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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. Section 2113.102(a), 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. Section 2162.103(a), 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) "Major contract" means a contract, including a
15 renewal of a contract, that has a value of \$10 million or more. The
16 term includes a service contract.

17 (5) "State agency" has the meaning assigned by Section
18 2151.002.

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

22 Sec. 2261.004. STATE AGENCY REPOSITORY. Each state agency
23 shall maintain in a central location all contracts for that agency.

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

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

- (1) Section 322.020;
- (2) Section 2054.008;
- (3) Section 2166.2551;
- (4) Section 2254.006; and
- (5) Section 2254.0301.

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

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

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

- (1) introduction;
- (2) scope of work;
- (3) indemnification or damage claims;
- (4) price;
- (5) specifications;
- (6) funding out clause;
- (7) antitrust;
- (8) payment;
- (9) affirmation clauses;
- (10) technology access clause;
- (11) dispute resolution;
- (12) term of contract;
- (13) confidential information;
- (14) abandonment or default;

1 (15) right to audit;

2 (16) force majeure;

3 (17) ownership of intellectual property, including
4 rights to data, documents, and computer software;

5 (18) independent contractor;

6 (19) termination; and

7 (20) buy Texas.

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. (a)
15 After a contract is completed or otherwise terminated, each state
16 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 shall 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 regarding who may approve
18 a contract for the agency.

19 (b) Each state agency shall adopt administrative rules to
20 establish a monetary threshold above which agency contracts and
21 amendments to or extensions of agency contracts require written
22 authorization by 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 each person authorized to approve contracts

1 at the agency. The list must include the person's name, position,
2 and 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 contract manager shall:
7 (1) periodically review and report on a contractor's
8 performance throughout the term of a contract; and

9 (2) submit a quarterly report to the executive
10 director of the agency on the results of the reviews performed under
11 Subdivision (1).

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

14 SUBCHAPTER F. CHANGES TO CONTRACTS

15 Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE
16 ORDERS. (a) An extension of or amendment to a contract, including
17 a change order, is subject to the same approval processes as the
18 original contract.

19 (b) A state agency may not extend or amend a contract unless
20 the agency complies with the same approval processes for the
21 extension or amendment as required for the original contract and a
22 contract manager for the agency states in writing why the extension
23 or amendment is necessary.

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

27 Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE. (a) If a

proposed contract amendment or extension changes the monetary value of a contract by \$1 million or more, the state agency must obtain review and approval from the Contract Advisory Team and the agency's executive director before the agency amends or extends the contract.

(b) This section does not apply to a proposed contract amendment required by a state or federal statute.

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

SUBCHAPTER G. TRAINING

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

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

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

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

SECTION 9. Section 2262.003, Government Code, is transferred to Subchapter C, Chapter 2261, Government Code, redesignated as Section 2261.105, Government Code, and amended to

1 read as follows:

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

5 (1) the state auditor may conduct an audit or
6 investigation of any entity receiving funds from the state directly
7 under the contract or indirectly through a subcontract under the
8 contract;

9 (2) acceptance of funds directly under the contract or
10 indirectly through a subcontract under the contract acts as
11 acceptance of the authority of the state auditor, under the
12 direction of the legislative audit committee, to conduct an audit
13 or investigation in connection with those funds; and

14 (3) under the direction of the legislative audit
15 committee, an entity that is the subject of an audit or
16 investigation by the state auditor must provide the state auditor
17 with access to any information the state auditor considers relevant
18 to the investigation or audit.

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

21 SECTION 10. Sections 2261.104 and 2261.208, Government
22 Code, as added by this Act, apply only to a contract for which a
23 state agency first advertises or otherwise solicits bids,
24 proposals, offers, or qualifications on or after the effective date
25 of this Act.

26 SECTION 11. A contract manager is not required to complete
27 the training required under Section 2261.301, Government Code, as

1 added by this Act, until September 1, 2015.

2 SECTION 12. A member of a governing body of a state agency
3 is not required to complete the training required under Section
4 2261.302, Government Code, as added by this Act, until September 1,
5 2015.

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

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