

By: Zaffirini

S.B. No. 1805

A BILL TO BE ENTITLED

1 AN ACT
2 relating to contracting issues of state agencies, including ethics
3 issues related to state contracting.

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

5 SECTION 1. Section 322.020, Government Code, is amended by
6 amending Subsections (b), (c), and (e) and adding Subsection (g) to
7 read as follows:

8 (b) Each state agency shall provide the Legislative Budget
9 Board:

10 (1) copies of the following documents:

11 (A) [~~(1)~~] each major contract entered into by the
12 agency; and

13 (B) [~~(2)~~] each request for proposal, invitation
14 to bid, or comparable solicitation related to the major contract;
15 and

16 (2) information regarding each major contract entered
17 into by the agency, including:

18 (A) the name of the contractor;

19 (B) the contract value;

20 (C) the beginning date and end date of the
21 contract;

22 (D) a description of any amendments made to the
23 contract;

24 (E) cumulative payments and encumbrances under

1 the contract;

2 (F) key contract terms that are out of compliance
3 in terms of timeliness standards; and

4 (G) any other information that the board
5 considers necessary.

6 (c) The Legislative Budget Board shall post on the Internet:

7 (1) each major contract of a state agency; ~~and~~

8 (2) each request for proposal, invitation to bid, or
9 comparable solicitation related to the major contract; and

10 (3) information provided to the board under Subsection
11 (b)(2) regarding a major contract.

12 (e) The Legislative Budget Board shall make the information
13 searchable by contract value, state agency, ~~and~~ vendor, and date,
14 including both the beginning date and the end date of the contract.

15 The Legislative Budget Board may make the information searchable by
16 other subjects as appropriate.

17 (g) The Legislative Budget Board shall set appropriate
18 criteria to determine when and what information should be updated.

19 SECTION 2. Section 2113.102(a), Government Code, is amended
20 to read as follows:

21 (a) A state agency may not use appropriated money to
22 contract with a person to audit ~~[the financial records or accounts~~
23 ~~of]~~ the agency except:

24 (1) as provided by ~~[+]~~

25 ~~[(1)]~~ Subsections (b), (c), and (d); and

26 (2) in accordance with Section 321.020 ~~[Chapter 466,~~
27 ~~pertaining to the state lottery,~~

1 ~~[(3) Chapter 2306, pertaining to the Texas Department~~
2 ~~of Housing and Community Affairs; and~~

3 ~~[(4) Chapter 361, Transportation Code, pertaining to~~
4 ~~the Texas Turnpike Authority division of the Texas Department of~~
5 ~~Transportation].~~

6 SECTION 3. Section 2162.103(a), Government Code, is amended
7 to read as follows:

8 (a) In comparing the cost of providing a service, the
9 council shall consider the:

10 (1) cost of supervising the work of a private
11 contractor; ~~and~~

12 (2) cost of a state agency's performance of the
13 service, including:

14 (A) the costs of the comptroller, attorney
15 general, and other support agencies; and

16 (B) other indirect costs related to the agency's
17 performance of the service;

18 (3) installation costs and any other initial costs
19 associated with a contract with a private contractor;

20 (4) other costs associated with the transition to
21 using a private contractor's goods or services; and

22 (5) cost savings to the state if a private contractor
23 were awarded the contract.

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

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

1 (A) is employed by a state agency; and

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

5 (3-a) "Executive director" means the administrative
6 head of a state agency.

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

9 SECTION 5. Subchapter A, Chapter 2262, Government Code, is
10 amended by adding Section 2262.0015 to read as follows:

11 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. (a)
12 The comptroller by rule shall establish threshold requirements that
13 exclude small or routine contracts, including purchase orders, from
14 the application of this chapter.

15 (b) This chapter does not apply to an enrollment contract
16 described by 1 T.A.C. Section 391.183 as that section existed on
17 November 1, 2007.

18 SECTION 6. The heading to Section 2262.053, Government
19 Code, is amended to read as follows:

20 Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

21 SECTION 7. Section 2262.053, Government Code, is amended by
22 amending Subsections (a) and (d) and adding Subsections (e), (f),
23 and (g) to read as follows:

24 (a) In coordination with the [~~comptroller,~~] Department of
25 Information Resources, [~~and~~] state auditor, and Health and Human
26 Services Commission, the comptroller or a private vendor selected
27 by the comptroller [~~commission~~] shall develop [~~or administer~~] a

1 training program for contract managers.

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

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

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

10 (g) A state agency or educational entity may develop
11 qualified contract manager training to supplement the training
12 required under this section. The comptroller may incorporate the
13 training developed by the agency or entity into the training
14 program under this section.

15 SECTION 8. Subchapter B, Chapter 2262, Government Code, is
16 amended by adding Section 2262.0535 and Sections 2262.055 through
17 2262.066 to read as follows:

18 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
19 comptroller or a private vendor selected by the comptroller shall
20 adapt the program developed under Section 2262.053 to develop an
21 abbreviated program for training the members of the governing
22 bodies of state agencies. The training may be provided together
23 with other required training for members of state agency governing
24 bodies.

25 (b) All members of the governing body of a state agency
26 shall complete at least one course of the training developed under
27 this section. This subsection does not apply to a state agency that

1 does not enter into any contracts.

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

6 Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency
7 shall maintain in a central location all contracts for that agency.

8 Sec. 2262.057. REPORTING CONTRACTOR PERFORMANCE. (a)
9 After a contract is completed or otherwise terminated, each state
10 agency shall review the contractor's performance under the
11 contract.

12 (b) Using the forms developed by the team under Sections
13 2262.104 and 2262.105, the state agency shall report to the
14 comptroller on the results of the review regarding the contractor's
15 performance under the contract.

16 Sec. 2262.058. CONTRACTOR PERFORMANCE DATABASE. (a) The
17 comptroller shall store in a database contractor performance
18 reviews as provided by this section.

19 (b) The comptroller shall evaluate the contractor's
20 performance based on the information reported under Section
21 2262.057 and criteria established by the comptroller.

22 (c) The comptroller shall establish an evaluation process
23 that allows vendors who receive an unfavorable performance review
24 to protest any classification given by the comptroller.

25 (d) The comptroller shall develop a database that
26 incorporates the performance reviews and aggregates the reviews for
27 each contractor.

1 (e) A state agency may use the performance review database
2 to determine whether to award a contract to a contractor reviewed in
3 the database.

4 Sec. 2262.059. EXCLUDING CONTRACTOR FROM SOLICITATION
5 PROCESS. Based on its own contractor performance reviews and on
6 information in the database developed under Section 2262.058, a
7 state agency may exclude a contractor from the solicitation process
8 for a contract if the agency determines the contractor has
9 performed poorly on a previous state contract without regard to
10 whether the contractor has been barred under Section 2155.077.

11 Sec. 2262.060. PERFORMANCE MEASURES; REPORTS. (a) Each
12 state agency shall develop a plan for incorporating performance
13 measures into all contracts entered into by the agency. This
14 includes ensuring that performance measures are written into each
15 contract prior to execution.

16 (b) 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 (c) The state agency shall make the report accessible to the
23 public on the agency's website.

24 Sec. 2262.061. CONTRACT MANAGERS. (a) Each state agency
25 that enters into contracts other than interagency contracts shall
26 establish a career ladder program for contract management in the
27 agency.

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

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

8 Sec. 2262.062. APPROVAL OF CONTRACTS. (a) Each state
9 agency shall establish formal guidelines regarding who may approve
10 a contract for the agency.

11 (b) Each state agency shall adopt administrative rules to
12 establish a monetary threshold above which agency contracts and
13 amendments to or extensions of agency contracts require written
14 authorization by the agency executive director.

15 (c) For state agency contracts valued in excess of \$1
16 million the agency executive director must authorize a contract
17 amendment in writing.

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

22 Sec. 2262.063. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
23 PROHIBITED. A state agency may not negotiate a contract with only
24 one employee engaging in the negotiation.

25 Sec. 2262.064. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN
26 CONTRACTS. (a) If a state agency determines that a proposed
27 contract or proposed contract extension or amendment would

1 outsource existing services or functions performed by the agency
2 that have a value of \$10 million or more, or that would lead to the
3 loss of 100 or more existing state employee positions, the agency
4 shall create an optimized model for the identified functions or
5 services to determine how and at what cost the agency could most
6 efficiently provide the functions or services.

7 (b) The model must show consideration of all relevant
8 factors, including:

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

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

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

22 Sec. 2262.065. ANALYSIS OF SERVICES AND FUNCTIONS. (a) In
23 this section, "inherently governmental in nature" means a function
24 or service that involves the exercise or use of governmental
25 authority or discretion.

26 (b) If a state agency determines that a proposed contract or
27 proposed contract extension or amendment would outsource existing

1 services or functions performed by the agency that have a value of
2 \$10 million or more, or would lead to the loss of 100 or more
3 existing state employee positions, then before the agency may issue
4 a competitive solicitation for the contract or amend or extend the
5 contract the agency shall contract with the State Council on
6 Competitive Government for its staff to perform an analysis to
7 determine if any of the services or functions to be performed under
8 the contract or contract extension or amendment are inherently
9 governmental in nature.

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

15 (1) contract with a private entity to perform the
16 service or function; or

17 (2) amend or extend the contract, if a private entity
18 is to perform the service or function under the contract extension
19 or amendment.

20 (d) The analysis required under this section must use the
21 standards and policies contained in the Office of Federal
22 Procurement Policy, Policy Letter 92-1, or comparable guidelines
23 developed by the State Council on Competitive Government.

24 (e) A state agency may contract with a private entity to
25 perform a service or function or amend or extend an existing
26 contract to allow a private entity to perform a service or function
27 that the State Council on Competitive Government determines to be

1 inherently governmental in nature if the chief administrative
2 officer of the agency issues a report stating that there is a
3 compelling state interest in outsourcing the service or function.

4 Sec. 2262.066. FULL AND FAIR COST COMPARISON. (a) If a
5 state agency determines that a proposed contract or proposed
6 contract extension or amendment would outsource existing services
7 or functions performed by the agency that have a value of \$10
8 million or more, or that would lead to the loss of 100 or more
9 existing state employee positions, the agency shall:

10 (1) conduct a full and fair cost comparison to
11 determine whether a private entity could perform the service or
12 function with a comparable or better level of quality at a cost
13 savings to the state; and

14 (2) prepare a business case providing the initial
15 justification for the proposed contract or proposed contract
16 extension or amendment that includes:

17 (A) the results of the comparison required under
18 Subdivision (1); and

19 (B) the anticipated return on investment in terms
20 of cost savings and efficiency for the proposed contract or
21 proposed contract extension or amendment.

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

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

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

27 (c) A state agency shall submit the business case required

1 under Subsection (a)(2) to the governor, lieutenant governor,
2 speaker of the house of representatives, Legislative Budget Board,
3 and standing committees of the legislature that have primary
4 jurisdiction over the agency, over state appropriations, and over
5 state purchasing.

6 SECTION 9. Section 2262.101, Government Code, is amended to
7 read as follows:

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

11 (1) ~~[reviewing the solicitation of major contracts by~~
12 ~~state agencies;~~

13 ~~[(2)]~~ reviewing any findings or recommendations made
14 by the state auditor, including those made under Section
15 2262.052(b), regarding a state agency's compliance with the
16 contract management guide; ~~[and]~~

17 (2) ~~[(3)]~~ providing recommendations to the
18 comptroller ~~[commission]~~ regarding:

19 (A) the development of the contract management
20 guide; and

21 (B) the training under Section 2262.053; and

22 (3) certifying that state agencies have complied with
23 Sections 2262.064 and 2262.066.

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

27 SECTION 10. Section 2262.102(a), Government Code, is

1 amended to read as follows:

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

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

4 (2) one member from the comptroller's office;

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

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

9 ~~(5)] one member from the governor's office; and~~

10 (5) one member from the State Council on Competitive
11 Government.

12 SECTION 11. Subchapter C, Chapter 2262, Government Code, is
13 amended by adding Sections 2262.104 and 2262.105 to read as
14 follows:

15 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The team
16 shall develop and publish a uniform set of definitions for use as
17 applicable in state contracts.

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

21 Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.
22 As part of the uniform forms published under Section 2262.104, the
23 team shall develop forms for use by state agencies in reporting a
24 contractor's performance under Section 2262.057.

25 SECTION 12. Chapter 2262, Government Code, is amended by
26 adding Subchapters D, E, F, and G to read as follows:

1 SUBCHAPTER D. CONTRACT PROVISIONS

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

5 Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

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

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

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

19 (1) holds the contractor responsible for the conduct
20 of all subcontractors in complying with the contractor's contract
21 with the state agency; and

22 (2) requires each subcontractor to disclose all
23 potential conflicts of interest to the state agency, according to
24 guidelines developed under Section 2262.201(b), when the
25 subcontractor contracts with or is otherwise hired by the
26 contractor.

27 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;

1 STATE AGENCY EMPLOYEES. Before entering into a contract with the
2 state, a contractor and subcontractor shall disclose each employee:

3 (1) who was employed by:

4 (A) the state at any time during the two years
5 before the date of the disclosure and is now employed by the
6 contractor or subcontractor; or

7 (B) the contractor or subcontractor at any time
8 during the year before the date of the disclosure and is now
9 employed by the state; and

10 (2) who is materially involved in the development of
11 the contract terms or the management of the contract.

12 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
13 OUTSOURCING. (a) Each contract entered into by a state agency must
14 include a provision requiring disclosure of any services materially
15 necessary to fulfill the contract, including services performed by
16 a subcontractor, that will be or are performed in a country other
17 than the United States. This section does not apply to services
18 that are occasional, minor, or incidental to fulfilling the
19 contract.

20 (b) The contract must include a provision allowing the state
21 agency to terminate the contract and solicit a new contract, except
22 as provided by Subsection (d), if:

23 (1) the contractor or a subcontractor of the
24 contractor performs a service materially necessary to fulfill the
25 contract in a country other than the United States; and

26 (2) the contractor does not disclose in the contract
27 that the service will be performed in a country other than the

1 United States.

2 (c) A state agency that decides not to solicit a new
3 contract under circumstances in which the agency is authorized to
4 do so under a contract provision required by Subsection (b) shall
5 report this decision to:

6 (1) the governor;

7 (2) the lieutenant governor;

8 (3) the speaker of the house of representatives; and

9 (4) the team.

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

16 Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN
17 LARGE CONTRACTS. If a state agency determines that a proposed
18 contract or proposed contract extension or amendment would
19 outsource existing services or functions performed by the agency
20 that have a value of \$10 million or more, or that would lead to the
21 loss of 100 or more existing state employee positions, the contract
22 or contract amendment must contain a provision that requires the
23 contractor to give preference in hiring to former employees of a
24 state agency:

25 (1) whose employment is terminated because of the
26 contract or contract extension or amendment;

27 (2) who satisfy the contractor's hiring criteria for

1 that position; and

2 (3) whose salary requirements are competitive with
3 market rates for positions with equivalent skills and experience.

4 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

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

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

11 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING
12 CLASS. Each executive director of a state agency shall annually
13 complete the ethics and contracting class developed under Section
14 2262.053(f). This section does not apply to a state agency that
15 does not enter into any contracts.

16 SUBCHAPTER F. CHANGES TO CONTRACTS

17 Sec. 2262.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE
18 ORDERS. (a) An extension of or amendment to a contract, including
19 a change order, is subject to the same approval processes as the
20 original contract.

21 (b) A state agency may not extend or amend a contract
22 unless:

23 (1) the agency complies with the same approval
24 processes for the extension or amendment as required for the
25 original contract; and

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

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

4 Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) If a
5 proposed contract amendment or extension changes the monetary value
6 of a contract by \$1 million or more, the state agency must obtain
7 review and approval from the team and the agency's executive
8 director before the agency amends or extends the contract.

9 (b) This section does not apply to a proposed contract
10 amendment required by a state or federal statute.

11 Sec. 2262.253. CERTAIN CONTRACT EXTENSIONS. This
12 subchapter does not apply to contract extensions that are
13 specifically established as a component of the original
14 procurement.

15 SUBCHAPTER G. STATE OFFICE OF CONTRACT MANAGEMENT

16 Sec. 2262.301. DEFINITIONS. In this subchapter:

17 (1) "High-risk contract" means a state agency contract
18 that:

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

20 (B) has a value of less than \$10 million, but has
21 high-risk factors as identified by the office.

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

24 (3) "Office" means the state office of contract
25 management.

26 (4) "Quality assurance team" means the quality
27 assurance team established under Section 2054.158.

1 (5) "Solicitation" means a solicitation for bids,
2 offers, qualifications, proposals, or similar expressions of
3 interest for a high-risk contract.

4 Sec. 2262.302. ESTABLISHMENT; GENERAL DUTIES. The
5 comptroller shall establish a state office of contract management
6 to:

7 (1) develop criteria for identifying high-risk
8 factors in contracts;

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

11 (3) provide recommendations and assistance to state
12 agency personnel throughout the contract management process; and

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

16 Sec. 2262.303. REVIEW AND APPROVAL; WAIVER. (a) Each state
17 agency must receive approval from the office before taking the
18 following actions in relation to a high-risk contract:

19 (1) publicly releasing solicitation documents;

20 (2) executing a final contract; and

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

23 (b) In determining whether to approve an action described by
24 Subsection (a), the office shall review related documentation to
25 ensure that potential risks related to the high-risk contract have
26 been identified and mitigated.

27 (c) The comptroller by rule may adopt criteria for waiving

1 the review and approval requirements under Subsections (a) and (b).

2 Sec. 2262.304. SOLICITATION AND CONTRACT CANCELLATION.

3 After review of and comment on the matter by the Legislative Budget
4 Board and the governor, the office may recommend the cancellation
5 of a solicitation or a contract during the review process under
6 Section 2262.303 if:

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

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

11 (3) an executed contract is experiencing performance
12 failure or payment irregularities.

13 SECTION 13. Section 2262.003, Government Code, is
14 transferred to Subchapter D, Chapter 2262, Government Code, as
15 added by this Act, is redesignated as Section 2262.157, Government
16 Code, and is amended to read as follows:

17 Sec. 2262.157 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
18 RELATING TO AUDITING. (a) Each state agency shall include in each
19 of its contracts a term that provides that:

20 (1) the state auditor may conduct an audit or
21 investigation of any entity receiving funds from the state directly
22 under the contract or indirectly through a subcontract under the
23 contract;

24 (2) acceptance of funds directly under the contract or
25 indirectly through a subcontract under the contract acts as
26 acceptance of the authority of the state auditor, under the
27 direction of the legislative audit committee, to conduct an audit

1 or investigation in connection with those funds; and

2 (3) under the direction of the legislative audit
3 committee, an entity that is the subject of an audit or
4 investigation by the state auditor must provide the state auditor
5 with access to any information the state auditor considers relevant
6 to the investigation or audit.

7 (b) The state auditor shall provide assistance to a state
8 agency in developing the contract provisions.

9 SECTION 14. Section 51.923, Education Code, is amended to
10 read as follows:

11 Sec. 51.923. QUALIFICATIONS OF CERTAIN BUSINESS ENTITIES TO
12 ENTER INTO CONTRACTS WITH AN INSTITUTION OF HIGHER EDUCATION. (a)
13 In this section:

14 (1) "Business entity [~~Corporation~~]" means any entity
15 recognized by law through which business for profit is conducted,
16 including a sole proprietorship, partnership, firm, corporation,
17 limited liability company, holding company, joint stock company,
18 receivership, or trust [~~a corporation for profit organized under~~
19 ~~the laws of this state or under laws other than the laws of this~~
20 ~~state~~].

21 (2) "Governing board" has the meaning assigned by
22 Section 61.003 [~~of this code~~].

23 (3) "Institution of higher education" has the meaning
24 assigned by Section 61.003 [~~of this code~~].

25 (4) "Nonprofit corporation" means any organization
26 exempt from federal income tax under Section 501 of the Internal
27 Revenue Code of 1986 that does not distribute any part of its income

1 to any member, director, or officer.

2 (b) A nonprofit corporation is not disqualified from
3 entering into a contract or other transaction with an institution
4 of higher education even though one or more members of the governing
5 board of the institution of higher education also serves as a
6 member, ~~or~~ director, or officer of the nonprofit corporation.

7 (c) A business entity ~~[corporation]~~ is not disqualified
8 from entering into a contract or other transaction with an
9 institution of higher education even though one or more members of
10 the governing board of the institution of higher education has a
11 substantial interest in the business entity ~~[also serves as a~~
12 ~~stockholder or director of the corporation provided that no member~~
13 ~~of the governing board owns or has a beneficial interest in more~~
14 ~~than five percent of the corporation's outstanding capital stock~~
15 ~~and further provided that the contract or transaction is:~~

16 ~~[(1) an affiliation, licensing, or sponsored research~~
17 ~~agreement, or~~

18 ~~[(2) awarded by competitive bidding or competitive~~
19 ~~sealed proposals].~~

20 (d) An institution of higher education is not prohibited
21 from entering into a contract or other transaction with a business
22 entity in which a member of the governing board of the institution
23 of higher education has a substantial interest ~~[described in this~~
24 ~~section]~~ if the ~~[any]~~ board member ~~[having an interest described in~~
25 ~~this section in the contract or transaction]~~ discloses that
26 interest in a meeting held in compliance with Chapter 551,
27 Government Code, and refrains from voting on the contract or

1 transaction. Any such contract or transaction requiring board
2 approval must be approved by an affirmative majority of the board
3 members voting on the contract or transaction.

4 (e) For purposes of this section, a member of a governing
5 board has a substantial interest in a business entity if:

6 (1) the member owns 10 percent or more of the voting
7 stock or shares of the business entity or owns either 10 percent or
8 more or \$15,000 or more of the fair market value of the business
9 entity;

10 (2) funds received by the member from the business
11 entity exceed 10 percent of the member's gross income for the
12 previous year; or

13 (3) an individual related to the member in the first
14 degree by consanguinity or affinity, as determined under Chapter
15 573, Government Code, has an interest in the business entity as
16 described by Subdivision (1) or (2).

17 (f) A violation of this section does not render an action of
18 the governing board voidable unless the contract or transaction
19 that was the subject of the action would not have passed the
20 governing board without the vote of the member who violated this
21 section.

22 (g) This section preempts the common law of conflict of
23 interests as applied to members of a governing board of an
24 institution of higher education.

25 SECTION 15. Section 2262.051(f), Government Code, is
26 repealed.

27 SECTION 16. (a) Sections 2262.063 through 2262.066 and

1 2262.154, Government Code, and Subchapter G, Chapter 2262,
2 Government Code, as added by this Act, apply only to a contract for
3 which a state agency first advertises or otherwise solicits bids,
4 proposals, offers, or qualifications on or after the effective date
5 of this Act.

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

11 SECTION 17. Not later than May 1, 2010, the comptroller of
12 public accounts shall develop the training program, including the
13 ethics and contracting class, required by Section 2262.053,
14 Government Code, as amended by this Act, and Section 2262.0535,
15 Government Code, as added by this Act.

16 SECTION 18. A member of a governing body of a state agency
17 is not required to complete the training developed under Section
18 2262.0535, Government Code, as added by this Act, until September
19 1, 2011.

20 SECTION 19. An executive director of a state agency is not
21 required to comply with Section 2262.202, Government Code, as added
22 by this Act, until September 1, 2011.

23 SECTION 20. A contract manager is not required to be
24 certified under Chapter 2262, Government Code, as amended by this
25 Act, until September 1, 2011.

26 SECTION 21. (a) As soon as practicable, and not later than
27 May 1, 2010, the Contract Advisory Team shall develop the forms,

1 criteria, recommendations, and provisions required by this Act,
2 including Sections 2262.104, 2262.105, 2262.152, and 2262.201(b),
3 Government Code, as added by this Act.

4 (b) A state agency is not required to comply with Sections
5 2262.056 through 2262.062 and Sections 2262.153, 2262.155, and
6 2262.156, Government Code, as added by this Act, until September 1,
7 2011. A state agency may comply earlier if the forms, electronic
8 requirements, database, or other items are available before that
9 date.

10 SECTION 22. This Act takes effect November 1, 2009.