

By: Zaffirini

S.B. No. 1680

A BILL TO BE ENTITLED

AN ACT

relating to certain requirements applicable to contracts entered into by state agencies.

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

SECTION 1. Subsection (a), Section 2113.102, Government Code, is amended to read as follows:

(a) A state agency may not use appropriated money to contract with a person to audit ~~[the financial records or accounts of]~~ the agency except:

(1) as provided by

~~[(1)]~~ Subsections (b), (c), and (d); and

(2) in accordance with Section 321.020 ~~[Chapter 466, pertaining to the state lottery,~~

~~[(3) Chapter 2306, pertaining to the Texas Department of Housing and Community Affairs, and~~

~~[(4) Chapter 361, Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation].~~

SECTION 2. Subsection (a), Section 2162.103, Government Code, is amended to read as follows:

(a) In comparing the cost of providing a service, the council shall consider the:

(1) cost of supervising the work of a private contractor; ~~and~~

(2) cost of a state agency's performance of the service, including:

(A) the costs of the comptroller, attorney general, and other support agencies; and

(B) other indirect costs related to the agency's performance of the service;

(3) installation costs and any other initial costs associated with a contract with a private contractor;

(4) other costs associated with the transition to using a private contractor's goods or services; and

(5) cost savings to the state if a private contractor were awarded the contract.

SECTION 3. Section 2261.002, Government Code, is amended to read as follows:

Sec. 2261.002. DEFINITIONS. In this chapter:

(1) "Contract" includes an agreement or other written expression of terms of agreement, including an amendment, a modification, a renewal, or an extension, for the purchase or sale of goods or services that is entered into or paid for, wholly or partly, by a state agency during a fiscal year and a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both. The term does not include:

(A) a contract that has been reported to the Legislative Budget Board under Section 2054.008, 2166.2551, 2254.006, or 2254.0301;

1 (B) a purchase order;

2 (C) an interagency contract;

3 (D) an interlocal agreement;

4 (E) a contract with a value of not more than
5 \$50,000; or

6 (F) a contract paid only with funds not
7 appropriated by the General Appropriations Act.

8 (2) "Contract manager" means a person who:

9 (A) is employed by a state agency; and

10 (B) has significant contract management duties
11 for the state agency.

12 (3) "Executive director" means the administrative
13 head of a state agency.

14 (4) "General counsel" means the general counsel of a
15 state agency.

16 (5) "Major contract" means a contract, including a
17 renewal of a contract, that has a value of \$10 million or more. The
18 term includes a service contract.

19 (6) "State agency" has the meaning assigned by Section
20 2151.002.

21 SECTION 4. Subchapter A, Chapter 2261, Government Code, is
22 amended by adding Sections 2261.004, 2261.005, 2261.006, and
23 2261.007 to read as follows:

24 Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS.

25 (a) Each state agency shall maintain in a central location all
26 contracts for that agency.

27 (b) In this subsection, "contract" includes a sole-source

1 contract. Each state agency shall maintain accurate records of all
2 essential information relating to agency contracts, including
3 information on:

4 (1) a contract delay or changes to a contract in which
5 total expenditures under the contract increase by more than 35
6 percent from the original contract amount; and

7 (2) cost overruns, including a written explanation of
8 why expenditures have increased under a contract.

9 Sec. 2261.005. CONTRACT REPORTING. (a) In this section,
10 "contract" includes a construction contract.

11 (b) The following sections prescribe reporting requirements
12 for certain contracts:

13 (1) Section 322.020;

14 (2) Section 2054.008;

15 (3) Section 2166.2551;

16 (4) Section 2254.006; and

17 (5) Section 2254.0301.

18 Sec. 2261.006. CONTRACT MANAGEMENT. A contract manager,
19 general counsel, or executive director of a state agency shall
20 manage agency contracts.

21 Sec. 2261.007. PROFESSIONAL SERVICES. A state agency shall
22 procure professional services in accordance with Subchapter A,
23 Chapter 2254.

24 SECTION 5. Subchapter C, Chapter 2261, Government Code, is
25 amended by adding Sections 2261.103, 2261.104, and 2261.105 to read
26 as follows:

27 Sec. 2261.103. USE OF UNIFORM FORMS. A state agency may use

1 any forms developed by the comptroller as templates, guides, or
2 samples for contracts entered into by the agency.

3 Sec. 2261.104. ESSENTIAL PROVISIONS. The following are
4 required provisions in each contract, other than a grant:

- 5 (1) introduction;
- 6 (2) scope of work;
- 7 (3) indemnification or damage claims;
- 8 (4) price;
- 9 (5) specifications;
- 10 (6) funding out clause;
- 11 (7) antitrust;
- 12 (8) payment;
- 13 (9) affirmation clauses;
- 14 (10) technology access clause;
- 15 (11) dispute resolution;
- 16 (12) term of contract;
- 17 (13) confidential information;
- 18 (14) abandonment or default;
- 19 (15) right to audit;
- 20 (16) force majeure;
- 21 (17) ownership of intellectual property, including
22 rights to data, documents, and computer software;
- 23 (18) independent contractor;
- 24 (19) termination; and
- 25 (20) buy Texas.

26 Sec. 2261.105. REQUIRED PROVISIONS. In any contract for
27 the acquisition of goods and services to which a state agency is a

1 party, a provision required by applicable law to be included in the
2 contract is considered to be a part of the executed contract without
3 regard to:

4 (1) whether the provision appears on the face of the
5 contract; or

6 (2) whether the contract includes any provision to the
7 contrary.

8 SECTION 6. The heading to Subchapter E, Chapter 2261,
9 Government Code, is amended to read as follows:

10 SUBCHAPTER E. CONTRACTING [~~CONTRACTOR~~] OVERSIGHT

11 SECTION 7. Subchapter E, Chapter 2261, Government Code, is
12 amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207,
13 2261.208, and 2261.209 to read as follows:

14 Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.

15 (a) After a contract is completed or otherwise terminated, each
16 state agency shall review the contractor's performance under the
17 contract.

18 (b) Using forms made available to the state agency, a state
19 agency shall report to the comptroller on the results of the review
20 regarding a contractor's performance under a major contract.

21 (c) A state agency may use any vendor performance tracking
22 system available to state agencies to determine whether to award a
23 contract to a person reviewed in the database.

24 Sec. 2261.205. EXCLUDING CONTRACTOR FROM SOLICITATION
25 PROCESS. Based on its own contractor performance reviews and on
26 information in any vendor performance tracking system available to
27 state agencies, a state agency may exclude a contractor from the

1 solicitation process for a contract if the agency determines the
2 contractor has performed poorly on a previous state contract
3 without regard to whether the contractor has been barred under
4 Section 2155.077.

5 Sec. 2261.206. CONTRACT MANAGERS. (a) Each state agency
6 that enters into contracts other than interagency contracts shall
7 establish a career ladder program for contract management in the
8 agency.

9 (b) An employee hired as a contract manager may engage in
10 procurement planning, contract solicitation, contract formation,
11 price establishment, and other contract activities.

12 (c) Each state agency shall determine, in consultation with
13 the state auditor, the amount and significance of contract
14 management duties sufficient for an employee to be considered a
15 contract manager under this chapter.

16 Sec. 2261.207. APPROVAL OF CONTRACTS. (a) Each state
17 agency shall establish formal guidelines:

18 (1) regarding who may approve a contract for the
19 agency;

20 (2) for contract planning and solicitation;

21 (3) for contract negotiations; and

22 (4) for contract management.

23 (b) Each state agency shall adopt a policy to establish a
24 monetary threshold above which agency contracts and amendments to
25 or extensions of agency contracts require written authorization by
26 the agency executive director.

27 (c) For state agency contracts valued in excess of \$1

1 million, the agency executive director must authorize a contract
2 amendment in writing.

3 (d) Each state agency shall annually report to the
4 comptroller a list of persons authorized to approve contracts at
5 the agency. The list must include each person's name, position, and
6 supervisory responsibility, if any.

7 Sec. 2261.208. NEGOTIATION OF MAJOR CONTRACT BY SINGLE
8 EMPLOYEE PROHIBITED. A state agency may not negotiate a major
9 contract with only one employee engaging in the negotiation.

10 Sec. 2261.209. CONTRACT REVIEW. A contract manager shall:

11 (1) periodically review and report on a contractor's
12 performance throughout the term of a contract; and

13 (2) submit, at a minimum, a quarterly report to the
14 executive director of the agency on the results of the reviews
15 performed under Subdivision (1).

16 SECTION 8. Chapter 2261, Government Code, is amended by
17 adding Subchapters F and G to read as follows:

18 SUBCHAPTER F. CHANGES TO CONTRACTS

19 Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE
20 ORDERS. (a) An extension of or amendment to a contract, including
21 a change order, is subject to the same approval processes as the
22 original contract.

23 (b) A state agency may not extend or amend a contract unless
24 the agency complies with the same approval processes for the
25 extension or amendment as required for the original contract and a
26 contract manager for the agency states in writing why the extension
27 or amendment is necessary or advantageous to the state.

1 (c) This section does not affect whether a state agency is
2 required to undertake a new solicitation process in the manner
3 required for a new contract in order to extend or amend a contract.

4 Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST
5 OVERRUNS. (a) If a proposed contract amendment or extension
6 changes the monetary value of a contract by at least 35 percent or
7 \$1 million, the state agency must obtain review and approval from
8 the Contract Advisory Team and the agency's executive director
9 before the agency amends or extends the contract.

10 (b) Subsection (a) does not apply to a proposed contract
11 amendment required by a state or federal statute.

12 (c) The executive director shall be timely notified of a
13 contract cost overrun.

14 Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS. This
15 subchapter does not apply to contract extensions that are
16 specifically established as a component of the original
17 procurement.

18 SUBCHAPTER G. TRAINING

19 Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS. (a) A
20 state agency shall require a contract manager to be trained under
21 Section 2262.053.

22 (b) A state agency shall maintain a list of contract
23 managers who have completed the contract management training.

24 (c) A state agency may develop qualified contract manager
25 training to supplement the training required under this section.

26 Sec. 2261.302. TRAINING FOR GOVERNING BODIES. All members
27 of the governing body of a state agency shall complete at least one

1 course of abbreviated training provided under Section 2262.053.
2 This section does not apply to a state agency that does not enter
3 into any contracts.

4 SECTION 9. Section 2262.003, Government Code, is
5 transferred to Subchapter C, Chapter 2261, Government Code,
6 redesignated as Section 2261.105, Government Code, and amended to
7 read as follows:

8 Sec. 2261.105 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
9 RELATING TO AUDITING. (a) Each state agency shall include in each
10 of its contracts a term that provides that:

11 (1) the state auditor may conduct an audit or
12 investigation of any entity receiving funds from the state directly
13 under the contract or indirectly through a subcontract under the
14 contract;

15 (2) acceptance of funds directly under the contract or
16 indirectly through a subcontract under the contract acts as
17 acceptance of the authority of the state auditor, under the
18 direction of the legislative audit committee, to conduct an audit
19 or investigation in connection with those funds; and

20 (3) under the direction of the legislative audit
21 committee, an entity that is the subject of an audit or
22 investigation by the state auditor must provide the state auditor
23 with access to any information the state auditor considers relevant
24 to the investigation or audit.

25 (b) The state auditor shall provide assistance to a state
26 agency in developing the contract provisions.

27 SECTION 10. Sections 2261.006, 2261.104, 2261.105, and

1 2261.208, Government Code, as added by this Act, apply only to a
2 contract for which a state agency first advertises or otherwise
3 solicits bids, proposals, offers, or qualifications on or after the
4 effective date of this Act.

5 SECTION 11. A contract manager is not required to complete
6 the training required under Section 2261.301, Government Code, as
7 added by this Act, until September 1, 2015.

8 SECTION 12. A member of a governing body of a state agency
9 is not required to complete the training required under Section
10 2261.302, Government Code, as added by this Act, until September 1,
11 2015.

12 SECTION 13. A state agency is not required to comply with
13 Section 2261.004 and Sections 2261.204 through 2261.209,
14 Government Code, as added by this Act, until September 1, 2015.

15 SECTION 14. This Act takes effect November 1, 2013.