

1-1 By: Zaffirini S.B. No. 1680  
1-2 (In the Senate - Filed March 8, 2013; March 25, 2013, read  
1-3 first time and referred to Committee on Government Organization;  
1-4 April 4, 2013, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 4, 2013,  
1-6 sent to printer.)

1-7	COMMITTEE VOTE				
1-8		Yea	Nay	Absent	PNV
1-9	Zaffirini	X			
1-10	Schwertner	X			
1-11	Birdwell	X			
1-12	Garcia	X			
1-13	Paxton	X			
1-14	Rodriguez	X			
1-15	Taylor	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1680 By: Garcia

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to certain requirements applicable to contracts entered  
1-20 into by state agencies.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subsection (a), Section 2113.102, Government  
1-23 Code, is amended to read as follows:

1-24 (a) A state agency may not use appropriated money to  
1-25 contract with a person to audit ~~[the financial records or accounts~~  
1-26 ~~of]~~ the agency except:

1-27 (1) as provided by ~~+~~  
1-28 ~~[(1)]~~ Subsections (b), (c), and (d); and  
1-29 (2) in accordance with Section 321.020 ~~[Chapter 466,~~  
1-30 ~~pertaining to the state lottery,~~

1-31 ~~[(3) Chapter 2306, pertaining to the Texas Department~~  
1-32 ~~of Housing and Community Affairs, and~~

1-33 ~~[(4) Chapter 361, Transportation Code, pertaining to~~  
1-34 ~~the Texas Turnpike Authority division of the Texas Department of~~  
1-35 ~~Transportation].~~

1-36 SECTION 2. Subsection (a), Section 2162.103, Government  
1-37 Code, is amended to read as follows:

1-38 (a) In comparing the cost of providing a service, the  
1-39 council shall consider the:

1-40 (1) cost of supervising the work of a private  
1-41 contractor; ~~and~~

1-42 (2) cost of a state agency's performance of the  
1-43 service, including:

1-44 (A) the costs of the comptroller, attorney  
1-45 general, and other support agencies; and

1-46 (B) other indirect costs related to the agency's  
1-47 performance of the service;

1-48 (3) installation costs and any other initial costs  
1-49 associated with a contract with a private contractor;

1-50 (4) other costs associated with the transition to  
1-51 using a private contractor's goods or services; and

1-52 (5) cost savings to the state if a private contractor  
1-53 were awarded the contract.

1-54 SECTION 3. Section 2261.002, Government Code, is amended to  
1-55 read as follows:

1-56 Sec. 2261.002. DEFINITIONS. In this chapter:

1-57 (1) "Contract" includes an agreement or other written  
1-58 expression of terms of agreement, including an amendment, a  
1-59 modification, a renewal, or an extension, for the purchase or sale  
1-60 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;

(B) a purchase order;

(C) an interagency contract;

(D) an interlocal agreement;

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

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

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

(A) is employed by a state agency; and

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

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

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

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

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

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

Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS.

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

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

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

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

Sec. 2261.005. CONTRACT REPORTING. (a) In this section, "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. CONTRACT MANAGEMENT. A contract manager, general counsel, or executive director of a state agency shall manage agency contracts.

Sec. 2261.007. 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 PROVISIONS. The following are required provisions in each contract, other than a grant:

(1) introduction;

(2) scope of work;

(3) indemnification or damage claims;

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

3-19 Sec. 2261.105. REQUIRED PROVISIONS. In any contract for  
 3-20 the acquisition of goods and services to which a state agency is a  
 3-21 party, a provision required by applicable law to be included in the  
 3-22 contract is considered to be a part of the executed contract without  
 3-23 regard to:

- 3-24 (1) whether the provision appears on the face of the
- 3-25 contract; or
- 3-26 (2) whether the contract includes any provision to the
- 3-27 contrary.

3-28 SECTION 6. The heading to Subchapter E, Chapter 2261,  
 3-29 Government Code, is amended to read as follows:

3-30 SUBCHAPTER E. CONTRACTING [~~CONTRACTOR~~] OVERSIGHT

3-31 SECTION 7. Subchapter E, Chapter 2261, Government Code, is  
 3-32 amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207,  
 3-33 2261.208, and 2261.209 to read as follows:

3-34 Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.  
 3-35 (a) After a contract is completed or otherwise terminated, each  
 3-36 state agency shall review the contractor's performance under the  
 3-37 contract.

3-38 (b) Using forms made available to the state agency, a state  
 3-39 agency shall report to the comptroller on the results of the review  
 3-40 regarding a contractor's performance under a major contract.

3-41 (c) A state agency may use any vendor performance tracking  
 3-42 system available to state agencies to determine whether to award a  
 3-43 contract to a person reviewed in the database.

3-44 Sec. 2261.205. EXCLUDING CONTRACTOR FROM SOLICITATION  
 3-45 PROCESS. Based on its own contractor performance reviews and on  
 3-46 information in any vendor performance tracking system available to  
 3-47 state agencies, a state agency may exclude a contractor from the  
 3-48 solicitation process for a contract if the agency determines the  
 3-49 contractor has performed poorly on a previous state contract  
 3-50 without regard to whether the contractor has been barred under  
 3-51 Section 2155.077.

3-52 Sec. 2261.206. CONTRACT MANAGERS. (a) Each state agency  
 3-53 that enters into contracts other than interagency contracts shall  
 3-54 establish a career ladder program for contract management in the  
 3-55 agency.

3-56 (b) An employee hired as a contract manager may engage in  
 3-57 procurement planning, contract solicitation, contract formation,  
 3-58 price establishment, and other contract activities.

3-59 (c) Each state agency shall determine, in consultation with  
 3-60 the state auditor, the amount and significance of contract  
 3-61 management duties sufficient for an employee to be considered a  
 3-62 contract manager under this chapter.

3-63 Sec. 2261.207. APPROVAL OF CONTRACTS. (a) Each state  
 3-64 agency shall establish formal guidelines:

- 3-65 (1) regarding who may approve a contract for the
- 3-66 agency;
- 3-67 (2) for contract planning and solicitation;
- 3-68 (3) for contract negotiations; and
- 3-69 (4) for contract management.

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

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

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

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

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

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

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

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

#### SUBCHAPTER F. CHANGES TO CONTRACTS

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

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

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

Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST OVERRUNS. (a) If a proposed contract amendment or extension changes the monetary value of a contract by at least 35 percent or \$1 million, 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) Subsection (a) does not apply to a proposed contract amendment required by a state or federal statute.

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

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 read as follows:

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

5-33