

By: Zaffirini

S.B. No. 1053

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the management of state contracts, including the
3 establishment of the contract management division of the
4 Legislative Budget Board.

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

6 SECTION 1. Section 2262.002(a), Government Code, is amended
7 to read as follows:

8 (a) Except as provided by Section 2262.206, this [This]
9 chapter does not apply to an institution of higher education as
10 defined by Section 61.003, Education Code.

11 SECTION 2. Chapter 2262, Government Code, is amended by
12 adding Subchapter E to read as follows:

13 SUBCHAPTER E. CONTRACT MANAGEMENT DIVISION

14 Sec. 2262.201. DEFINITIONS. In this subchapter:

15 (1) "Division" means the contract management division
16 established by the Legislative Budget Board under this subchapter.

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

19 (3) "Quality assurance team" means the quality
20 assurance team established under Section 2054.158.

21 (4) "Contract Advisory Team" means the contract
22 advisory team established under Section 2262.101.

23 (5) "Contract" means an original contract or grant; a
24 contract or grant amendment; a contract or grant extension; a

1 purchase order; an interagency grant or agreement; or an interlocal
2 agreement.

3 (6) "High-risk contract" means a state agency contract
4 that:

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

6 (B) has a value of less than \$10 million, but has
7 high-risk factors as identified by the division;

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

10 (D) is entered into with an entity that, during
11 the five-year period preceding the date of the award of the
12 contract, has had a contract with a state agency or federal
13 governmental entity terminated or canceled for:

14 (i) a violation of, or noncompliance with,
15 the terms of the contract;

16 (ii) delivery of an ineffective product,
17 service, or system;

18 (iii) significant delays or cost overruns;

19 (iv) fraud;

20 (v) misconduct; or

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

23 (E) is entered into with an entity that, at any
24 time during the five-year period preceding the date of the award of
25 the contract, has had a monetary judgment entered against the
26 entity as a result of litigation initiated by the state, a state
27 official, or a state agency.

1 Sec. 2262.202. ESTABLISHMENT; GENERAL DUTIES. The
2 Legislative Budget Board shall establish a contract management
3 division to:

4 (1) develop criteria for identifying high-risk
5 factors in contracts;

6 (2) define the information that must be included in
7 the required report and notice;

8 (3) coordinate and consult with the Contract Advisory
9 Team on all high-risk contracts; and

10 (4) coordinate and consult with the quality assurance
11 team on all high-risk contracts relating to a major information
12 resources project.

13 Sec. 2262.203. REVIEW AND REPORTING. (a) The division
14 shall:

15 (1) review high-risk contracts and identify certain
16 high-risk contracts for further monitoring and reporting; and

17 (2) report annually on the status of high-risk
18 contracts to the:

19 (A) governor;

20 (B) lieutenant governor;

21 (C) speaker of the house of representatives;

22 (D) presiding officer of the committee in the
23 house of representatives with primary responsibility for
24 appropriations; and

25 (E) presiding officer of the committee in the
26 senate with primary responsibility for appropriations.

27 (b) For contracts identified under Subsection (a)(1), the

1 division shall require the state agency that executed the contract
2 to report on the status of the contract monthly or quarterly, as
3 determined by the division.

4 (c) Based on reports received under Subsection (b), the
5 division shall notify the Legislative Budget Board as soon as
6 practicable of any high-risk contracts experiencing cost overruns
7 or performance failure or otherwise demonstrating poor management.

8 (d) A state agency shall provide the division any
9 information necessary for the division to perform the division's
10 duties under this section.

11 Sec. 2262.204. OUTSIDE SERVICES. (a) The division may
12 retain the services of private counsel or of private consultants
13 who have expertise in a technical matter that is the subject of a
14 high-risk contract or proposed high-risk contract.

15 (b) A state agency with a high-risk contract or proposed
16 high-risk contract for which private counsel or consultants are
17 retained by the division shall pay the costs and fees of the counsel
18 or consultants.

19 Sec. 2262.205. RECOMMENDATION OF CONTRACT CANCELLATION.
20 The division may recommend the cancellation of a contract of a state
21 agency to the agency and the Legislative Budget Board during the
22 review process under this subchapter if an executed contract is
23 experiencing performance failure or payment irregularities.

24 Sec. 2262.206. NOTIFICATION OF CERTAIN PURCHASES OR
25 CONTRACTS. (a) In this section, "institution of higher education"
26 has the meaning assigned by Section 61.003, Education Code.

27 (b) A state agency or institution of higher education may

1 not enter into a contract or make a purchase with an expected value
2 that exceeds or may reasonably be expected to exceed \$10 million
3 unless the agency or institution, at least 30 business days before
4 the date of the contract or purchase, provides written notice of the
5 contract or purchase to:

6 (1) the division;

7 (2) the governor;

8 (3) the state auditor;

9 (4) the presiding officer of the committee in the
10 house of representatives with primary responsibility for
11 appropriations; and

12 (5) the presiding officer of the committee in the
13 senate with primary responsibility for appropriations.

14 (c) Subsection (d) applies only to a contract or purchase
15 with an expected value that exceeds or may reasonably be expected to
16 exceed \$1 million and that is awarded or made:

17 (1) as a result of an emergency or following an
18 emergency procurement procedure authorized by law; or

19 (2) without advertising or otherwise soliciting bids,
20 proposals, offers, or qualifications relating to competitive
21 bidding processes required by state statutes, policies, or
22 procedures.

23 (d) A state agency or institution of higher education may
24 not enter into a contract or make a purchase described by Subsection
25 (c) unless, at least 24 hours before awarding the contract or making
26 the purchase, the agency or institution provides to the entities
27 described by Subsection (b) written notice and a clear statement of

1 the emergency and the necessity for the contract or purchase.

2 Sec. 2262.207. RULES. The Legislative Budget Board may
3 adopt rules to implement this subchapter.

4 Sec. 2262.208. NO CAUSE OF ACTION CREATED. This subchapter
5 does not create a cause of action.

6 SECTION 3. Subchapter E, Chapter 2262, Government Code, as
7 added by this Act, applies only to a contract or purchase for which
8 a state agency first advertises or otherwise solicits bids,
9 proposals, offers, or qualifications on or after the effective date
10 of this Act.

11 SECTION 4. On the effective date of this Act, a state agency
12 shall report to the contract management division of the Legislative
13 Budget Board all high-risk contracts, as defined by Section
14 2262.201, Government Code, as added by this Act, the agency
15 anticipates entering into during the state fiscal biennium
16 beginning September 1, 2015.

17 SECTION 5. This Act takes effect September 1, 2015.