

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 29, 2009

TO: Honorable Burt R. Solomons, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4682 by Parker (Relating to the use of private procurement specialists for certain state agency contracts.), **Committee Report 1st House, Substituted**

The bill would result in a significant indeterminate cost to the state. The actual cost would be dependent on the number of state agency contracts meeting the criteria set forth in the bill, the number of procurement specialists required, the length of time necessary for a contract review, and the rates at which a specialist would be paid.

The bill would require the Comptroller of Public Accounts to select and assign a private procurement specialist (PPS) to assist state agencies in executing high-cost contracts, defined as contracts with a value of at least \$10 million to meet the requirements of this bill. The PPS would be required to approve agency solicitations or contracts at three stages of the procurement process: (1) prior to publically releasing the solicitation documents; (2) prior to executing a final contract; and (3) prior to making payments that equal half the contract value. The bill would require the Comptroller and selected PPS to review related contract documentation to ensure that potential risks are identified and mitigated. The selected PPS may recommend the cancelation of the contract during any stage in the process after review and comment on such a recommendation by the Legislative Budget Board (LBB) and the governor, if it is found that proceeding with the contract: (1) is not in the best interests of the state; (2) puts the state at unacceptable risk; or (3) results in performance failure or payment irregularities.

The Texas Department of Transportation (TxDOT) is currently exempt from existing statewide oversight of contracts related to highway construction and maintenance. The bill's new requirements would be applied to all TxDOT contracts meeting the "high-cost" and "major information resources project" definitions.

The bill's requirements would not apply to professional or consulting services as defined in Chapter 2254, Government Code.

The bill would also eliminate the current review of solicitations exceeding a value of \$1 million by the State Contract Advisory Team, resulting in fewer agency contracts proceeding through existing statewide oversight processes.

There is a direct cost to the state resulting from employing private procurement specialists to assist with contracts of \$10 million or more. However, because the number of specialists required, the length of time necessary for a contract review, and the rates at which a specialist would be paid are unknown at this time, the fiscal impact is significant but indeterminate. In 2008, state agencies reported \$439 million worth of contracts applicable to the bill's requirements. Assuming a conservative rate of five percent of the contract value to employ a PPS, the requirements of the bill would cost the state \$21 million in All Funds. The associated costs would be ongoing because the bill would require interaction with the PPS during various stages throughout the contract lifecycle, and new contracts meeting the bill's criteria are enacted each year by state agencies. The bill allows for PPS vendors to be paid through a pay-for-performance arrangement, which could reduce the cost to the state, but cannot be considered a guaranteed savings at this time.

The ultimate final impact of the bill's requirements is also dependent on the establishment of implementation parameters by the Comptroller, and an understanding of how the need for a PPS would be determined. The Comptroller would also maintain the ability to waive, by rule, the requirements of the bill.

State agencies and institutions of higher education using the Department of Information Resources' (DIR) cooperative contracts for the procurement of information technology commodities could see an increase in cost due to an increase in the administrative fee charged by DIR to cover the direct and indirect costs of the requirements of this bill.

Agencies report that the new contract review requirements would create additional delays in the procurement and contracting process, potentially resulting in increased project management or service delivery costs.

Local Government Impact

Local governments using the Department of Information Resources' (DIR) cooperative contracts for the procurement of information technology commodities could see an increase in cost due to an increase in the administrative fee charged by DIR to cover the direct and indirect costs of the requirements of this bill.

Source Agencies: 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 307 Secretary of State, 308 State Auditor's Office, 313 Department of Information Resources, 362 Texas Lottery Commission, 405 Department of Public Safety, 454 Department of Insurance, 455 Railroad Commission, 477 Commission on State Emergency Communications, 529 Health and Human Services Commission, 551 Department of Agriculture, 582 Commission on Environmental Quality, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 802 Parks and Wildlife Department

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