

## **BILL ANALYSIS**

Senate Research Center

S.B. 1681  
By: Zaffirini  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The manner in which state agencies engage and administer contracts with vendors is of vital concern for the state because it directly affects the use of state-appropriated financial resources and, in some cases, the termination of state employee positions. Successful contract management involves three phases: solicitation and procurement, contract negotiation and execution, and contract administration and monitoring. A sole focus on any one stage would not prevent problems from risks or predatory practices from occurring in subsequent phases. The state's lengthy and costly withdrawal from several state contracts in recent years demonstrates the need for increased oversight and training in the contracting process.

S.B. 1681 improves management of state contracts by improving the training programs for employees involved in contracting and by providing ongoing assistance to solicit, negotiate, and manage contracts with vendors.

S.B. 1681 amends current law relating to oversight and management of state contracts.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 2262.0015, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 2262, Government Code, by adding Sections 2262.0015 and 2262.005, as follows:

Sec. 2262.0015. **APPLICABILITY TO CERTAIN CONTRACTS.** (a) Requires the comptroller of public accounts of the State of Texas (comptroller) to by rule establish threshold requirements that exclude small or routine contracts, including purchase orders, from the application of this chapter.

(b) Provides that this chapter does not apply to an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on November 1, 2013.

Sec. 2262.005. **CONSULTATION WITH STATE AGENCIES.** Requires the comptroller to consult with state agencies in developing forms, contract terms, and criteria required under this chapter.

SECTION 2. Amends the heading to Section 2262.053, Government Code, to read as follows:

Sec. 2262.053. **TRAINING FOR CONTRACT MANAGERS.**

SECTION 3. Amends Section 2262.053, Government Code, by amending Subsections (a) and (d) and adding Subsections (e) and (f), as follows:

(a) Requires the comptroller, in coordination with the Department of Information Resources (DIR), state auditor, and Health and Human Services Commission (HHSC), to develop a training program for contract managers, rather than requiring the Texas

Building and Procurement Commission (TBPC), in coordination with the comptroller, DIR, and state auditor, to develop or administer a training program for contract managers.

(d) Requires the comptroller to administer training under this section, rather than requires TBPC to administer the training program under this section.

(e) Requires the comptroller to certify contract managers who have completed the contract management training required under this section.

(f) Authorizes a state agency to develop qualified contract manager training to supplement the training required under this section. Authorizes the comptroller to incorporate the training developed by the agency into the training program under this section.

SECTION 4. Amends Subchapter B, Chapter 2262, Government Code, by adding Sections 2262.0535 and 2262.055, as follows:

Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) Requires the comptroller to adapt the program developed under Section 2262.053 (Training) to provide an abbreviated program for training the members of the governing bodies of state agencies. Authorizes the training to be provided together with other required training for members of state agency governing bodies.

(b) Requires all members of the governing body of a state agency to complete at least one course of the training provided under this section. Provides that this subsection does not apply to a state agency that does not enter into any contracts.

Sec. 2262.055. VENDOR PERFORMANCE TRACKING SYSTEM. (a) Requires the comptroller to evaluate the vendor's performance based on information reported by state agencies and criteria established by the comptroller.

(b) Requires the comptroller to establish an evaluation process that allows vendors who receive an unfavorable performance review to protest any classification given by the comptroller.

(c) Requires the comptroller to include the performance reviews in a vendor performance tracking system.

SECTION 5. Amends Section 2262.101, Government Code, as follows:

Sec. 2262.101. CREATION; DUTIES. (a) Creates this subsection from existing text. Provides that the Contract Advisory Team (team) is created to assist state agencies in improving contract management practices by:

(1) reviewing and making recommendations on the solicitation documents and contract documents for contracts of, rather than reviewing the solicitation of major contracts by, state agencies that have a value of at least \$10 million;

(2) Makes a nonsubstantive change;

(3) providing recommendations to the comptroller, rather than TBPC, regarding the development of the contract management guide and the training under Section 2262.053;

(4) providing recommendations and assistance to state agency personnel throughout the contract management process;

(5) coordinating and consulting with the quality assurance team established under Section 2054.158 (Quality Assurance Team) on all contracts relating to a major information resources project; and

(6) creating and periodically performing a risk assessment to determine the appropriate level of management and oversight of contracts by state agencies.

(b) Requires that the risk assessment created and performed under Subsection (a)(6) include the following criteria:

(1) the amount of appropriations to the agency;

(2) total contract value as a percentage of appropriations to the agency; or

(3) the impact of the functions and duties of the state agency on the health, safety, and well-being of residents.

(c) Requires the comptroller to oversee the activities of the team, including ensuring that the team carries out its duties under Subsection (a)(5).

(d) Requires a state agency to comply with a recommendation made under Subsection (a)(1) or submit a written explanation regarding why the recommendation is not applicable to the contract under review.

(e) Authorizes the team to review documents under Subsection (a)(1) only for compliance with contract management and best practices principles and prohibits the team from making a recommendation regarding the purpose or subject of the contract.

(f) Authorizes the team to develop an expedited process for reviewing solicitations under Subsection (a)(1) for contracts:

(1) that the team identifies as posing a low risk of loss to the state; or

(2) for which templates will be used more than once by a state agency.

SECTION 6. Amends Section 2262.102, Government Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Provides that the team consists of the following six, rather than five, members:

(1) one member from HHSC, rather than from the attorney general's office;

(2)-(3) Makes no change to these subdivisions;

(4) one member from the Texas Facilities Commission, rather than from TBPC;

(5) Makes a nonsubstantive change; and

(6) one member from a small state agency.

(c) Requires the attorney general's office to provide legal assistance to the team.

(d) Provides that, in this section, "small state agency" means a state agency with fewer than 100 employees.

SECTION 7. Amends Chapter 2262, Government Code, by adding Subchapter D, as follows:

#### SUBCHAPTER D. CONTRACT FORMS AND PROVISIONS

Sec. 2262.151. **CONTRACT TERMS RELATING TO NONCOMPLIANCE.** (a) Requires the comptroller to develop recommendations for contract terms regarding remedies for noncompliance by contractors, including remedies for noncompliance with any required disclosure of conflicts of interest by contractors. Authorizes the comptroller to develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts.

(b) Authorizes a state agency to include applicable recommended terms in a contract entered into by the agency.

Sec. 2262.152. **UNIFORM FORMS.** Requires the comptroller to develop and make available a uniform and automated set of forms that a state agency is authorized to use in the different stages of the contracting process.

Sec. 2262.153. **FORMS FOR REPORTING CONTRACTOR PERFORMANCE.** Requires the comptroller, as part of the uniform forms published under Section 2262.152, to develop forms for use by state agencies in reporting a contractor's performance for use in the vendor performance tracking system under Section 2262.055.

**SECTION 8.** Transfers Section 2262.003, Government Code, to Subchapter D, Chapter 2262, Government Code, as added by this Act, redesignates it as Section 2262.154, Government Code, and amends it as follows:

Sec. 2262.154. **New heading: REQUIRED PROVISION RELATING TO AUDITING.** Redesignates existing Section 2262.003 as Section 2262.154. (a)-(b) Makes no change to these subsections.

**SECTION 9.** Repealer: Section 2262.051(f) (relating to requiring the guide to establish solicitation procedures for a state agency), Government Code.

**SECTION 10.** Requires the comptroller, not later than May 1, 2014, to develop the training program required by Section 2262.053, Government Code, as amended by this Act, and Section 2262.0535, Government Code, as added by this Act.

**SECTION 11.** Provides that a member of a governing body of a state agency is not required to complete the training program provided under Section 2262.0535, Government Code, as added by this Act, until September 1, 2015.

**SECTION 12.** Requires the comptroller to use the vendor performance tracking system established by the comptroller before the effective date of this Act in carrying out the comptroller's duties under Section 2262.055, Government Code, as added by this Act.

**SECTION 13.** Provides that a contract manager is not required to be certified under Chapter 2262 (Statewide Contract Management), Government Code, as amended by this Act, until September 1, 2015.

**SECTION 14.** Requires the comptroller and the team, as soon as practicable, and not later than May 1, 2014, to develop the forms and recommendations required by this Act, including Sections 2262.151, 2262.152, and 2262.153, Government Code, as added by this Act.

**SECTION 15.** Effective date: November 1, 2013.