

1-1 By: Zaffirini S.B. No. 1681
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

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Zaffirini</u>	X		
1-10	<u>Schwertner</u>	X		
1-11	<u>Birdwell</u>	X		
1-12	<u>Garcia</u>	X		
1-13	<u>Paxton</u>	X		
1-14	<u>Rodriguez</u>	X		
1-15	<u>Taylor</u>	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1681 By: Garcia

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

1-19 relating to oversight and management of state contracts.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Subchapter A, Chapter 2262, Government Code, is
1-22 amended by adding Sections 2262.0015 and 2262.005 to read as
1-23 follows:
1-24 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. (a)
1-25 The comptroller by rule shall establish threshold requirements that
1-26 exclude small or routine contracts, including purchase orders, from
1-27 the application of this chapter.
1-28 (b) This chapter does not apply to an enrollment contract
1-29 described by 1 T.A.C. Section 391.183 as that section existed on
1-30 November 1, 2013.
1-31 Sec. 2262.005. CONSULTATION WITH STATE AGENCIES. The
1-32 comptroller shall consult with state agencies in developing forms,
1-33 contract terms, and criteria required under this chapter.
1-34 SECTION 2. The heading to Section 2262.053, Government
1-35 Code, is amended to read as follows:
1-36 Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.
1-37 SECTION 3. Section 2262.053, Government Code, is amended by
1-38 amending Subsections (a) and (d) and adding Subsections (e) and (f)
1-39 to read as follows:
1-40 (a) In coordination with the [~~comptroller,~~ Department of
1-41 Information Resources, [~~and~~ state auditor, and Health and Human
1-42 Services Commission, the comptroller [~~commission~~] shall develop
1-43 [~~or administer~~] a training program for contract managers.
1-44 (d) The comptroller [~~Texas Building and Procurement~~
1-45 ~~Commission~~] shall administer the training program under this
1-46 section.
1-47 (e) The comptroller shall certify contract managers who
1-48 have completed the contract management training required under this
1-49 section.
1-50 (f) A state agency may develop qualified contract manager
1-51 training to supplement the training required under this section.
1-52 The comptroller may incorporate the training developed by the
1-53 agency into the training program under this section.
1-54 SECTION 4. Subchapter B, Chapter 2262, Government Code, is
1-55 amended by adding Sections 2262.0535 and 2262.055 to read as
1-56 follows:
1-57 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
1-58 comptroller shall adapt the program developed under Section
1-59 2262.053 to provide an abbreviated program for training the members
1-60 of the governing bodies of state agencies. The training may be

2-1 provided together with other required training for members of state
 2-2 agency governing bodies.

2-3 (b) All members of the governing body of a state agency
 2-4 shall complete at least one course of the training provided under
 2-5 this section. This subsection does not apply to a state agency that
 2-6 does not enter into any contracts.

2-7 Sec. 2262.055. VENDOR PERFORMANCE TRACKING SYSTEM. (a)
 2-8 The comptroller shall evaluate the vendor's performance based on
 2-9 information reported by state agencies and criteria established by
 2-10 the comptroller.

2-11 (b) The comptroller shall establish an evaluation process
 2-12 that allows vendors who receive an unfavorable performance review
 2-13 to protest any classification given by the comptroller.

2-14 (c) The comptroller shall include the performance reviews
 2-15 in a vendor performance tracking system.

2-16 SECTION 5. Section 2262.101, Government Code, is amended to
 2-17 read as follows:

2-18 Sec. 2262.101. CREATION; DUTIES. (a) The Contract
 2-19 Advisory Team is created to assist state agencies in improving
 2-20 contract management practices by:

2-21 (1) reviewing and making recommendations on the
 2-22 solicitation documents and final contract documents for [of major]
 2-23 contracts of [by] state agencies that have a value of at least \$10
 2-24 million but not more than \$100 million;

2-25 (2) reviewing any findings or recommendations made by
 2-26 the state auditor, including those made under Section 2262.052(b),
 2-27 regarding a state agency's compliance with the contract management
 2-28 guide; [and]

2-29 (3) providing recommendations to the comptroller
 2-30 [commission] regarding:

2-31 (A) the development of the contract management
 2-32 guide; and

2-33 (B) the training under Section 2262.053;

2-34 (4) providing recommendations and assistance to state
 2-35 agency personnel throughout the contract management process;

2-36 (5) coordinating and consulting with the quality
 2-37 assurance team established under Section 2054.158 on all contracts
 2-38 relating to a major information resources project; and

2-39 (6) reviewing, making recommendations, and approving
 2-40 contracts under Section 2262.104.

2-41 (b) The comptroller shall oversee the activities of the
 2-42 team, including ensuring that the team carries out its duties under
 2-43 Subsection (a)(5).

2-44 (c) A state agency shall:

2-45 (1) comply with a recommendation made under Subsection
 2-46 (a)(1); or

2-47 (2) submit a written explanation regarding why the
 2-48 recommendation is not applicable to the contract under review.

2-49 (d) The team may review documents under Subsection (a)(1)
 2-50 only for compliance with contract management and best practices
 2-51 principles and may not make a recommendation regarding the purpose
 2-52 or subject of the contract.

2-53 SECTION 6. Section 2262.102, Government Code, is amended by
 2-54 amending Subsection (a) and adding Subsection (c) to read as
 2-55 follows:

2-56 (a) The team consists of the following five members:

2-57 (1) one member from the attorney general's office;

2-58 (2) one member from the comptroller's office;

2-59 (3) one member from the Department of Information
 2-60 Resources;

2-61 (4) [one member from the Texas Building and
 2-62 Procurement Commission; and

2-63 [(-5)] one member from the governor's office; and

2-64 (5) one member from a small state agency.

2-65 (c) In this section, "small state agency" means a state
 2-66 agency with fewer than 100 employees.

2-67 SECTION 7. Subchapter C, Chapter 2262, Government Code, is
 2-68 amended by adding Section 2262.104 to read as follows:

2-69 Sec. 2262.104. REVIEW AND APPROVAL. Each state agency

3-1 shall receive recommendations and approval from the team before
3-2 taking the following actions in relation to a contract that has a
3-3 value of more than \$100 million:

- 3-4 (1) publicly releasing solicitation documents; and
- 3-5 (2) executing a final contract.

3-6 SECTION 8. Chapter 2262, Government Code, is amended by
3-7 adding Subchapter D to read as follows:

3-8 SUBCHAPTER D. CONTRACT FORMS AND PROVISIONS

3-9 Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

3-10 (a) The comptroller shall develop recommendations for contract
3-11 terms regarding remedies for noncompliance by contractors,
3-12 including remedies for noncompliance with any required disclosure
3-13 of conflicts of interest by contractors. The comptroller may
3-14 develop recommended contract terms that are generally applicable to
3-15 state contracts and terms that are applicable to important types of
3-16 state contracts.

3-17 (b) A state agency may include applicable recommended terms
3-18 in a contract entered into by the agency.

3-19 Sec. 2262.152. UNIFORM FORMS. The comptroller shall
3-20 develop and make available a uniform and automated set of forms that
3-21 a state agency may use in the different stages of the contracting
3-22 process.

3-23 Sec. 2262.153. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.

3-24 As part of the uniform forms published under Section 2262.152, the
3-25 comptroller shall develop forms for use by state agencies in
3-26 reporting a contractor's performance for use in the vendor
3-27 performance tracking system under Section 2262.055.

3-28 SECTION 9. Section 2262.003, Government Code, is
3-29 transferred to Subchapter D, Chapter 2262, Government Code, as
3-30 added by this Act, redesignated as Section 2262.154, Government
3-31 Code, and amended to read as follows:

3-32 Sec. 2262.154 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
3-33 RELATING TO AUDITING. (a) Each state agency shall include in each
3-34 of its contracts a term that provides that:

3-35 (1) the state auditor may conduct an audit or
3-36 investigation of any entity receiving funds from the state directly
3-37 under the contract or indirectly through a subcontract under the
3-38 contract;

3-39 (2) acceptance of funds directly under the contract or
3-40 indirectly through a subcontract under the contract acts as
3-41 acceptance of the authority of the state auditor, under the
3-42 direction of the legislative audit committee, to conduct an audit
3-43 or investigation in connection with those funds; and

3-44 (3) under the direction of the legislative audit
3-45 committee, an entity that is the subject of an audit or
3-46 investigation by the state auditor must provide the state auditor
3-47 with access to any information the state auditor considers relevant
3-48 to the investigation or audit.

3-49 (b) The state auditor shall provide assistance to a state
3-50 agency in developing the contract provisions.

3-51 SECTION 10. Subsection (f), Section 2262.051, Government
3-52 Code, is repealed.

3-53 SECTION 11. Not later than May 1, 2014, the comptroller of
3-54 public accounts shall develop the training program required by
3-55 Section 2262.053, Government Code, as amended by this Act, and
3-56 Section 2262.0535, Government Code, as added by this Act.

3-57 SECTION 12. A member of a governing body of a state agency
3-58 is not required to complete the training provided under Section
3-59 2262.0535, Government Code, as added by this Act, until September
3-60 1, 2015.

3-61 SECTION 13. The comptroller of public accounts shall use
3-62 the vendor performance tracking system established by the
3-63 comptroller before the effective date of this Act in carrying out
3-64 the comptroller's duties under Section 2262.055, Government Code,
3-65 as added by this Act.

3-66 SECTION 14. A contract manager is not required to be
3-67 certified under Chapter 2262, Government Code, as amended by this
3-68 Act, until September 1, 2015.

3-69 SECTION 15. As soon as practicable, and not later than May

4-1 1, 2014, the comptroller of public accounts and Contract Advisory
4-2 Team shall develop the forms and recommendations required by this
4-3 Act, including Sections 2262.151, 2262.152, and 2262.153,
4-4 Government Code, as added by this Act.

4-5 SECTION 16. This Act takes effect November 1, 2013.

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