

## **BILL ANALYSIS**

C.S.S.B. 1681  
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Government Efficiency & Reform  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It is generally accepted that 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, results in the termination of state employee positions. Contract management experts contend that successful contract management involves three phases: solicitation and procurement, contract negotiation and execution, and contract administration and monitoring, and warn that a disproportionate focus on any one stage would not prevent problems from risks or predatory practices from occurring in subsequent phases. These experts point to the state's lengthy and costly withdrawal from several state contracts in recent years to demonstrate the need for increased oversight and training in the contracting process, and suggest that improving the training programs for employees involved in contracting and providing ongoing assistance to solicit, negotiate, and manage contracts with vendors would improve state contract management practices. C.S.S.B. 1681 seeks to establish these improvements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 1681 amends the Government Code to require the comptroller of public accounts to establish, by rule, threshold requirements that exclude small or routine contracts, including purchase orders, from the application of statutory provisions relating to statewide contract management. The bill exempts from the application of such provisions an enrollment contract with multiple vendors for the purchase of goods and services by health and human service agencies under Health and Human Services Commission (HHSC) rules. The bill requires the comptroller to consult with state agencies in developing forms, contract terms, and criteria required under provisions relating to statewide contract management.

C.S.S.B. 1681 adds HHSC to the list of entities with which the comptroller is required to coordinate in developing a training program for contract managers. The bill requires the comptroller to certify contract managers who have completed the required contract management training. The bill authorizes a state agency to develop qualified contract manager training to supplement the required training and authorizes the comptroller to incorporate the training developed by the agency into the comptroller-developed training program. The bill requires the comptroller to develop the training program not later than May 1, 2014. The bill specifies that a contract manager is not required to be certified until September 1, 2015.

C.S.S.B. 1681 requires the comptroller, not later than May 1, 2014, to adapt the contract management training program to provide an abbreviated program for training the members of state agency governing bodies. The bill authorizes the training to be provided together with other required training for members of state agency governing bodies. The bill requires all members of

such governing bodies to complete at least one course of such training, specifies that such a member is not required to complete the training until September 1, 2015, and exempts from this requirement a state agency that does not enter into any contracts.

C.S.S.B. 1681 repeals statutory provisions requiring the state agency contract management guide to establish procedures by which a state agency is required to consult with the Contract Advisory Team before issuing a solicitation for a major contract.

C.S.S.B. 1681 requires the comptroller to evaluate a vendor's performance based on information reported by state agencies and criteria established by the comptroller. The bill 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 and to include the performance reviews in a vendor performance tracking system and requires the comptroller to use the vendor performance tracking system established by the comptroller before the bill's effective date in carrying out the comptroller's duties under these provisions.

C.S.S.B. 1681 clarifies that the duty of the Contract Advisory Team to state agencies in improving contract management practices by reviewing the solicitation of major contracts includes reviewing and making recommendations on the solicitation documents and contract documents for contracts of state agencies that have a value of at least \$10 million. The bill expands the advisory team's duties in providing such assistance to include providing recommendations and assistance to state agency personnel throughout the contract management process; coordinating and consulting with the quality assurance team on all contracts relating to a major information resources project; and creating and periodically performing a risk assessment to determine the appropriate level of management and oversight of contracts by state agencies. The bill requires the risk assessment to include as criteria the amount of appropriations to the agency, the total contract value as a percentage of appropriations to the agency, and the impact of the functions and duties of the state agency on the health, safety, and well-being of residents.

C.S.S.B. 1681 requires the comptroller to oversee the activities of the advisory team, including ensuring that the advisory team carries out its duties to coordinate and consult with the quality assurance team on all contracts relating to a major information resources project. The bill requires a state agency to comply with a recommendation made on the solicitation documents and contract documents for contracts of state agencies that have a value of at least \$10 million or to submit a written explanation regarding why the recommendation is not applicable to the contract under review. The bill authorizes the advisory team to review such documents only for compliance with contract management and best practices principles and prohibits the advisory team from making a recommendation regarding the purpose or subject of the contract. The bill authorizes the advisory team to develop an expedited process for reviewing solicitation documents for contracts of state agencies that have a value of at least \$10 million that the team identifies as posing a low risk of loss to the state, or for which templates will be used more than once by a state agency.

C.S.S.B. 1681 increases the membership of the advisory team from five members to six members, adds one member from a state agency with fewer than 100 employees, and includes one member from HHSC, rather than the attorney general's office. The bill requires the attorney general's office to provide legal assistance to the team.

C.S.S.B. 1681 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. The bill 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. The bill authorizes a state agency to include applicable recommended terms in a contract entered into by the agency. The bill requires the comptroller to develop and make available a uniform and automated set of forms that a state agency may use in the different stages of the contracting process. The bill requires the

comptroller, as part of such uniform forms, to develop forms for state agencies to report a contractor's performance for use in the vendor performance tracking system. The bill requires the comptroller and Contract Advisory Team to develop the forms and recommendations required under the bill's provisions as soon as practicable, but not later than May 1, 2014.

C.S.S.B. 1681 repeals statutory provisions requiring the contract management guide to establish procedures by which a state agency is required to consult with the Contract Advisory Team before issuing a solicitation for a major contract.

C.S.S.B. 1681 repeals Section 2262.051(f), Government Code.

### **EFFECTIVE DATE**

November 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 1681 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Subchapter A, Chapter 2262, Government Code, is amended.

SECTION 2. The heading to Section 2262.053, Government Code, is amended.

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

(a) In coordination with the ~~[comptroller,]~~ Department of Information Resources, ~~[and]~~ state auditor, and Health and Human Services Commission, the comptroller ~~[commission]~~ shall develop ~~[or administer]~~ a training program for contract managers.

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

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

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

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

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

(a) In coordination with the ~~[comptroller,]~~ Department of Information Resources, ~~[and]~~ state auditor, and Health and Human Services Commission, the comptroller ~~[commission]~~ shall develop ~~[or administer]~~ a training program for contract managers.

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

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

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

SECTION 4. Subchapter B, Chapter 2262, Government Code, is amended.

SECTION 5. Section 2262.101, Government Code, is amended to read as follows:

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

(1) reviewing and making recommendations on the solicitation documents and final contract documents for [of major] contracts of [by] state agencies that have a value of at least \$10 million but not more than \$100 million;

(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~~

(3) providing recommendations to the comptroller [commission] regarding:

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

(B) 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 on all contracts relating to a major information resources project; and

(6) reviewing, making recommendations, and approving contracts under Section 2262.104.

(b) The comptroller shall oversee the activities of the team, including ensuring that the team carries out its duties under Subsection (a)(5).

(c) A state agency shall:

SECTION 4. Same as engrossed version.

SECTION 5. Section 2262.101, Government Code, is amended to read as follows:

Sec. 2262.101. CREATION; DUTIES. (a) The Contract Advisory 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 [of major] contracts of [by] state agencies that have a value of at least \$10 million;

(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~~

(3) providing recommendations to the comptroller [commission] regarding:

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

(B) 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 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) The risk assessment created and performed under Subsection (a)(6) must include the following criteria:

(1) the amount of appropriations to the agency;

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

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

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

(d) A state agency shall:

- (1) comply with a recommendation made under Subsection (a)(1); or
- (2) submit a written explanation regarding why the recommendation is not applicable to the contract under review.
- (d) The team may review documents under Subsection (a)(1) only for compliance with contract management and best practices principles and may not make a recommendation regarding the purpose or subject of the contract.

SECTION 6. Section 2262.102, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

- (a) The team consists of the following ~~five~~ members:
  - (1) one member from the ~~attorney general's office~~;
  - (2) one member from the comptroller's office;
  - (3) one member from the Department of Information Resources;
  - (4) ~~[one member from the Texas Building and Procurement Commission; and~~
  - ~~[(5)]~~ one member from the governor's office; and
  - (5) one member from a small state agency.

(c) In this section, "small state agency" means a state agency with fewer than 100 employees.

SECTION 7. Subchapter C, Chapter 2262, Government Code, is amended by adding Section 2262.104 to read as follows:  
Sec. 2262.104. REVIEW AND APPROVAL. Each state agency shall receive recommendations and approval from the team before taking the following actions in relation to a contract that has a value of more than \$100 million:

- (1) comply with a recommendation made under Subsection (a)(1); or
- (2) submit a written explanation regarding why the recommendation is not applicable to the contract under review.
- (e) The team may review documents under Subsection (a)(1) only for compliance with contract management and best practices principles and may not make a recommendation regarding the purpose or subject of the contract.
- (f) The team may 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. Section 2262.102, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

- (a) The team consists of the following ~~six~~ ~~[five]~~ members:
  - (1) one member from the ~~Health and Human Services Commission~~ ~~[attorney general's office]~~;
  - (2) one member from the comptroller's office;
  - (3) one member from the Department of Information Resources;
  - (4) ~~one member from the Texas Building and Procurement~~ ~~Commission;~~ ~~[and]~~
  - (5) one member from the governor's office; and
  - (6) one member from a small state agency.
- (c) The attorney general's office shall provide legal assistance to the team.
- (d) In this section, "small state agency" means a state agency with fewer than 100 employees.

~~No equivalent provision.~~

- (1) publicly releasing solicitation documents; and
- (2) executing a final contract.

SECTION 8. Chapter 2262, Government Code, is amended.

SECTION 7. Same as engrossed version.

SECTION 9. Section 2262.003, Government Code, is transferred to Subchapter D, Chapter 2262, Government Code, as added by this Act, redesignated as Section 2262.154, Government Code, and amended.

SECTION 8. Same as engrossed version.

SECTION 10. Subsection (f), Section 2262.051, Government Code, is repealed.

SECTION 9. Same as engrossed version.

SECTION 11. Not later than May 1, 2014, the comptroller of public accounts shall 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 10. Same as engrossed version.

SECTION 12. A member of a governing body of a state agency is not required to complete the training provided under Section 2262.0535, Government Code, as added by this Act, until September 1, 2015.

SECTION 11. Same as engrossed version.

SECTION 13. The comptroller of public accounts shall 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 12. Same as engrossed version.

SECTION 14. A contract manager is not required to be certified under Chapter 2262, Government Code, as amended by this Act, until September 1, 2015.

SECTION 13. Same as engrossed version.

SECTION 15. As soon as practicable, and not later than May 1, 2014, the comptroller of public accounts and Contract Advisory Team shall develop the forms and

SECTION 14. Same as engrossed version.

recommendations required by this Act, including Sections 2262.151, 2262.152, and 2262.153, Government Code, as added by this Act.

SECTION 16. This Act takes effect November 1, 2013.

SECTION 15. Same as engrossed version.