in a central location all contracts for that agency.

19 Sec. 2262.058. REPORTING CONTRACTOR PERFORMANCE. (a)  
20 After a contract is completed or otherwise terminated, each state  
21 agency shall review the contractor's performance under the  
22 contract.

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

27 Sec. 2262.059. CONTRACTOR PERFORMANCE DATABASE. (a) The

1 comptroller shall store in a database contractor performance  
2 reviews as provided by this section.

3 (b) The comptroller shall evaluate the contractor's  
4 performance based on the information reported under Section  
5 2262.058 and criteria established by the comptroller by rule.  
6 Based on the results of the evaluation, the comptroller shall  
7 determine whether the contractor is approved or not approved under  
8 this subsection or barred under Section 2155.077. The comptroller  
9 by rule shall state generally the reasons for which a contractor  
10 will be determined to be approved or not approved under this  
11 subsection.

12 (c) The comptroller shall establish an evaluation process  
13 that allows vendors who receive an unfavorable contractor  
14 performance review or who are the subject of an unfavorable  
15 determination made by the comptroller under Subsection (b) to  
16 protest the unfavorable review or unfavorable determination by the  
17 comptroller.

18 (d) The comptroller shall develop a database that  
19 incorporates the performance reviews and aggregates the reviews for  
20 each contractor. The database must also include the determination  
21 made by the comptroller under Subsection (b) for each contractor.

22 (e) A state agency may use the performance review database  
23 to determine whether to award a contract to a contractor included in  
24 the database.

25 Sec. 2262.060. EXCLUDING CONTRACTOR FROM SOLICITATION  
26 PROCESS. Based on its own contractor performance reviews and on  
27 information in the database developed under Section 2262.059, a

1 state agency may exclude a contractor from the solicitation process  
2 for a contract if the agency determines the contractor has  
3 performed poorly on a previous state contract without regard to  
4 whether the contractor has been barred under Section 2155.077.

5 Sec. 2262.061. PERFORMANCE MEASURES; REPORTS. (a) Each  
6 state agency shall develop a plan and timeline for incorporating  
7 process-oriented and outcome-based performance measures into all  
8 contracts entered into by the agency. This includes ensuring that  
9 performance measures are written into each contract before  
10 execution.

11 (b) Before including the performance measures in a state  
12 agency contract, a state agency shall make available to the public a  
13 draft of the proposed performance measures and allow adequate time  
14 for review, comment, and incorporation of comments into the  
15 performance measures.

16 (c) Not later than March 1 of each year, each state agency  
17 shall report to the team, governor, lieutenant governor, and  
18 speaker of the house of representatives regarding performance  
19 measures in the agency's contracts. The report must describe the  
20 agency's efforts to include performance-based provisions in the  
21 agency's contracts.

22 (d) Each state agency shall make the report accessible to  
23 the public on the agency's website.

24 Sec. 2262.062. ANNUAL EVALUATION OF CERTAIN CONTRACTS. A  
25 state agency that enters into a contract with a monetary value that  
26 exceeds the monetary threshold provided by comptroller rule shall  
27 have an independent evaluator annually review the contract and the

1 contractor's performance under the contract to determine whether  
2 the contractor is complying with the contract terms.

3 Sec. 2262.063. CONTRACT MANAGERS. (a) Each state agency  
4 that enters into contracts other than interagency contracts shall  
5 establish a career ladder program for contract management in the  
6 agency.

7 (b) An employee hired as a contract manager may engage in  
8 procurement planning, contract solicitation, contract formation,  
9 price establishment, and other contract activities.

10 (c) Each state agency shall determine, in consultation with  
11 the state auditor, the amount and significance of contract  
12 management duties sufficient for an employee to be considered a  
13 contract manager under this chapter.

14 (d) A contract manager shall complete the training program  
15 and become certified under Section 2262.053.

16 Sec. 2262.064. APPROVAL OF CONTRACTS. (a) Each state  
17 agency shall establish formal guidelines regarding who may approve  
18 a contract for the agency.

19 (b) Each state agency shall adopt administrative rules to  
20 establish:

21 (1) a monetary threshold above which agency contracts  
22 and amendments to or extensions of agency contracts require written  
23 authorization by the agency executive director; and

24 (2) a monetary threshold above which a draft contract  
25 may not be entered into unless the agency complies with public  
26 notice, public comment, and governing body approval procedures  
27 strictly analogous to rulemaking procedures under Chapter 2001

1 before the contract is entered into.

2 (c) A state agency may not enter into a contract unless the  
3 contract is:

4 (1) approved and signed by at least two persons  
5 authorized to approve contracts for the agency; or

6 (2) approved by the agency's governing body in an open  
7 meeting.

8 (d) A person authorized to approve contracts for a state  
9 agency must sign a conflict-of-interest statement agreeing to  
10 disclose any potential conflict of interest before approving a  
11 contract.

12 (e) A state agency contract must include a provision  
13 designating who may authorize amendments to the contract for the  
14 state agency. For state agency contracts valued in excess of \$1  
15 million, the agency executive director must authorize a contract  
16 amendment in writing.

17 (f) Each state agency shall annually report to the  
18 comptroller a list of persons authorized to approve contracts at  
19 the agency. The list must include each person's name, position, and  
20 supervisory responsibility, if any.

21 Sec. 2262.065. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE  
22 PROHIBITED. A state agency may not negotiate a contract with only  
23 one employee engaging in the negotiation.

24 Sec. 2262.066. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN  
25 CONTRACTS. (a) If a state agency determines that a proposed  
26 contract or proposed contract extension or amendment would  
27 outsource existing services or functions performed by the agency

1 that have a value of \$10 million or more, the agency shall create an  
2 optimized model for the identified functions or services to  
3 determine how and at what cost the agency could most efficiently  
4 provide the functions or services.

5 (b) The model must show consideration of all relevant  
6 factors, including:

7 (1) best practices in Texas and other states;  
8 (2) available technology;  
9 (3) access to benefits and services for clients;  
10 (4) program integrity; and  
11 (5) assessment of state agency skills available  
12 throughout the life of the project.

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

16 (d) A model developed under this section is confidential and  
17 is not subject to disclosure under Chapter 552 until a final  
18 determination has been made to award the contract for which the  
19 model was developed.

20 Sec. 2262.067. ANALYSIS OF SERVICES AND FUNCTIONS. (a) In  
21 this section, "inherently governmental in nature" means a function  
22 or service that involves the exercise or use of governmental  
23 authority or discretion.

24 (b) If a state agency determines that a proposed contract or  
25 proposed contract extension or amendment would outsource existing  
26 services or functions performed by the agency that have a value of  
27 \$10 million or more, then before the agency may issue a competitive

1 solicitation for the contract or amend or extend the contract, the  
2 agency shall contract with the State Council on Competitive  
3 Government for its staff to perform an analysis to determine if any  
4 of the services or functions to be performed under the contract or  
5 contract extension or amendment are inherently governmental in  
6 nature.

7 (c) Except as provided by Subsection (e), if the State  
8 Council on Competitive Government determines that a service or  
9 function to be performed under the contract or contract extension  
10 or amendment is inherently governmental in nature, the state agency  
11 may not:

12 (1) contract with a private entity to perform the  
13 service or function; or

14 (2) amend or extend the contract, if a private entity  
15 is to perform the service or function under the contract extension  
16 or amendment.

17 (d) The analysis required under this section must use the  
18 guidelines developed by the State Council on Competitive  
19 Government.

20 (e) A state agency may contract with a private entity to  
21 perform a service or function or amend or extend an existing  
22 contract to allow a private entity to perform a service or function  
23 that the State Council on Competitive Government determines to be  
24 inherently governmental in nature if the chief administrative  
25 officer of the agency issues a report stating that there is a  
26 compelling state interest in outsourcing the service or function.

27 Sec. 2262.068. FULL AND FAIR COST COMPARISON. (a) If a

1 state agency determines that a proposed contract or proposed  
2 contract extension or amendment would outsource existing services  
3 or functions performed by the agency that have a value greater than  
4 \$10 million or another amount provided by comptroller rule, the  
5 agency shall:

6 (1) conduct a full and fair cost comparison to  
7 determine whether a private entity could perform the service or  
8 function with a comparable or better level of quality at a cost  
9 savings to the state; and

10 (2) prepare a business case providing the initial  
11 justification for the proposed contract or proposed contract  
12 extension or amendment that includes:

13 (A) the results of the comparison required under  
14 Subdivision (1); and

15 (B) the anticipated return on investment in terms  
16 of cost savings and efficiency for the proposed contract or  
17 proposed contract extension or amendment.

18 (b) To perform the comparison required by Subsection  
19 (a)(1), the state agency may:

20 (1) contract with the State Council on Competitive  
21 Government to have its staff perform the comparison; or

22 (2) use the methodology provided in Section 2162.103.

23 (c) A state agency shall submit the business case required  
24 under Subsection (a)(2) to the governor, lieutenant governor,  
25 speaker of the house of representatives, Legislative Budget Board,  
26 and standing committees of the legislature that have primary  
27 jurisdiction over the agency, over state appropriations, and over

1 state purchasing.

2 SECTION 13. Section 2262.101, Government Code, is amended  
3 to read as follows:

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

7 (1) reviewing the solicitation of major contracts by  
8 state agencies;

9 (2) reviewing any findings or recommendations made by  
10 the state auditor, including those made under Section 2262.052(b),  
11 regarding a state agency's compliance with the contract management  
12 guide; ~~and~~

13 (3) providing recommendations to the comptroller  
14 ~~[commission]~~ regarding:

15 (A) the development of the contract management  
16 guide; ~~and~~

17 (B) the training under Section 2262.053; and

18 (C) any state agency that should be exempt under  
19 Section 2262.002(c) or 2262.052(c) from complying with the contract  
20 management guide;

21 (4) certifying that state agencies have complied with  
22 Sections 2262.066 and 2262.068; and

23 (5) setting standards for outsourcing state services  
24 and prescribing methods for monitoring those services.

25 (b) The team shall consult with state agencies in developing  
26 forms, contract terms, guidelines, and criteria required under this  
27 chapter.

SECTION 14. Section 2262.102(a), Government Code, is amended to read as follows:

(a) The team consists of the following five members:

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

(2) two members ~~[one member]~~ from the comptroller's office;

(3) one member from the Department of Information Resources; and

(4) ~~[one member from the Texas Building and Procurement Commission; and~~

~~(5)]~~ one member from the governor's office.

SECTION 15. Subchapter C, Chapter 2262, Government Code, is amended by adding Sections 2262.104 and 2262.105 to read as follows:

Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The team established under Section 2262.101 shall develop and publish a uniform set of definitions for use as applicable in state contracts. Each state agency shall use the terminology as applicable in the contracts entered into by the agency.

(b) The team shall develop and publish a uniform and automated set of forms that a state agency must use in the different stages of the contracting process.

Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE. As part of the uniform forms published under Section 2262.104, the team shall develop forms for use by state agencies in reporting a contractor's performance under Section 2262.058.

SECTION 16. Chapter 2262, Government Code, is amended by

adding Subchapters D, E, F, and G to read as follows:

SUBCHAPTER D. CONTRACT PROVISIONS

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

Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

(a) A state agency contract shall include provisions authorizing the agency to impose clearly defined penalties for noncompliance with contract terms. The provisions must include mechanisms for identifying when a contractor fails to comply with the contract terms, remedies to compel compliance, and remedies available for persons affected by the noncompliance.

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

(c) A state agency may include applicable recommended terms in a contract entered into by the agency.

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

(1) holds the contractor responsible for the conduct of all subcontractors in complying with the contractor's contract

1 with the state agency; and

2 (2) requires each subcontractor to disclose all  
3 potential conflicts of interest to the state agency, according to  
4 guidelines developed under Section 2262.201(b), when the  
5 subcontractor contracts with or is otherwise hired by the  
6 contractor.

7 Sec. 2262.154. LANGUAGE CONTAINED IN REQUEST FOR PROPOSALS.  
8 Each state agency contract must incorporate the language used in  
9 the request for proposals for that contract.

10 Sec. 2262.155. PROVISION RELATED TO POLITICAL  
11 CONTRIBUTIONS. Each contract entered into by a state agency must  
12 include a provision that prohibits the contractor from making a  
13 campaign contribution to an elected official during the term of the  
14 contract.

15 Sec. 2262.156. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;  
16 OUTSOURCING. (a) Each contract entered into by a state agency must  
17 include a provision requiring disclosure of any services materially  
18 necessary to fulfill the contract, including services performed by  
19 a subcontractor, that will be or are performed in a country other  
20 than the United States. This section does not apply to services  
21 that are occasional, minor, or incidental to fulfilling the  
22 contract.

23 (b) The contract must include a provision allowing the state  
24 agency to terminate the contract and solicit a new contract, except  
25 when a contractor takes prompt corrective action described by  
26 Subsection (c), if:

27 (1) the contractor or a subcontractor of the

1 contractor performs a service materially necessary to fulfill the  
2 contract in a country other than the United States; and

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

6 (c) A contractor may replace a subcontractor without  
7 termination of a contract under this section if the contractor  
8 determines that the subcontractor is performing a service  
9 materially necessary to fulfill the contract in a country other  
10 than the United States and did not disclose that fact to the  
11 contractor.

12 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST; PROHIBITIONS

13 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each  
14 contractor who responds to a state agency's contract solicitation  
15 shall disclose in its response all potential conflicts of interest  
16 to the agency.

17 (b) The team shall develop guidelines to aid contractors and  
18 state agencies in identifying potential conflicts of interest.

19 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING  
20 CLASS. Each executive director of a state agency shall annually  
21 complete the ethics and contracting class developed under Section  
22 2262.053(f). This section does not apply to a state agency that  
23 does not enter into any contracts.

24 Sec. 2262.203. PROHIBITIONS RELATED TO STATE CONTRACTS.

25 (a) A state agency may not enter into or renew a contract with a  
26 person who has as an employee a former state agency employee who was  
27 involved in contracting for the agency in the preceding six months.

1        (b) A state agency may not employ an individual who was  
2 employed by a person that conducts business with the state agency  
3 before the last day of the sixth month after the date the individual  
4 was last employed by the person.

5        (c) The team may exempt a state agency from a prohibition  
6 provided by Subsection (a) or (b).

7                    SUBCHAPTER F. CHANGES TO CONTRACTS

8        Sec. 2262.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE  
9 ORDERS. (a) An extension of or amendment to a contract, including  
10 a change order, is subject to the same rules and approval processes  
11 as the original contract.

12        (b) A state agency may not extend or amend a contract  
13 unless:

14                (1) the agency complies with the same rules and  
15 approval processes for the extension or amendment as required for  
16 the original contract; and

17                (2) a contract manager for the agency states in  
18 writing why the extension or amendment is necessary.

19        (c) This section does not affect whether a state agency is  
20 required to undertake a new solicitation process in the manner  
21 required for a new contract in order to extend or amend a contract.

22        Sec. 2262.252. AMENDMENT REQUIRING SIGNIFICANT ALTERATION.  
23 A state agency may not amend a contract to significantly alter the  
24 original terms or monetary value of the contract awarded through a  
25 competitive bidding process unless the state agency conducts  
26 another competitive bidding process for the goods or services under  
27 the new terms.

1       Sec. 2262.253. CERTAIN CONTRACT EXTENSIONS. This  
2 subchapter does not apply to contract extensions that are  
3 specifically established as a component of the original  
4 procurement.

5       SUBCHAPTER G. OFFICE OF CONTRACT MANAGEMENT; HIGH-RISK CONTRACTS

6       Sec. 2262.301. DEFINITIONS. In this subchapter:

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

9                       (A) has a value of at least \$10 million; or

10                      (B) has a value of less than \$10 million, but has  
11 high-risk factors as identified by a state agency's office of  
12 contract management.

13               (2) "Major information resources project" has the  
14 meaning assigned by Section 2054.003(10).

15               (3) "Quality assurance team" means the quality  
16 assurance team established under Section 2054.158.

17               (4) "Solicitation" means a solicitation for bids,  
18 offers, qualifications, proposals, or similar expressions of  
19 interest for a high-risk contract.

20       Sec. 2262.302. ESTABLISHMENT; GENERAL DUTIES. Each state  
21 agency subject to this chapter shall establish an office of  
22 contract management to:

23               (1) develop criteria for identifying high-risk  
24 factors in contracts;

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

27               (3) provide recommendations and assistance to agency

personnel throughout the contract management process; and

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

Sec. 2262.303. REVIEW AND APPROVAL; WAIVER. (a) A state agency must receive approval from the agency's office of contract management before taking the following actions in relation to a high-risk contract:

(1) publicly releasing solicitation documents;

(2) executing a final contract; and

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

(b) In determining whether to approve an action described by Subsection (a), the agency's office of contract management shall review related documentation to ensure that potential risks related to the high-risk contract have been identified and mitigated.

(c) The comptroller by rule may adopt criteria for waiving the review and approval requirements under Subsections (a) and (b).

Sec. 2262.304. SOLICITATION AND CONTRACT CANCELLATION. After review of and comment on the matter by the Legislative Budget Board and the governor, a state agency's office of contract management may recommend the cancellation of a solicitation or a contract during the review process under Section 2262.303 if:

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

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

1           (3) an executed contract is experiencing performance  
2 failure or payment irregularities.

3           Sec. 2262.305. AUDIT OF HIGH-RISK CONTRACT. The state  
4 auditor shall conduct an audit of a state agency contract  
5 identified as high risk by a state agency or the team.

6           SECTION 17. Sections 2155.004(e), 2262.001(1-a), and  
7 2262.0011, Government Code, are repealed.

8           SECTION 18. (a) Sections 2262.065 through 2262.068,  
9 Government Code, and Subchapter G, Chapter 2262, Government Code,  
10 as added by this Act, apply only to a contract for which a state  
11 agency first advertises or otherwise solicits bids, proposals,  
12 offers, or qualifications on or after the effective date of this  
13 Act.

14           (b) Section 2262.201(a), Government Code, as added by this  
15 Act, applies only in relation to a contract for which a state agency  
16 first solicits bids, proposals, offers, or qualifications on or  
17 after the date that the Contract Advisory Team's guidelines  
18 regarding potential conflicts of interest take effect.

19           SECTION 19. Not later than May 1, 2010, the comptroller of  
20 public accounts shall develop the training program, including the  
21 ethics and contracting class, required by Section 2262.053,  
22 Government Code, as amended by this Act, and Section 2262.0535,  
23 Government Code, as added by this Act.

24           SECTION 20. A member of a governing body of a state agency  
25 is not required to complete the training developed under Section  
26 2262.0535, Government Code, as added by this Act, until September  
27 1, 2011.

1           SECTION 21. An executive director of a state agency is not  
2 required to comply with Section 2262.202, Government Code, as added  
3 by this Act, until September 1, 2011.

4           SECTION 22. A contract manager is not required to be  
5 certified under Chapter 2262, Government Code, as amended by this  
6 Act, until September 1, 2011.

7           SECTION 23. (a) As soon as practicable, and not later than  
8 May 1, 2010, the Contract Advisory Team shall develop the forms,  
9 criteria, recommendations, and provisions required by this Act,  
10 including Sections 2262.104, 2262.105, 2262.152, and 2262.201(b),  
11 Government Code, as added by this Act.

12           (b) A state agency is not required to comply with Sections  
13 2262.057 through 2262.064 and Sections 2262.151, 2262.152,  
14 2262.153, and 2262.156, Government Code, as added by this Act,  
15 until September 1, 2011. A state agency may comply earlier if the  
16 forms, electronic requirements, database, or other items are  
17 available before that date.

18           SECTION 24. This Act takes effect November 1, 2009.