

SUBJECT: Private procurement specialists for certain state agency contracts

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Geren, Hilderbran, Jones, Maldonado, Swinford

1 nay — Harless

1 present not voting — Oliveira

2 absent — Lucio, S. Turner

WITNESSES: None

BACKGROUND: Government Code, ch. 2262 governs statewide contract management. The code establishes the contract advisory team, consisting of five members from various state agencies and offices, to assist in improving contract management practices by reviewing the solicitation of major contracts by state agencies.

DIGEST: CSHB 4682 would require the comptroller, under certain conditions, to select and assign private procurement specialists to review and approve actions associated with a high cost contract — defined as a contract valued at \$10 million or more. A procurement specialist would be a private person who was an expert in the subject matter of the contract and is proficient in applicable procurement laws. The specialist would provide recommendations and assistance to a state agency throughout the contract initiation and management process.

The bill would delete provisions allowing the state's contract advisory team to review the solicitation of major contracts by state agencies. The bill would only apply to a Texas Department of Transportation contract if it was high-cost and for a major information resources project. Contracts for professional or consulting services would not be included under the bill.

Prior to assigning a private procurement specialist, the comptroller and the agency seeking the contract would consider each potential specialist's

experience and knowledge on the subject matter, as well as any fees or costs associated with securing their services.

The comptroller would assign a private procurement specialist for a high-cost contract upon determining that a specialist would secure a net savings to the state over the life of the contract. A state agency could request a specialist upon making this determination as well.

An agency would have to gain approval from the procurement specialist before publicly releasing solicitation documents, executing a final contract, or making payments equaling half the value of the contract. Prior to approving such an action on a contract, the procurement specialist and the comptroller would review related documentation to ensure that potential risks had been identified and addressed. An agency that disagreed with a specialist could take an alternative action if the agency's administrative head and the comptroller approved.

A private procurement specialist could recommend cancelling a solicitation or contract if it was not in the best interest of the state or placed the state at an unacceptable risk or if an executed contract was experiencing performance failure or payment irregularities.

An agency seeking to enlist a procurement specialist would have to agree to compensate the specialist with either a flat fee agreement or a pay-for-performance agreement. The pay-for-performance agreement would have to provide that the specialist be paid a percentage of savings attributable to the specialist's involvement in the contract negotiations. State agencies using procurement specialists would report any realized savings to the comptroller. The comptroller would adopt rules to implement and administer provisions governing private procurement specialists.

The bill would take effect September 1, 2009, and would apply to a solicitation for a contract after that date.

**SUPPORTERS
SAY:**

CSHB 4682 would provide a valuable option for state agencies to save taxpayers money in the negotiation and implementation of contracts. Allowing the comptroller to require a private procurement specialist for high-cost contracts would be an innovative approach to contract management, effectively using private sector resources to the benefit of the state and its taxpayers. This innovation would be especially important in light of the recent recession, which has made paramount the need to

maximize efficiency. Private procurement specialists are able to contribute prized private sector bargaining and contract experience that public sector employees often lack.

Since procurement specialists have practical, applied knowledge of the procurement process from the private vantage, they would be able to identify issues and advantages that might escape the notice of a public contract team. Private specialists would be able to supplement knowledge and experience of public contract teams and could save the state three to five percent on large contracts. Properly negotiated contracts upfront have additional long-term benefits to taxpayers and the state agencies that oversee the contracts. Procurement specialists also could help ensure that contracts were properly structured to protect the state from long-term risks inherent in many provisions. If a problem arose after a contract was originally signed, the state could take action against the specialist in court.

**OPPONENTS
SAY:**

CSHB 4682 could result in greater contract costs to agencies. There is no clear evidence to prove that private procurement specialists save taxpayer money, and the state already has in place the contract advisory team to assist in contract negotiations. The contract advisory team is composed of public sector experts from the Comptroller's Office, the Attorney General's Office, the Department of Information Resources, and others. The team was specifically established for this purpose and can bring to bear a broad sample of strengths from many different focus areas. The advisory team already can provide substantially similar services to contract procurement specialists, at no additional cost to the state.

Provisions in the bill authorizing the procurement specialists are vague. The bill contains no caps on payments to the specialists in the form of a flat fee or a percentage of savings. Further, the bill would not address a situation in which the state paid a specialist in full for services and later discovered a problem with the contract. Specialists would have no specific accountability under the bill after a contract was finalized.

NOTES:

The Legislative Budget Board (LBB) estimates that the bill would result in a significant cost to the state, but that the cost cannot be determined. The LBB determined that the actual cost would depend on the number of eligible contracts, the amount a specialist would be paid, and other factors.