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H.B. No. 198

Substitute the following for H.B. No. 198:

By: Callegari

C.S.H.B. No. 198

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

~~(2)]~~ reviewing any findings or recommendations made
by the state auditor, including those made under Section
2262.052(b), regarding a state agency's compliance with the
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)
18 This subchapter applies to a Texas Department of Transportation
19 contract 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 entered
23 into under Chapter 2166.

24 Sec. 2262.153. PRIVATE PROCUREMENT SPECIALISTS. (a) A
25 state agency shall, when appropriate, select a private procurement
26 specialist as provided by this subchapter.

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

1 the private sector who is:

2 (1) an expert in the subject matter of the contract for
3 which the private procurement specialist is selected; and

4 (2) proficient in the procurement laws applicable to
5 the contract for which the private procurement specialist is
6 selected.

7 (c) A private procurement specialist shall:

8 (1) review and approve actions under Section
9 2262.154(d); and

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

14 (d) Before the comptroller or, if applicable, the
15 Department of Information Resources approves the use of a private
16 procurement specialist under Section 2262.154, the comptroller or,
17 if applicable, the Department of Information Resources and the
18 state agency seeking to enter into the contract shall consider:

19 (1) potential private procurement specialists'
20 relative experience and knowledge on the subject matter of the
21 contract; and

22 (2) probable fees or costs associated with securing
23 the services of a private procurement specialist.

24 (e) A private procurement specialist or a business entity in
25 which the specialist has a substantial interest may not bid on or
26 otherwise make a proposal to receive a contract for which the
27 specialist was selected. A selected private procurement specialist

1 or a business entity in which the specialist has a substantial
2 interest may not provide services for or to a client, other than
3 services provided to the state agency under this subchapter, if the
4 provision of services:

5 (1) involves a matter directly related to the contract
6 for which the specialist was selected by the agency; or

7 (2) creates a conflict of interest that may directly
8 affect the state's interest.

9 (f) The prohibitions in Subsection (e) also apply to:

10 (1) a person that is an agent, subsidiary, or parent
11 company of the private procurement specialist; or

12 (2) a person related within the second degree by
13 consanguinity or affinity to the private procurement specialist.

14 (g) For purposes of this section, a private procurement
15 specialist has a substantial interest in a business entity if:

16 (1) the specialist or the specialist's spouse, if
17 applicable, owns the business entity, or the combined ownership of
18 the specialist and the specialist's spouse, if applicable, is at
19 least 10 percent of the voting stock or shares of the business
20 entity; or

21 (2) the specialist or the specialist's spouse, if
22 applicable, is a partner, limited partner, or officer of the
23 business entity.

24 (h) In this section, "business entity" means a sole
25 proprietorship, partnership, firm, corporation, holding company,
26 joint-stock company, receivership, trust, or other entity
27 recognized by law.

1 Sec. 2262.154. USE OF PRIVATE PROCUREMENT SPECIALIST. (a)

2 With the approval of the comptroller or, if applicable, the
3 Department of Information Resources, a state agency shall use a
4 private procurement specialist for a high-cost contract if the
5 agency determines that given the cost and nature of the proposed
6 contract there will probably be a net savings to the state over the
7 life of the contract if a specialist is selected.

8 (b) The approval of the Department of Information Resources
9 is required, rather than the comptroller's approval, in order to
10 use a private procurement specialist under Subsection (a) for a
11 high-cost contract that is for a major information resources
12 project.

13 (c) A state agency seeking to enter into a high-cost
14 contract must send to the comptroller or, if applicable, to the
15 Department of Information Resources the information necessary to
16 approve the use of a private procurement specialist under this
17 section. At a minimum, the information must include the state
18 agency's draft solicitation for the contract.

19 (d) During the contract formation and contract management
20 process with respect to a high-cost contract for which a private
21 procurement specialist is approved, a state agency shall
22 collaborate with and, except as provided by Subsection (f), obtain
23 the approval of the private procurement specialist before taking
24 any of the following actions in relation to the contract:

- 25 (1) publicly releasing solicitation documents;
26 (2) executing a final contract; and
27 (3) making a payment or a series of payments that equal

1 half of the contract value.

2 (e) In determining whether to approve an action described by
3 Subsection (d), the selected private procurement specialist shall
4 review related documentation to ensure that potential risks related
5 to the high-cost contract have been identified and mitigated.

6 (f) If a state agency disagrees with a determination of a
7 private procurement specialist regarding an action described by
8 Subsection (d), the agency may take the action without the approval
9 of the specialist if the administrative head of the agency and the
10 comptroller or, if applicable, the Department of Information
11 Resources approve the action.

12 Sec. 2262.155. SOLICITATION AND CONTRACT CANCELLATION. (a)
13 After review of and comment on the matter by the Legislative Budget
14 Board and the governor, the selected private procurement specialist
15 may recommend the cancellation of a solicitation or a contract
16 under Section 2262.154(d) if:

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

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

21 (3) with regard to an executed contract, an agency is
22 experiencing performance failure or payment irregularities.

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

25 (c) A state agency shall include in each of its high-cost
26 contracts a term that provides that the state agency may
27 immediately terminate the contract without further obligation to

1 the contractor if there is performance failure or there are payment
2 irregularities with regard to the contract.

3 Sec. 2262.156. PAYMENT OF PRIVATE PROCUREMENT SPECIALIST
4 SERVICES. (a) In this section, "ordinary procurement procedures"
5 means procedures related to the contract formation and contract
6 management process ordinarily performed by state agency
7 procurement personnel, including planning, determination of the
8 procurement method, solicitation, evaluation and award, inspection
9 and acceptance, contract administration, and payment.

10 (b) The state agency seeking to enter into a contract for
11 which a private procurement specialist is selected shall enter into
12 an agreement with the specialist to compensate the specialist using
13 either:

- 14 (1) a flat fee agreement; or
15 (2) a pay-for-performance agreement described by
16 Subsection (c).

17 (c) If a pay-for-performance agreement is used, the state
18 agency shall develop a projected budget for the contract based on
19 the agency's expected cost of entering into and managing the
20 contract if the agency were to enter into and manage the contract
21 using ordinary procurement procedures but without using the
22 services of a private procurement specialist. The
23 pay-for-performance agreement must provide that the private
24 procurement specialist will be paid a percentage of the savings
25 realized by the agency as a result of using the private procurement
26 specialist, compared with the agency's projected budget for the
27 contract.

1 Sec. 2262.157. REPORT. Not later than January 1 of each
2 year, each state agency that has used the services of a private
3 procurement specialist during the preceding year shall report to
4 the comptroller the savings realized by the agency as a result of
5 using the private procurement specialist's services. A state
6 agency shall base the determination of savings realized on the
7 agency's projected costs or budget for the contract compared to the
8 actual costs for the contract.

9 Sec. 2262.158. RULES; WAIVER. The comptroller and the
10 Department of Information Resources shall adopt rules to implement
11 and administer this subchapter, including rules for waiving
12 approval of the use of a private procurement specialist under
13 Section 2262.154.

14 SECTION 4. Section 2262.051(f), Government Code, is
15 repealed.

16 SECTION 5. Subchapter D, Chapter 2262, Government Code, as
17 added by this Act, applies only to a contract for which the
18 solicitation of bids, offers, qualifications, proposals, or
19 similar expressions of interest is published on or after September
20 1, 2011.

21 SECTION 6. This Act takes effect September 1, 2011.