

By: Zaffirini
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S.B. No. 1680

Substitute the following for S.B. No. 1680:

By: Harper-Brown

C.S.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.

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

(A) is employed by a state agency; and

(B) has significant contract management duties

1 for the state agency.

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

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

6 (5) "Major contract" means a contract, including a
7 renewal of a contract, that has a value of at least \$1 million. The
8 term includes a service contract.

9 (6) "State agency" has the meaning assigned by Section
10 2151.002.

11 SECTION 4. Subchapter A, Chapter 2261, Government Code, is
12 amended by adding Sections 2261.004, 2261.005, and 2261.006 to read
13 as follows:

14 Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS.

15 (a) Each state agency shall determine and use a standardized
16 method for maintaining all contracts for that agency.

17 (b) In this subsection, "contract" includes a sole-source
18 contract. Each state agency shall maintain accurate records of all
19 essential information relating to agency contracts, including
20 information on:

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

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

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

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

(1) Section 322.020;

(2) Section 2054.008;

(3) Section 2166.2551;

(4) Section 2254.006; and

(5) Section 2254.0301.

Sec. 2261.006. PROFESSIONAL SERVICES. A state agency shall procure professional services in accordance with Subchapter A, Chapter 2254.

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

Sec. 2261.103. USE OF UNIFORM FORMS. A state agency may use any forms developed by the comptroller as templates, guides, or samples for contracts entered into by the agency.

Sec. 2261.104. ESSENTIAL CONTRACT PROVISIONS. The following are required provisions in each contract to which the provisions are applicable, other than a grant:

(1) legal authority;

(2) statement of work;

(3) indemnification or damage claims;

(4) consideration;

(5) specifications;

(6) funding out clause;

(7) antitrust;

(8) payment;

- (9) dispute resolution;
- (10) term of contract;
- (11) confidential information;
- (12) abandonment or default;
- (13) right to audit;
- (14) force majeure;
- (15) independent contractor; and
- (16) termination.

Sec. 2261.105. REQUIRED PROVISIONS. In any contract for the acquisition of goods and services to which a state agency is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to:

- (1) whether the provision appears on the face of the contract; or
- (2) whether the contract includes any provision to the contrary.

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

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

SECTION 7. Section 2261.202, Government Code, is amended to read as follows:

Sec. 2261.202. CONTRACT MONITORING RESPONSIBILITIES. (a) As one of its contract management policies, each state agency that makes procurements to which this chapter applies shall establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of agency staff,

1 including internal audit staff and other inspection,
2 investigative, or audit staff.

3 (b) The policy must establish clear lines of
4 accountability, staff roles and responsibilities, and
5 decision-making authority for program staff, contract management
6 staff, and executive management staff.

7 SECTION 8. Subchapter E, Chapter 2261, Government Code, is
8 amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207,
9 2261.208, and 2261.209 to read as follows:

10 Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.

11 (a) After a contract is completed or otherwise terminated, each
12 state agency shall review the contractor's performance under the
13 contract.

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

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

20 Sec. 2261.205. EXCLUDING CONTRACTOR FROM SOLICITATION
21 PROCESS. Based on its own contractor performance reviews and on
22 information in any vendor performance tracking system available to
23 state agencies, a state agency may exclude a contractor from the
24 solicitation process for a contract if the agency determines the
25 contractor has performed poorly on a previous state contract
26 without regard to whether the contractor has been barred under
27 Section 2155.077.

1 Sec. 2261.206. CONTRACT MANAGERS. (a) Each state agency
2 that enters into contracts other than interagency contracts shall
3 establish a career ladder program for contract management in the
4 agency.

5 (b) An employee hired as a contract manager may participate
6 in procurement planning, contract solicitation, contract
7 formation, price establishment, and other contract activities.

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

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

14 (1) regarding who may approve a contract for the
15 agency;

16 (2) for contract planning and solicitation;

17 (3) for contract negotiations; and

18 (4) for contract management.

19 (b) Each state agency shall adopt a policy to establish a
20 monetary threshold above which agency contracts and amendments to
21 or extensions of agency contracts require written authorization by
22 the agency executive director.

23 (c) For state agency contracts valued in excess of \$1
24 million, the agency executive director must authorize a contract
25 amendment in writing.

26 (d) Each state agency shall annually report to the
27 comptroller a list of persons authorized to approve contracts at

1 the agency. The list must include each person's name, position, and
2 supervisory responsibility, if any.

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

6 Sec. 2261.209. CONTRACT REVIEW. (a) A contractor's
7 performance must be periodically reviewed throughout the term of a
8 contract.

9 (b) A state agency shall ensure ongoing communication
10 between executive management staff, contract management staff, and
11 program staff of the results of the reviews performed under
12 Subsection (a) with specific attention to:

13 (1) contracts that are anticipated to be completed
14 later than originally estimated; or

15 (2) contracts that are expected to cost more than the
16 amount that was originally budgeted.

17 SECTION 9. Chapter 2261, Government Code, is amended by
18 adding Subchapters F and G to read as follows:

19 SUBCHAPTER F. CHANGES TO CONTRACTS

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

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

1 necessary or advantageous to the state.

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

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

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

14 (c) The executive director shall be timely notified of any
15 unanticipated contract cost overrun.

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

20 SUBCHAPTER G. TRAINING

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

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

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

1 Sec. 2261.302. TRAINING FOR GOVERNING BODIES. All members
2 of the governing body of a state agency shall complete at least one
3 course of abbreviated training provided under Section 2262.053.
4 This section does not apply to a state agency that does not enter
5 into any contracts.

6 SECTION 10. Section 2262.003, Government Code, is
7 transferred to Subchapter C, Chapter 2261, Government Code,
8 redesignated as Section 2261.106, Government Code, and amended to
9 read as follows:

10 Sec. 2261.106 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
11 RELATING TO AUDITING. (a) Each state agency shall include in each
12 of its contracts a term that provides that:

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

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

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

27 (b) The state auditor shall provide assistance to a state

1 agency in developing the contract provisions.

2 SECTION 11. Sections 2261.104, 2261.105, and 2261.208,
3 Government Code, as added by this Act, apply only to a contract for
4 which a state agency first advertises or otherwise solicits bids,
5 proposals, offers, or qualifications on or after the effective date
6 of this Act.

7 SECTION 12. A contract manager is not required to complete
8 the training required under Section 2261.301, Government Code, as
9 added by this Act, until September 1, 2015.

10 SECTION 13. A member of a governing body of a state agency
11 is not required to complete the training required under Section
12 2261.302, Government Code, as added by this Act, until September 1,
13 2015.

14 SECTION 14. A state agency is not required to comply with
15 Section 2261.202, Government Code, as amended by this Act, and
16 Section 2261.004 and Sections 2261.204 through 2261.209,
17 Government Code, as added by this Act, until September 1, 2015.

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