

By: Parker

H.B. No. 198

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)  
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 for  
23 professional or consulting services under Chapter 2254.

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 may not bid on or  
25 otherwise make a proposal to receive a contract for which the  
26 specialist was selected.

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

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

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

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

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

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

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

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

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

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

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

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

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

24       (c) A state agency shall include in each of its high-cost  
25 contracts a term that provides that the state agency may  
26 immediately terminate the contract without further obligation to  
27 the contractor if there is performance failure or there are payment

1 irregularities with regard to the contract.

2 Sec. 2262.156. PAYMENT OF PRIVATE PROCUREMENT SPECIALIST  
3 SERVICES. (a) The state agency seeking to enter into a contract  
4 for which a private procurement specialist is selected shall enter  
5 into an agreement with the specialist to compensate the specialist  
6 using either:

7 (1) a flat fee agreement; or

8 (2) a pay-for-performance agreement described by  
9 Subsection (b).

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

21 Sec. 2262.157. REPORT. Not later than January 1 of each  
22 year, each state agency that has used the services of a private  
23 procurement specialist during the preceding year shall report to  
24 the comptroller the savings realized by the agency as a result of  
25 using the private procurement specialist's services. A state  
26 agency shall base the determination of savings realized on the  
27 agency's projected costs or budget for the contract compared to the

1 actual costs for the contract.

2 Sec. 2262.158. RULES; WAIVER. The comptroller and the  
3 Department of Information Resources shall adopt rules to implement  
4 and administer this subchapter, including rules for waiving  
5 approval of the use of a private procurement specialist under  
6 Section 2262.154.

7 SECTION 4. Section 2262.051(f), Government Code, is  
8 repealed.

9 SECTION 5. Subchapter D, Chapter 2262, Government Code, as  
10 added by this Act, applies only to a contract for which the  
11 solicitation of bids, offers, qualifications, proposals, or  
12 similar expressions of interest is published on or after September  
13 1, 2011.

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