

By: Zaffirini  
(Harper-Brown)

S.B. No. 1681

Substitute the following for S.B. No. 1681:

By: Harper-Brown

C.S.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 contract documents for [~~of major~~]  
15 contracts of [~~by~~] state agencies that have a value of at least \$10  
16 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) creating and periodically performing a risk  
5 assessment to determine the appropriate level of management and  
6 oversight of contracts by state agencies.

7 (b) The risk assessment created and performed under  
8 Subsection (a)(6) must include the following criteria:

9 (1) the amount of appropriations to the agency;

10 (2) total contract value as a percentage of  
11 appropriations to the agency; and

12 (3) the impact of the functions and duties of the state  
13 agency on the health, safety, and well-being of residents.

14 (c) The comptroller shall oversee the activities of the  
15 team, including ensuring that the team carries out its duties under  
16 Subsection (a)(5).

17 (d) A state agency shall:

18 (1) comply with a recommendation made under Subsection  
19 (a)(1); or

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

22 (e) The team may review documents under Subsection (a)(1)  
23 only for compliance with contract management and best practices  
24 principles and may not make a recommendation regarding the purpose  
25 or subject of the contract.

26 (f) The team may develop an expedited process for reviewing  
27 solicitations under Subsection (a)(1) for contracts:

1           (1) that the team identifies as posing a low risk of  
2 loss to the state; or

3           (2) for which templates will be used more than once by  
4 a state agency.

5           SECTION 6. Section 2262.102, Government Code, is amended by  
6 amending Subsection (a) and adding Subsections (c) and (d) to read  
7 as follows:

8           (a) The team consists of the following six [~~five~~] members:

9           (1) one member from the Health and Human Services  
10 Commission [~~attorney general's office~~];

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

12           (3) one member from the Department of Information  
13 Resources;

14           (4) one member from the Texas Facilities [~~Building and~~  
15 ~~Procurement~~] Commission; [~~and~~]

16           (5) one member from the governor's office; and

17           (6) one member from a small state agency.

18           (c) The attorney general's office shall provide legal  
19 assistance to the team.

20           (d) In this section, "small state agency" means a state  
21 agency with fewer than 100 employees.

22           SECTION 7. Chapter 2262, Government Code, is amended by  
23 adding Subchapter D to read as follows:

24           SUBCHAPTER D. CONTRACT FORMS AND PROVISIONS

25           Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

26           (a) The comptroller shall develop recommendations for contract  
27 terms regarding remedies for noncompliance by contractors,

1 including remedies for noncompliance with any required disclosure  
2 of conflicts of interest by contractors. The comptroller may  
3 develop recommended contract terms that are generally applicable to  
4 state contracts and terms that are applicable to important types of  
5 state contracts.

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

8 Sec. 2262.152. UNIFORM FORMS. The comptroller shall  
9 develop and make available a uniform and automated set of forms that  
10 a state agency may use in the different stages of the contracting  
11 process.

12 Sec. 2262.153. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.  
13 As part of the uniform forms published under Section 2262.152, the  
14 comptroller shall develop forms for use by state agencies in  
15 reporting a contractor's performance for use in the vendor  
16 performance tracking system under Section 2262.055.

17 SECTION 8. Section 2262.003, Government Code, is  
18 transferred to Subchapter D, Chapter 2262, Government Code, as  
19 added by this Act, redesignated as Section 2262.154, Government  
20 Code, and amended to read as follows:

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

24 (1) the state auditor may conduct an audit or  
25 investigation of any entity receiving funds from the state directly  
26 under the contract or indirectly through a subcontract under the  
27 contract;

1           (2) acceptance of funds directly under the contract or  
2 indirectly through a subcontract under the contract acts as  
3 acceptance of the authority of the state auditor, under the  
4 direction of the legislative audit committee, to conduct an audit  
5 or investigation in connection with those funds; and

6           (3) under the direction of the legislative audit  
7 committee, an entity that is the subject of an audit or  
8 investigation by the state auditor must provide the state auditor  
9 with access to any information the state auditor considers relevant  
10 to the investigation or audit.

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

13          SECTION 9. Subsection (f), Section 2262.051, Government  
14 Code, is repealed.

15          SECTION 10. Not later than May 1, 2014, the comptroller of  
16 public accounts shall develop the training program required by  
17 Section 2262.053, Government Code, as amended by this Act, and  
18 Section 2262.0535, Government Code, as added by this Act.

19          SECTION 11. A member of a governing body of a state agency  
20 is not required to complete the training provided under Section  
21 2262.0535, Government Code, as added by this Act, until September  
22 1, 2015.

23          SECTION 12. The comptroller of public accounts shall use  
24 the vendor performance tracking system established by the  
25 comptroller before the effective date of this Act in carrying out  
26 the comptroller's duties under Section 2262.055, Government Code,  
27 as added by this Act.

1           SECTION 13. A contract manager is not required to be  
2 certified under Chapter 2262, Government Code, as amended by this  
3 Act, until September 1, 2015.

4           SECTION 14. As soon as practicable, and not later than May  
5 1, 2014, the comptroller of public accounts and Contract Advisory  
6 Team shall develop the forms and recommendations required by this  
7 Act, including Sections 2262.151, 2262.152, and 2262.153,  
8 Government Code, as added by this Act.

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