

By: Zaffirini

S.B. No. 1681

A BILL TO BE ENTITLED

AN ACT

relating to oversight and management of state contracts.

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

SECTION 1. Subchapter A, Chapter 2262, Government Code, is amended by adding Sections 2262.0015 and 2262.005 to read as follows:

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS.

(a) The comptroller by rule shall establish threshold requirements that exclude small or routine contracts, including purchase orders, from the application of this chapter.

(b) This chapter does not apply to an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on November 1, 2013.

Sec. 2262.005. CONSULTATION WITH STATE AGENCIES. The comptroller shall consult with state agencies in developing forms, contract terms, and criteria required under this chapter.

SECTION 2. The heading to Section 2262.053, Government Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

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

1 Services Commission, the comptroller [~~commission~~] shall develop
2 [~~or administer~~] a training program for contract managers.

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

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

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

13 SECTION 4. Subchapter B, Chapter 2262, Government Code, is
14 amended by adding Sections 2262.0535 and 2262.055 to read as
15 follows:

16 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
17 comptroller shall adapt the program developed under Section
18 2262.053 to provide an abbreviated program for training the members
19 of the governing bodies of state agencies. The training may be
20 provided together with other required training for members of state
21 agency governing bodies.

22 (b) All members of the governing body of a state agency
23 shall complete at least one course of the training provided under
24 this section. This subsection does not apply to a state agency that
25 does not enter into any contracts.

26 Sec. 2262.055. VENDOR PERFORMANCE TRACKING SYSTEM.
27 (a) The comptroller shall evaluate the vendor's performance based

1 on information reported by state agencies and criteria established
2 by the comptroller.

3 (b) The comptroller shall establish an evaluation process
4 that allows vendors who receive an unfavorable performance review
5 to protest any classification given by the comptroller.

6 (c) The comptroller shall include the performance reviews
7 in a vendor performance tracking system.

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

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

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

17 (2) reviewing any findings or recommendations made by
18 the state auditor, including those made under Section 2262.052(b),
19 regarding a state agency's compliance with the contract management
20 guide; ~~and~~

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

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

25 (B) the training under Section 2262.053;

26 (4) providing recommendations and assistance to state
27 agency personnel throughout the contract management process;

1 (5) coordinating and consulting with the quality
2 assurance team established under Section 2054.158 on all contracts
3 relating to a major information resources project; and

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

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

9 (c) A state agency shall:

10 (1) comply with a recommendation made under Subsection
11 (a)(1); or

12 (2) submit a written explanation regarding why the
13 recommendation is not applicable to the contract under review.

14 (d) The team may review documents under Subsection (a)(1)
15 only for compliance with contract management and best practices
16 principles and may not make a recommendation regarding the purpose
17 or subject of the contract.

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

21 (a) The team consists of the following five members:

22 (1) one member from the attorney general's office;

23 (2) one member from the comptroller's office;

24 (3) one member from the Department of Information
25 Resources;

26 (4) ~~one member from the Texas Building and~~
27 ~~Procurement Commission; and~~

1 ~~[(5)]~~ one member from the governor's office; and

2 (5) one member from a small state agency.

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

5 SECTION 7. Subchapter C, Chapter 2262, Government Code, is
6 amended by adding Section 2262.104 to read as follows:

7 Sec. 2262.104. REVIEW AND APPROVAL. Each state agency
8 shall receive recommendations and approval from the team before
9 taking the following actions in relation to a contract that has a
10 value of more than \$100 million:

11 (1) publicly releasing solicitation documents; and

12 (2) executing a final contract.

13 SECTION 8. Chapter 2262, Government Code, is amended by
14 adding Subchapter D to read as follows:

15 SUBCHAPTER D. CONTRACT FORMS AND PROVISIONS

16 Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

17 (a) The comptroller shall develop recommendations for contract
18 terms regarding remedies for noncompliance by contractors,
19 including remedies for noncompliance with any required disclosure
20 of conflicts of interest by contractors. The comptroller may
21 develop recommended contract terms that are generally applicable to
22 state contracts and terms that are applicable to important types of
23 state contracts.

24 (b) A state agency may include applicable recommended terms
25 in a contract entered into by the agency.

26 Sec. 2262.152. UNIFORM FORMS. The comptroller shall
27 develop and make available a uniform and automated set of forms that

1 a state agency may use in the different stages of the contracting
2 process.

3 Sec. 2262.153. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.

4 As part of the uniform forms published under Section 2262.152, the
5 comptroller shall develop forms for use by state agencies in
6 reporting a contractor's performance for use in the vendor
7 performance tracking system under Section 2262.055.

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

12 Sec. 2262.154 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
13 RELATING TO AUDITING. (a) Each state agency shall include in each
14 of its contracts a term that provides that:

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

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

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

1 to the investigation or audit.

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

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

6 SECTION 11. Not later than May 1, 2014, the comptroller of
7 public accounts shall develop the training program required by
8 Section 2262.053, Government Code, as amended by this Act, and
9 Section 2262.0535, Government Code, as added by this Act.

10 SECTION 12. A member of a governing body of a state agency
11 is not required to complete the training provided under Section
12 2262.0535, Government Code, as added by this Act, until September
13 1, 2015.

14 SECTION 13. The comptroller of public accounts shall use
15 the vendor performance tracking system established by the
16 comptroller before the effective date of this Act in carrying out
17 the comptroller's duties under Section 2262.055, Government Code,
18 as added by this Act.

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

22 SECTION 15. As soon as practicable, and not later than May
23 1, 2014, the comptroller of public accounts and Contract Advisory
24 Team shall develop the forms and recommendations required by this
25 Act, including Sections 2262.151, 2262.152, and 2262.153,
26 Government Code, as added by this Act.

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