

By: Zaffirini, et al.
(Elkins, Otto, Walle, Gutierrez, Leach, et al.)

S.B. No. 543

Substitute the following for S.B. No. 543:

By: Elkins

C.S.S.B. No. 543

A BILL TO BE ENTITLED

AN ACT

1
2 relating to oversight of and requirements applicable to state
3 contracts and other state financial and accounting issues;
4 authorizing fees.

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

6 SECTION 1. Section 821.009(b), Government Code, is amended
7 to read as follows:

8 (b) Notwithstanding any other law and in addition to the
9 requirements of Subchapter E, Chapter 2262, before a contract
10 described by Subsection (a) may be entered into by the retirement
11 system, a representative of the office of the attorney general
12 shall review the form and terms of the contract and may make
13 recommendations to the retirement system for changes to the
14 contract if the attorney general determines that the office of the
15 attorney general has sufficient subject matter expertise and
16 resources available to provide this service.

17 SECTION 2. Section 825.103(g), Government Code, is amended
18 to read as follows:

19 (g) Notwithstanding any other law and except as provided by
20 Section 2262.202, Chapters 2261 and 2262 do not apply to the
21 retirement system. The Contract Management and Oversight
22 [~~Advisory~~] Team shall assist the retirement system at the request
23 of the retirement system. The retirement system may use the
24 training program for contract management provided under Chapter

1 2262.

2 SECTION 3. Section 2054.065(a)(2), Government Code, is
3 amended to read as follows:

4 (2) "Team" means the Contract Management and Oversight
5 [~~Advisory~~] Team established under Subchapter E [~~E~~], Chapter 2262.

6 SECTION 4. Section 2101.001(1), Government Code, is amended
7 to read as follows:

8 (1) "Enterprise resource planning" includes the
9 administration of a state agency's:

- 10 (A) general ledger;
- 11 (B) accounts payable;
- 12 (C) accounts receivable;
- 13 (D) budgeting;
- 14 (E) inventory;
- 15 (F) asset management;
- 16 (G) billing;
- 17 (H) payroll;
- 18 (I) projects;
- 19 (J) grants;
- 20 (K) human resources, including administration of
21 performance measures, time spent on tasks, and other personnel and
22 labor issues; and
- 23 (L) purchasing, including solicitations and
24 contracting.

25 SECTION 5. Section 2101.011, Government Code, is amended by
26 adding Subsection (e) to read as follows:

27 (e) A state agency's annual financial report must include

1 any claims made against the agency for the preceding fiscal year and
2 the amount paid by the agency in relation to each claim.

3 SECTION 6. Section 2101.035, Government Code, is amended by
4 adding Subsections (i), (j), and (k) to read as follows:

5 (i) State agencies other than a university system or an
6 institution of higher education as defined by Section 61.003,
7 Education Code, shall report contract and purchasing information in
8 the uniform manner required by the comptroller.

9 (j) The centralized accounting and payroll system, or any
10 successor system used to implement the enterprise resource planning
11 component of the uniform statewide accounting project, developed
12 under this section and Section 2101.036 must provide alerts to the
13 comptroller to notify the comptroller of a state contract other
14 than a contract of a university system or an institution of higher
15 education as defined by Section 61.003, Education Code, that has a
16 high risk of loss to the state based on parameters identified by
17 rule by the comptroller, including:

18 (1) a change order of more than 20 percent of the value
19 of the original contract; and

20 (2) a contract entered into in an amount that exceeds a
21 predetermined threshold amount.

22 (k) If, through the uniform statewide accounting system or a
23 component of that system, the comptroller or an officer or employee
24 of the comptroller's office releases or publishes information that
25 is confidential or excepted from required disclosure in reliance on
26 a determination made by a state agency about the status of the
27 information as confidential or excepted from disclosure, the

1 comptroller, officer, or employee, as appropriate, is:

2 (1) immune from any civil or criminal liability for
3 releasing or publishing the information; and

4 (2) not required to comply with the notification
5 requirements of Section 2054.1125 of this code and Chapter 521,
6 Business & Commerce Code, in relation to the release or publication
7 of the information.

8 SECTION 7. Section 2101.036, Government Code, is amended by
9 amending Subsection (d) and adding Subsection (e) to read as
10 follows:

11 (d) Notwithstanding any other provision of this chapter or
12 other law and except as provided by Subsection (e), this section and
13 any rules implementing this section apply only in relation to a
14 state agency as defined by Section 2054.003.

15 (e) A state agency in the legislative branch of state
16 government may elect to participate in the centralized accounting
17 and payroll system, or any successor system used to implement the
18 enterprise resource planning component of the uniform statewide
19 accounting project, developed under this section.

20 SECTION 8. Section 2102.005, Government Code, is amended to
21 read as follows:

22 Sec. 2102.005. INTERNAL AUDITING REQUIRED. A state agency
23 shall conduct a program of internal auditing that includes:

24 (1) an annual audit plan that is prepared using risk
25 assessment techniques and that identifies the individual audits to
26 be conducted during the year; and

27 (2) periodic audits of:

1 (A) the agency's major systems and controls,
2 including:
3 (i) ~~[(A)]~~ accounting systems and controls;
4 (ii) ~~[(B)]~~ administrative systems and
5 controls; ~~and~~
6 (iii) ~~[(C)]~~ electronic data processing
7 systems and controls; and
8 (iv) contract management processes and
9 controls; and
10 (B) one or more of the agency's contracts with
11 high-risk factors.

12 SECTION 9. Section 2113.102(a), Government Code, is amended
13 to read as follows:

14 (a) A state agency may not use appropriated money to
15 contract with a person to audit ~~[the financial records or accounts~~
16 ~~of]~~ the agency except:

- 17 (1) as provided by ~~[-~~
18 ~~[(1)]~~ Subsections (b), (c), and (d); and
19 (2) in accordance with Section 321.020 ~~[Chapter 466,~~
20 ~~pertaining to the state lottery,~~
21 ~~[(3)] Chapter 2306, pertaining to the Texas Department~~
22 ~~of Housing and Community Affairs, and~~
23 ~~[(4)] Chapter 361, Transportation Code, pertaining to~~
24 ~~the Texas Turnpike Authority division of the Texas Department of~~
25 ~~Transportation].~~

26 SECTION 10. Subchapter I, Chapter 2155, Government Code, is
27 amended by adding Section 2155.5035 to read as follows:

1 Sec. 2155.5035. USE OF SCHEDULE BY STATE AGENCY. (a) A
2 state agency purchasing goods or services that exceed \$50,000 under
3 a contract listed on the schedule shall submit a request for pricing
4 to:

5 (1) at least three vendors included on the schedule in
6 the category to which the purchase relates; or

7 (2) all vendors included on the schedule in the
8 category to which the purchase relates if fewer than three vendors
9 are included in the category.

10 (b) The price listed for a good or service under a multiple
11 award contract is a maximum price. A state agency may negotiate a
12 lower price for goods or services under a contract listed on a
13 schedule developed under this chapter.

14 SECTION 11. Section [2155.504](#), Government Code, is amended
15 to read as follows:

16 Sec. 2155.504. USE OF SCHEDULE BY LOCAL GOVERNMENTS
17 [~~GOVERNMENTAL ENTITIES~~]. (a) A [~~state agency or~~] local government
18 may purchase goods or services directly from a vendor under a
19 contract listed on a schedule developed under this subchapter. A
20 purchase authorized by this section satisfies any requirement of
21 state law relating to competitive bids or proposals and satisfies
22 any applicable requirements of Chapter 2157.

23 (b) The price listed for a good or service under a multiple
24 award contract is a maximum price. A [~~An agency or~~] local
25 government may negotiate a lower price for goods or services under a
26 contract listed on a schedule developed under this subchapter.

27 SECTION 12. Section [2162.103\(a\)](#), Government Code, is

1 amended to read as follows:

2 (a) In comparing the cost of providing a service, the
3 council shall consider the:

4 (1) cost of supervising the work of a private
5 contractor; ~~and~~

6 (2) cost of a state agency's performance of the
7 service, including:

8 (A) the costs of the comptroller, attorney
9 general, and other support agencies; and

10 (B) other indirect costs related to the agency's
11 performance of the service;

12 (3) installation costs and any other initial costs
13 associated with a contract with a private contractor;

14 (4) other costs associated with the transition to
15 using a private contractor's services; and

16 (5) cost savings to the state if a private contractor
17 were awarded the contract.

18 SECTION 13. Sections 2165.356(a) and (b), Government Code,
19 are amended to read as follows:

20 (a) Not later than the 60th day before the date the
21 commission is scheduled to vote on approval of a qualifying project
22 contract, the commission must submit to the Contract Management and
23 Oversight ~~[Advisory]~~ Team established under Subchapter E ~~[C]~~,
24 Chapter 2262, documentation of the modifications to a proposed
25 qualifying project made during the commission's evaluation and
26 negotiation process for the project, including a copy of:

27 (1) the final draft of the contract;

1 (2) the detailed qualifying project proposal; and

2 (3) any executed interim or other agreement.

3 (b) The Contract Management and Oversight [~~Advisory~~] Team
4 shall review the documentation submitted under Subsection (a) and
5 provide written comments and recommendations to the
6 commission. The review must focus on, but not be limited to, best
7 practices for contract management and administration.

8 SECTION 14. Section 2166.2551, Government Code, is amended
9 to read as follows:

10 Sec. 2166.2551. CONTRACT NOTIFICATION. The commission or
11 an agency whose project is exempted from all or part of this chapter
12 under Section 2166.003 shall provide written notice to the
13 Legislative Budget Board of a contract for a construction project
14 if the amount of the contract, including an amendment,
15 modification, renewal, or extension of the contract, exceeds
16 \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the
17 Legislative Budget Board and filed not later than the 10th day after
18 the date the agency enters into the contract.

19 SECTION 15. Section 2254.006, Government Code, is amended
20 to read as follows:

21 Sec. 2254.006. CONTRACT NOTIFICATION. A state agency,
22 including an institution of higher education as defined by Section
23 61.003, Education Code, shall provide written notice to the
24 Legislative Budget Board of a contract for professional services,
25 other than a contract for physician or optometric services, if the
26 amount of the contract, including an amendment, modification,
27 renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~].

1 The notice must be on a form prescribed by the Legislative Budget
2 Board and filed not later than the 10th day after the date the
3 agency enters into the contract.

4 SECTION 16. Section 2254.0301(a), Government Code, is
5 amended to read as follows:

6 (a) A state agency shall provide written notice to the
7 Legislative Budget Board of a contract for consulting services if
8 the amount of the contract, including an amendment, modification,
9 renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~].

10 The notice must be on a form prescribed by the Legislative Budget
11 Board and filed not later than the 10th day after the date the
12 entity enters into the contract.

13 SECTION 17. Sections 2261.001(a) and (c), Government Code,
14 are amended to read as follows:

15 (a) This chapter applies only to each procurement of goods
16 or services made by a state agency that is neither made by the
17 comptroller nor made under purchasing authority delegated to the
18 agency by or under Section 51.9335 or 73.115, Education Code, or
19 Section [~~2155.131 or~~] 2155.132.

20 (c) The comptroller on request shall determine whether a
21 procurement or type of procurement:

22 (1) is made under purchasing authority delegated to an
23 agency by or under Section [~~2155.131 or~~] 2155.132; or

24 (2) is made under some other source of purchasing
25 authority.

26 SECTION 18. Section 2261.002, Government Code, is amended
27 to read as follows:

1 Sec. 2261.002. DEFINITIONS. In this chapter:

2 (1) "Contract" includes an agreement or other written
3 expression of terms of agreement, including an amendment, a
4 modification, a renewal, or an extension, for the purchase of goods
5 or services that is entered into or paid for, wholly or partly, by a
6 state agency during a fiscal year and a grant, other than a grant
7 made to a school district or a grant made for other academic
8 purposes, under which the recipient of the grant is required to
9 perform a specific act or service, supply a specific type of
10 product, or both.

11 (2) "Contract deliverable" means a unit or increment
12 of work required by a contract, including goods, services, reports,
13 or documents.

14 (3) "Contract manager" means a person who:
15 (A) is employed by a state agency; and
16 (B) has significant contract management duties
17 for the state agency.

18 (4) "Executive director" means the administrative
19 head of a state agency.

20 (5) "General counsel" means the general counsel of a
21 state agency.

22 (6) "Major contract" means a contract, including a
23 renewal of a contract, that has a value of at least \$1 million. The
24 term includes a service contract.

25 (7) "State agency" has the meaning assigned by Section
26 2151.002.

27 SECTION 19. Subchapter A, Chapter 2261, Government Code, is

1 amended by adding Sections 2261.004, 2261.005, 2261.006, 2261.007,
2 2261.008, and 2261.009 to read as follows:

3 Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS.

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

6 (b) Each state agency shall maintain a comprehensive list of
7 all contracts for that agency.

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

12 (1) a contract delay or changes to a contract in which
13 total expenditures under the contract increase by more than 20
14 percent from the original contract amount; and

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

17 (d) Notwithstanding Section 441.185, contracts and other
18 related information required to be maintained under this section by
19 a state agency must be retained for the duration of the contract.

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

22 (b) The following sections prescribe reporting requirements
23 for certain contracts:

24 (1) Section 322.020;

25 (2) Section 2054.008;

26 (3) Section 2166.2551;

27 (4) Section 2254.006;

1 (5) Section 2254.028; and

2 (6) Section 2254.0301.

3 Sec. 2261.006. PROFESSIONAL SERVICES. A state agency shall
4 procure professional services in accordance with Subchapter A,
5 Chapter 2254.

6 Sec. 2261.007. CONTRACT GUIDELINES AND PROCEDURES. Each
7 state agency shall establish formal guidelines and procedures for
8 all employees involved in the contracting process:

9 (1) regarding who may approve a contract for the
10 agency;

11 (2) for contract planning and solicitation;

12 (3) for contract negotiations;

13 (4) for contract management; and

14 (5) for contract oversight.

15 Sec. 2261.008. INTERAGENCY AGREEMENTS AND CONTRACTS. An
16 interagency agreement or contract of a state agency is governed by
17 Chapter 771.

18 Sec. 2261.009. INTERLOCAL CONTRACTS. An interlocal
19 contract to which a state agency is a party is governed by Chapter
20 791.

21 SECTION 20. Subchapter B, Chapter 2261, Government Code, is
22 amended by adding Section 2261.054 to read as follows:

23 Sec. 2261.054. BEST VALUE STANDARD FOR CONTRACTING FOR
24 GOODS AND SERVICES. In determining the best value for the state,
25 the purchase price and whether the goods or services meet
26 specifications are the most important considerations. A state
27 agency may consider, subject to Sections 2155.074(c) and 2155.075,

1 other relevant factors, including:

2 (1) installation costs;

3 (2) life cycle costs;

4 (3) the quality and reliability of the goods and
5 services;

6 (4) the delivery terms;

7 (5) indicators of probable vendor performance under
8 the contract such as past vendor performance, the vendor's
9 financial resources and ability to perform, the vendor's experience
10 or demonstrated capability and responsibility, and the vendor's
11 ability to provide reliable maintenance agreements and support;

12 (6) the cost of any employee training associated with
13 a purchase;

14 (7) the effect of a purchase on agency productivity;

15 (8) the vendor's anticipated economic impact on the
16 state or a subdivision of the state, including potential tax
17 revenue and employment; and

18 (9) other factors relevant to determining the best
19 value for the state in the context of a particular purchase.

20 SECTION 21. The heading to Subchapter C, Chapter 2261,
21 Government Code, is amended to read as follows:

22 SUBCHAPTER C. CONTRACT FORMATION AND PROVISIONS

23 SECTION 22. Subchapter C, Chapter 2261, Government Code, is
24 amended by adding Sections 2261.103, 2261.104, 2261.105, 2261.106,
25 and 2261.107 to read as follows:

26 Sec. 2261.103. USE OF UNIFORM FORMS. A state agency may use
27 any forms developed by the comptroller as templates, guides, or

1 samples for contracts entered into by the agency.

2 Sec. 2261.104. ESSENTIAL CONTRACT PROVISIONS. (a) The
3 following are required provisions in each contract to which the
4 provisions are applicable, other than a grant:

- 5 (1) legal authority;
- 6 (2) statement of work;
- 7 (3) indemnification or damage claims;
- 8 (4) consideration;
- 9 (5) specifications;
- 10 (6) funding out clause;
- 11 (7) antitrust;
- 12 (8) payment;
- 13 (9) dispute resolution;
- 14 (10) term of contract;
- 15 (11) confidential information;
- 16 (12) abandonment or default;
- 17 (13) right to audit;
- 18 (14) force majeure;
- 19 (15) independent contractor; and
- 20 (16) termination.

21 (b) If a state agency determines that the circumstances of a
22 proposed contract require more protection for the state than the
23 provisions in Subsection (a) provide, the agency shall include a
24 provision in the contract providing for that protection.

25 Sec. 2261.105. CONTRACT PROVISIONS REQUIRED BY STATE LAW.

26 (a) In any contract for the acquisition of goods or services to
27 which a state agency is a party, a provision required by other

1 applicable law to be included in the contract is considered to be a
2 part of the executed contract without regard to whether:

3 (1) the provision appears on the face of the contract;

4 or

5 (2) the contract includes any provision to the
6 contrary.

7 (b) If a state agency determines that the circumstances of a
8 proposed contract require more protection for the state than the
9 provisions described by Subsection (a) provide, the agency shall
10 include a provision in the contract providing for that protection.

11 Sec. 2261.106. CONTRACT RENEWAL. A state agency shall
12 establish a standardized process for renewing all contracts of the
13 agency.

14 Sec. 2261.107. CONTRACT DURATION. (a) A state agency:

15 (1) must establish a reasonable term for a contract
16 before solicitation of the contract; and

17 (2) shall make an effort to keep the maximum length of
18 a contract to four years without reissuing a competitive
19 solicitation, including any contract renewals or extensions.

20 (b) A contract term established under Subsection (a)(1)
21 must be included in a solicitation document.

22 (c) A state agency may not enter into a contract that has an
23 indefinite term.

24 SECTION 23. Subchapter D, Chapter 2261, Government Code, is
25 amended by adding Section 2261.152 to read as follows:

26 Sec. 2261.152. CONTRACT PAYMENT. (a) For each contract for
27 goods or services that is subject to this chapter, a state agency

1 shall require that payment under the contract be linked to clear and
2 measurable achievements, such as length of time of work, contract
3 deliverables, or performance measures.

4 (b) A state agency may not make a final payment on a contract
5 for goods or services that is subject to this chapter unless the
6 agency verifies that all contract deliverables have been received.

7 SECTION 24. The heading to Subchapter E, Chapter 2261,
8 Government Code, is amended to read as follows:

9 SUBCHAPTER E. CONTRACT MONITORING AND [CONTRACTOR] OVERSIGHT

10 SECTION 25. Section 2261.202, Government Code, is amended
11 to read as follows:

12 Sec. 2261.202. CONTRACT MONITORING RESPONSIBILITIES. (a)
13 As one of its contract management policies, each state agency that
14 makes procurements to which this chapter applies shall establish
15 and adopt by rule a policy that clearly defines the contract
16 monitoring roles and responsibilities, if any, of agency staff,
17 including internal audit staff and other inspection,
18 investigative, or audit staff.

19 (b) The policy must establish clear lines of
20 accountability, staff roles and responsibilities, and
21 decision-making authority for program staff, contract management
22 staff, and executive management staff.

23 SECTION 26. Subchapter E, Chapter 2261, Government Code, is
24 amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207,
25 2261.208, 2261.209, 2261.210, 2261.211, 2261.212, 2261.213, and
26 2261.214 to read as follows:

27 Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.

1 After a contract with a value of \$25,000 or more is completed or
2 otherwise terminated, each state agency shall review the
3 contractor's performance under the contract and report to the
4 comptroller on the results of the review using forms made available
5 to the state agency.

6 Sec. 2261.205. CONTRACTING STAFF. (a) Each state agency
7 that enters into contracts other than interagency contracts shall
8 establish a career ladder program for contract management in the
9 agency.

10 (b) An employee hired as a contract manager may participate
11 in procurement planning, contract solicitation, contract
12 formation, price establishment, and other contract activities.

13 (c) Each state agency shall determine, in consultation with
14 the state auditor, the amount and significance of contract
15 management duties sufficient for an employee to be considered a
16 contract manager, program staff, or a contract specialist.

17 Sec. 2261.206. APPROVAL OF CONTRACTS. (a) Each state
18 agency shall adopt a policy to establish a monetary threshold above
19 which agency contracts and amendments to or extensions of agency
20 contracts require written authorization by the agency executive
21 director.

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

26 Sec. 2261.207. NEGOTIATION OF MAJOR CONTRACT BY SINGLE
27 EMPLOYEE PROHIBITED. A state agency may not negotiate a major

1 contract with only one employee engaging in the negotiation.

2 Sec. 2261.208. CONTRACT REVIEW; REPORTING. (a) A
3 contractor's performance must be periodically reviewed throughout
4 the term of a contract.

5 (b) A state agency shall ensure ongoing communication
6 between executive management staff, contract management staff, and
7 program staff of the results of the reviews performed under
8 Subsection (a) with specific attention to contracts that are:

9 (1) anticipated to be completed later than originally
10 estimated; or

11 (2) expected to cost more than the amount that was
12 originally budgeted.

13 (c) To implement this section, a state agency shall create a
14 system for agency-wide reporting on the status of, activity on, and
15 contractor performance for each contract.

16 Sec. 2261.209. CONTRACT ADMINISTRATION TEAM. (a) This
17 section applies to a state agency that has a contract with a value
18 of \$5 million or more.

19 (b) A state agency to which this section applies shall
20 create a contract administration team to:

21 (1) ensure and verify the performance of agency
22 contracts with a value of \$5 million or more; and

23 (2) maintain within the agency contract oversight
24 expertise to effectively manage contractors.

25 Sec. 2261.210. CONTRACT MONITORING PROCESS. A state agency
26 shall establish and implement a monitoring process for agency
27 contracts that includes:

- 1 (1) identifying the appropriate criteria for use in
2 measuring contract performance;
- 3 (2) creating a schedule for monitoring contract
4 performance;
- 5 (3) comparing work accomplished to work planned to be
6 accomplished;
- 7 (4) analyzing contract performance variances; and
- 8 (5) addressing contracting performance problems with
9 corrective action.

10 Sec. 2261.211. RISK MANAGEMENT PROCESS. (a) A state agency
11 shall establish and implement a:

12 (1) process for evaluating the potential risk to the
13 state, such as product risk, process risk, financial risk, and
14 schedule risk, if contract implementation or performance problems
15 occur, including a process for:

16 (A) risk identification or identifying items
17 that may prevent the agency from achieving contracting goals or
18 objectives;

19 (B) risk analysis or assessing the impact and
20 likelihood of a risk;

21 (C) risk evaluation or developing strategies or
22 approaches to address risks that have been identified and analyzed;

23 (D) risk treatment or the managerial approach to
24 risk;

25 (E) risk reduction or planning and performing
26 actions to mitigate risk due to a managerial decision to reduce
27 risk;

1 (F) contingency planning or developing plans for
2 corrective action to be taken if a potential risk occurs; and

3 (G) risk monitoring or tracking the
4 implementation of a risk reduction plan until the risk is
5 sufficiently mitigated; and

6 (2) procedure for corrective action to be used when
7 contract implementation or performance problems occur.

8 (b) In creating the process required by Subsection (a)(1),
9 the state agency shall consider:

10 (1) the complexity and subject matter of agency
11 contracts;

12 (2) the dollar value of agency contracts, including
13 contract extensions and amendments, and whether the procurement
14 will result in a major contract;

15 (3) the anticipated payment methodology;

16 (4) the experience of agency staff with the type of
17 procurement;

18 (5) whether the results of the procurement will impact
19 the public or only impact the agency;

20 (6) time constraints or the expected duration of the
21 procurement; and

22 (7) the type, availability, and experience of staff
23 resources required to implement the objectives of the procurement.

24 (c) Based on the assessed risk of a state agency contract,
25 the agency shall, for each contract:

26 (1) determine the appropriate frequency and method of
27 contract monitoring;

1 (2) allocate contract monitoring resources; and

2 (3) develop a contract auditing plan.

3 Sec. 2261.212. CONTRACT COMMUNICATION. (a) A state agency
4 shall maintain effective communication procedures regarding
5 contract performance.

6 (b) The chief financial officer of a state agency, or an
7 individual designated by the executive director with similar
8 contract administration duties and responsibilities, shall report
9 at least monthly to the executive director on the status of agency
10 contracts. The report must include a clear indication of:

11 (1) any contract cost overruns or contracts that are
12 performing poorly; and

13 (2) contracts that may cause the state to delay or
14 default on service delivery.

15 Sec. 2261.213. REPORT ON CERTAIN PURCHASES. (a) Not later
16 than December 1 of each year, the comptroller shall publish a report
17 on the number and dollar value of sole source and emergency
18 purchases made in the previous fiscal year.

19 (b) Each state agency shall timely provide to the
20 comptroller the information the comptroller requires for the
21 purpose of creating the report under Subsection (a) in the manner
22 and form specified by the comptroller.

23 (c) The comptroller shall establish requirements for the
24 provision of information under Subsection (b) in consultation with
25 the Contract Management and Oversight Team created under Subchapter
26 E, Chapter 2262, the Health and Human Services Commission, and the
27 Texas Department of Transportation.

1 (d) The comptroller may not require a state agency to
2 provide information under Subsection (b) on a contract related to
3 health and human services if:

4 (1) the value of the contract cannot be determined at
5 the time of execution of the contract; and

6 (2) any qualified vendor is eligible for the contract.

7 Sec. 2261.214. CONTRACT DATABASE. (a) Each state agency
8 that becomes a participant in the centralized accounting and
9 payroll system as authorized by Sections 2101.035 and 2101.036, or
10 any successor system used to implement the enterprise resource
11 planning component of the uniform statewide accounting project,
12 shall use the system to identify and record each contract entered
13 into by the agency as specified by the rules, policies, or
14 procedures developed by the comptroller, after consultation with
15 the Department of Information Resources.

16 (b) The comptroller shall provide as necessary information
17 and state agency contract data contained in the centralized
18 accounting and payroll system to other state agencies with
19 oversight duties, including the Legislative Budget Board, the state
20 auditor's office, and the Department of Information Resources.

21 SECTION 27. Chapter 2261, Government Code, is amended by
22 adding Subchapters F, G, H, and I to read as follows:

23 SUBCHAPTER F. CHANGES TO CONTRACTS

24 Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE
25 ORDERS. (a) This section does not apply to a contract amendment,
26 extension, or change order that does not change the cost or terms of
27 the contract.

1 (b) An extension of or amendment to a state agency contract,
2 including a change order, is subject to the same agency approval
3 processes as the original contract.

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

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

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

15 Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST
16 OVERRUNS. (a) If a proposed contract amendment or extension
17 changes the monetary value of a major contract by at least 20
18 percent or \$1 million, the state agency must submit the amendment or
19 extension for review to the agency's executive director before the
20 agency amends or extends the contract.

21 (b) Subsection (a) does not apply to a proposed contract
22 amendment required by a state or federal statute.

23 (c) The executive director shall be timely notified of any
24 unanticipated contract cost overrun.

25 Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS AND RENEWALS.
26 This subchapter does not apply to contract extensions or renewals
27 that are specifically established as a component of the original

1 procurement.

2 SUBCHAPTER G. TRAINING

3 Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS. (a) A
4 state agency shall require a contract manager to complete the
5 training program for contract managers developed and administered
6 by the comptroller.

7 (b) A state agency shall maintain a list of contract
8 managers who have completed the training program for contract
9 managers.

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

12 Sec. 2261.302. TRAINING FOR GOVERNING BODIES. All members
13 of the governing body of a state agency shall complete at least one
14 abbreviated course of the training program for contract managers
15 developed and administered by the comptroller. This section does
16 not apply to a state agency that does not enter into any contracts.

17 SUBCHAPTER H. CONTRACT PLANNING AND SOLICITATION

18 Sec. 2261.351. CONTRACT PLANNING. Before a state agency
19 solicits a contract, the agency must:

20 (1) identify, justify, and document the need for the
21 good or service;

22 (2) identify general contracting objectives,
23 assumptions, and constraints;

24 (3) consider alternatives to soliciting the contract;
25 and

26 (4) determine the preferred method of delivery for the
27 good or service.

1 Sec. 2261.352. SOLICITATION OF CONTRACT. (a) A

2 solicitation for a contract must include the following:

3 (1) a description of the work;

4 (2) a specific and measurable standard of performance;

5 (3) a list of the test conditions, methods, or
6 procedures for verifying that the contract deliverable meets the
7 standard;

8 (4) a method or process to monitor and ensure quality
9 in the contract deliverable;

10 (5) an acceptance process for each contract
11 deliverable that is expected to be delivered;

12 (6) a compensation structure that is consistent with
13 the type and value of work performed; and

14 (7) a remedy, if appropriate, for failure to meet
15 contract deliverables.

16 (b) In preparing a contract solicitation, a state agency
17 must include in the requirements for the contract deliverables:

18 (1) the quality level of the good or service;

19 (2) the amount of completion that is required;

20 (3) the suitability of the good or service for the work
21 to be done for the agency; and

22 (4) a defined and documented method of evaluation to
23 be used in making the award and in determining the best value bid
24 for the procurement.

25 SUBCHAPTER I. CONTRACT CLOSING

26 Sec. 2261.401. CLOSING PROCEDURE. A state agency shall
27 create and follow a procedure for contract closing that includes

1 procedures for:

2 (1) verification that all:

3 (A) required goods or services have been
4 delivered or performed, inspected, and accepted; and

5 (B) existing options have been exercised or have
6 expired;

7 (2) issuance of a contract completion notice by one of
8 the parties;

9 (3) acquisition of all required forms, reports, and
10 clearances;

11 (4) verification that other applicable terms have been
12 met;

13 (5) verification that there are no outstanding claims
14 or disputes; and

15 (6) final payment.

16 SECTION 28. Section 2262.001(1), Government Code, is
17 amended to read as follows:

18 (1) "Team" means the Contract Management and Oversight
19 ~~[Advisory]~~ Team created under Subchapter E ~~[C]~~.

20 SECTION 29. Section 2262.0015, Government Code, is amended
21 to read as follows:

22 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS.

23 (a) The comptroller by rule shall establish threshold
24 requirements that exclude small or routine contracts, including
25 purchase orders, from the application of Subchapters A, B, and D
26 ~~[this chapter]~~.

27 (b) Subchapters A, B, and D do ~~[This chapter does]~~ not apply

1 to an enrollment contract described by 1 T.A.C. Section 391.183 as
2 that section existed on November 1, 2013.

3 SECTION 30. Section 2262.002(b), Government Code, is
4 amended to read as follows:

5 (b) Except as otherwise provided by this chapter, this
6 ~~[This]~~ chapter does not apply to contracts of the Texas Department
7 of Transportation that:

8 (1) relate to highway construction or highway
9 engineering; or

10 (2) are subject to Section 201.112, Transportation
11 Code.

12 SECTION 31. Sections 2262.051(c) and (d), Government Code,
13 are amended to read as follows:

14 (c) The guide must provide required and recommended
15 contracting processes and procedures and information regarding the
16 primary duties of ~~[a]~~ contract management ~~[manager]~~, including how
17 to:

18 (1) develop and negotiate a contract;

19 (2) fairly and objectively select a contractor; ~~and~~

20 (3) monitor contractor and subcontractor performance
21 under a contract and ensure compliance with provisions in a
22 contract that hold the contractor accountable for performance
23 results;

24 (4) develop an accurate and comprehensive statement of
25 work and conform contract documents to the statement of work;

26 (5) evaluate and ensure compliance with contract
27 deliverables and performance metrics and any associated remedies

1 and incentives;

2 (6) maintain required documentation for contracting
3 decisions, contract changes, and problems with a contract;

4 (7) communicate any serious issue or risk that is
5 identified with a contract in a timely manner to the agency's
6 governing body or the single state officer who governs the agency;

7 (8) create a risk management process under Section
8 2261.211;

9 (9) build and maintain a working relationship with the
10 contractor, including instruction on communication and timely
11 management of problems;

12 (10) create a procedure for selecting and applying a
13 preferred dispute resolution method;

14 (11) implement an escalation process to address
15 contract disagreements;

16 (12) evaluate and approve requests for payments that
17 are consistent with the contract; and

18 (13) develop a process for contract closure and
19 performance evaluation of a contractor under a contract.

20 (d) The guide must include model provisions for state agency
21 contracts. The guide must:

22 (1) distinguish between essential provisions that a
23 state agency must include in a contract to protect the interests of
24 this state and recommended provisions that a state agency may
25 include in a contract;

26 (2) recognize the unique contracting needs of an
27 individual state agency or program and provide procedures for

1 documenting agency decisions that do not follow required
2 contracting processes and procedures but are [~~sufficient~~
3 ~~flexibility to accommodate those needs,~~] consistent with
4 protecting the interests of this state; and

5 (3) include maximum contract periods under which a new
6 competitive solicitation is not necessary [~~and~~

7 [~~(4) include the model contract management process~~
8 ~~developed under Section 2262.104 and recommendations on the~~
9 ~~appropriate use of the model].~~

10 SECTION 32. Section 2262.053(d), Government Code, is
11 amended to read as follows:

12 (d) The comptroller shall administer training under this
13 section and may assess a fee for the training in an amount
14 sufficient to recover the comptroller's costs under this section.

15 SECTION 33. Section 2262.0535, Government Code, is amended
16 by adding Subsection (c) to read as follows:

17 (c) The comptroller may assess a fee for the training
18 provided under this section in an amount sufficient to recover the
19 comptroller's costs under this section.

20 SECTION 34. Chapter 2262, Government Code, is amended by
21 adding Subchapters E and F to read as follows:

22 SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

23 Sec. 2262.201. DEFINITIONS. In this subchapter:

24 (1) "High-risk contract" means a state agency contract
25 or purchase order that:

26 (A) has a value of at least \$10 million;

27 (B) has a value of less than \$10 million, but has

1 high-risk factors as identified by the team;

2 (C) is entered into with an entity that is
3 incorporated outside of the United States;

4 (D) is entered into with an entity that, during
5 the five-year period preceding the date of the purchase or award of
6 the contract, has had a contract with a state agency or federal
7 governmental entity terminated or canceled for:

8 (i) a violation of, or noncompliance with,
9 the terms of the contract;

10 (ii) delivery of an ineffective product,
11 service, or system;

12 (iii) significant delays or cost overruns;

13 (iv) fraud;

14 (v) misconduct; or

15 (vi) any other event that resulted in the
16 termination or cancellation of the contract for cause; or

17 (E) meets other criteria that may be established
18 by the team, including that the contract or purchase order:

19 (i) is awarded by an agency with
20 significant audit findings related to contracting in the previous
21 two fiscal years;

22 (ii) is expected to cost more than 20
23 percent of the awarding agency's budget available from all sources;

24 (iii) outsources a program or key function
25 of a program of the awarding agency;

26 (iv) has a value of more than \$1 million and
27 is awarded on an emergency basis or is a sole source contract; or

1 (v) has a value of more than \$1 million and
2 has change orders that increase the cost of the contract by more
3 than 20 percent of the original contract cost, excluding routine
4 contract renewals.

5 (2) "Major information resources project" has the
6 meaning assigned by Section 2054.003(10).

7 (3) "Quality assurance team" means the quality
8 assurance team established under Section 2054.158.

9 (4) "Solicitation" means a solicitation for bids,
10 offers, qualifications, proposals, or similar expressions of
11 interest for a high-risk contract.

12 Sec. 2262.202. APPLICABILITY OF SUBCHAPTER. (a) This
13 subchapter applies to contracts of the Texas Department of
14 Transportation that:

15 (1) do not relate to highway construction or highway
16 engineering; or

17 (2) are not subject to Section 201.112, Transportation
18 Code.

19 (b) This subchapter does not apply to a contract of the
20 Employees Retirement System of Texas or the Teacher Retirement
21 System of Texas except for a contract with a nongovernmental entity
22 for claims administration of a group health benefit plan under
23 Subtitle H, Title 8, Insurance Code.

24 Sec. 2262.203. ESTABLISHMENT; GENERAL DUTIES. The
25 Legislative Budget Board shall establish a Contract Management and
26 Oversight Team to:

27 (1) develop criteria for identifying high-risk

1 factors in contracts;

2 (2) consult with state agencies on and review
3 high-risk contracts as provided by Section 2262.204;

4 (3) provide recommendations and assistance to state
5 agency personnel throughout the contract management process;

6 (4) coordinate and consult with the quality assurance
7 team on all high-risk contracts relating to a major information
8 resources project; and

9 (5) coordinate and consult with the comptroller to:

10 (A) develop criteria for high-risk contracts
11 under Section 2262.201(1)(E);

12 (B) identify strategies to mitigate contract
13 risks; and

14 (C) monitor contract activity using information
15 from the centralized accounting and payroll system or any successor
16 system used to implement the enterprise resource planning component
17 of the uniform statewide accounting project developed under
18 Sections [2101.035](#) and [2101.036](#).

19 Sec. 2262.204. NOTICE AND REVIEW; WAIVER. (a) Each state
20 agency must provide written notice to the team not later than the
21 30th day before the date the agency publicly releases solicitation
22 documents for a high-risk contract.

23 (b) A state agency must submit to the team information and
24 documentation requested by the team that relate to a high-risk
25 contract, including information on contract development, vendor
26 selection, and ongoing contract oversight.

27 (c) The team shall review information and documentation

1 submitted under Subsection (b) and make recommendations to ensure
2 that potential risks related to the high-risk contract have been
3 identified and mitigated.

4 (d) A state agency shall implement the team's
5 recommendations and provide any additional documentation required
6 by the team to demonstrate that risks related to the high-risk
7 contract have been mitigated. If a recommendation made by the team
8 is not implemented, the agency must provide written notice to the
9 team before the 31st day after the date the agency received the
10 recommendation.

11 (e) If, after receiving notice provided under Subsection
12 (d), the team determines that significant risks related to the
13 high-risk contract remain, the team shall provide written notice of
14 that fact to the Legislative Budget Board, the governor, and the
15 comptroller with a description of the risk and recommendations to
16 mitigate the risk, including cancellation of the high-risk
17 contract.

18 (f) The team may adopt criteria for waiving the consultation
19 and review requirements of this section.

20 Sec. 2262.205. SOLICITATION AND CONTRACT CANCELLATION.
21 After review of the written notice provided by the team under
22 Section 2262.204(e), the Legislative Budget Board, the governor, or
23 the comptroller may recommend that a state agency cancel a
24 solicitation or a high-risk contract if:

25 (1) a proposed contract would place the state at an
26 unacceptable risk if executed; or

27 (2) an executed contract is experiencing performance

1 failure or payment irregularities.

2 SUBCHAPTER F. VENDOR RISK MANAGEMENT PROGRAM FOR STATE CONTRACTS

3 Sec. 2262.251. DEFINITION. In this subchapter, "office"
4 means the State Office of Risk Management.

5 Sec. 2262.2515. APPLICABILITY. This subchapter does not
6 apply to a contract for goods with a value of \$50,000 or less.

7 Sec. 2262.252. COMPLIANCE VERIFICATION. (a) Each state
8 agency shall submit to the office ongoing contracts of the agency
9 for verification of vendor compliance with contract terms and
10 requirements and to correct contract compliance deficiencies as
11 provided by rules adopted by the office under Section 2262.253.

12 (b) The office may contract with a third-party
13 credentialing organization to provide compliance verification as
14 provided by this subchapter.

15 (c) Not later than December 31 of each even-numbered year,
16 the office shall provide a report to the legislature on the office's
17 findings under this subchapter and recommendations to ensure state
18 contract compliance and mitigate risk to the state.

19 (d) Notwithstanding Subsection (a), the office may not
20 require a state agency to submit for compliance verification a
21 contract related to health and human services if:

22 (1) the value of the contract cannot be determined at
23 the time of execution of the contract; and

24 (2) any qualified vendor is eligible for the contract.

25 Sec. 2262.253. RULES RELATING TO COMPLIANCE VERIFICATION.

26 (a) The office shall adopt rules to implement this subchapter.

27 (b) At a minimum, rules adopted under Subsection (a) must:

- 1 (1) provide standards for:
- 2 (A) selecting and submitting a statistically
3 significant sampling of contracts for review under this subchapter;
4 (B) identifying vendor noncompliance or
5 deficiency as a result of a contract review under this subchapter;
6 and
- 7 (C) implementing corrective action in relation
8 to vendor noncompliance or deficiency;
- 9 (2) in relation to verification system requirements,
10 provide criteria for:
- 11 (A) monitoring of vendor compliance with
12 contract terms and requirements through the life cycle of the
13 contract; and
- 14 (B) implementation of Internet-based software
15 that has the capability to exchange information and facilitate
16 payments and real-time reporting of collected information;
- 17 (3) in relation to requirements for contract
18 compliance verification:
- 19 (A) designate verification checklists, including
20 requirements for interviews and recordkeeping, exposure analyses,
21 equipment and facility forms, and pre-verification and
22 post-verification compliance;
- 23 (B) provide standards for verifying vendor
24 certificates of insurance, policy types and limits, policy
25 expirations and renewals, and endorsements;
- 26 (C) provide standards for additional vendor
27 screenings, including:

1 (i) financial screening, including
2 reviewing profit and loss statements, cash flow statements, balance
3 statements, and federal employer identification numbers and other
4 taxpayer identification numbers;

5 (ii) license screening, including any
6 required certifications and professional licenses;

7 (iii) state and federal debarment and
8 exclusion screening;

9 (iv) compliance with legal requirements;

10 (v) compliance with safety standards,
11 including workers' compensation and automobile insurance coverage;
12 and

13 (vi) review of vendor compliance with
14 security standards for information systems; and

15 (D) address any additional issues the office
16 determines to be necessary to achieve best practices in the
17 verification of contracts for compliance with contract terms and
18 requirements and to correct contract compliance deficiencies; and

19 (4) set a reasonable fee to be paid by a vendor who
20 enters into a contract with a state agency in an amount that is
21 sufficient to recover the office's costs under this subchapter and
22 that is less than one percent of the contract, not to exceed \$1,000.

23 Sec. 2262.254. REQUIRED CONTRACT PROVISION RELATING TO
24 VENDOR RISK MANAGEMENT PROGRAM. Each state agency shall include in
25 each of its contracts a clause that provides that the vendor agrees
26 that the vendor may be charged a reasonable fee as provided by
27 Section 2262.253(b)(4).

1 SECTION 35. Subchapter C, Chapter 2262, Government Code, is
2 repealed.

3 SECTION 36. (a) The Contract Advisory Team is abolished.

4 (b) The validity of an action taken by the Contract Advisory
5 Team before the team was abolished by this Act is not affected by
6 the abolition.

7 (c) All powers and duties of the Contract Advisory Team are
8 transferred to the Contract Management and Oversight Team
9 established by this Act.

10 (d) A rule, form, policy, procedure, or decision of the
11 Contract Advisory Team continues in effect as a rule, form, policy,
12 procedure, or decision of the Contract Management and Oversight
13 Team until superseded by an act of the Contract Management and
14 Oversight Team.

15 (e) A reference in law to the Contract Advisory Team means
16 the Contract Management and Oversight Team.

17 (f) Any action or proceeding involving the Contract
18 Advisory Team is transferred without change in status to the
19 Contract Management and Oversight Team, and the Contract Management
20 and Oversight Team assumes, without a change in status, the
21 position of the Contract Advisory Team in a negotiation or
22 proceeding to which the Contract Advisory Team is a party.

23 SECTION 37. Except as otherwise provided by this Act, this
24 Act applies only in relation to a contract:

25 (1) for which a state agency first advertises or
26 otherwise solicits bids, proposals, offers, or qualifications on or
27 after the effective date of this Act;

1 (2) that is extended or modified on or after the
2 effective date of this Act; or

3 (3) for which a change order is submitted on or after
4 the effective date of this Act.

5 SECTION 38. Sections [2166.2551](#), [2254.006](#), and
6 [2254.0301\(a\)](#), Government Code, as amended by this Act, apply only
7 to a state agency contract for which the agency is required to
8 provide notice to the Legislative Budget Board that is entered into
9 on or after the effective date of this Act.

10 SECTION 39. To the extent of any conflict, this Act prevails
11 over another Act of the 84th Legislature, Regular Session, 2015,
12 relating to state agency contracting and oversight.

13 SECTION 40. This Act takes effect September 1, 2015.