

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1680
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Government Organization
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The manner in which state agencies engage and administer contracts with vendors is of vital concern for the state because it directly affects the use of state appropriated financial resources and, in some cases, the termination of state employee positions. Legislative agencies continue to report that all three stages of contract solicitation, negotiation, and management must be skillfully managed to mitigate risk, contain costs, and ensure high quality. Texas would benefit from greater uniformity in state contracting management to ensure the best value for each dollar spent.

C.S.S.B. 1680 improves the processes by which the state solicits, negotiates, enters into, and manages contracts with vendors by improving the training processes for employees involved in contracting, improving contract reporting and oversight mechanisms at state agencies, and addressing contract amendments and extensions.

C.S.S.B. 1680 amends current law relating to certain requirements applicable to contracts entered into by state agencies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2113.102(a), Government Code, as follows:

(a) Prohibits a state agency from using appropriated money to contract with a person to audit the agency except as provided by Subsections (b) (relating to authorizing a state agency to use appropriated money to finance a supplemental audit of payments received from the government of the United States), (c) (relating to authorizing a state agency providing grants, loans, or other money to an entity other than a state agency to require, as a condition of receipt of the money, that the receipt have an annual, independent audit performed and submitted to the agency), and (d) (relating to the provision that Subsection (a) does not apply to the appointment of an internal auditor under Section 2102.006 (Internal Auditor; Staff) or to a contract with the state auditor); and in accordance with Section 321.020 (Coordination of Certain Audits). Deletes existing text prohibiting a state agency from using appropriated money to contract with a person to audit the financial records or accounts of the agency except as provided by Subsections (b), (c), and (d); Chapter 466 (State Lottery), pertaining to the state lottery; Chapter 2306 (Texas Department of Housing and Community Affairs), pertaining to the Texas Department of Housing and Community Affairs; and Chapter 361 (State Highway Turnpike Projects), Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation. Makes nonsubstantive changes.

SECTION 2. Amends Section 2162.103(a), Government Code, to require the State Council on Competitive Government (council), in comparing the cost of providing a service, to consider certain costs, including installation costs and any other initial costs associated with a contract

with a private contractor, other costs associated with the transition to using a private contractor's goods or services, and cost savings to the state if a private contractor were awarded the contract.

SECTION 3. Amends Section 2261.002, Government Code, to redefine "contract" and to define "contract manager," "executive director," "general counsel," and "major contract" in this chapter, and to make nonsubstantive changes.

SECTION 4. Amends Subchapter A, Chapter 2261, Government Code, by adding Sections 2261.004, 2261.005, 2261.006, and 2261.007, as follows:

Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS. (a) Requires each state agency to maintain in a central location all contracts for that agency.

(b) Provides that "contract" includes a sole-source contract in this subsection. Requires each state to maintain accurate records of all essential information relating to agency, contracts, including information on a contract delay or changes to a contract in which total expenditures under the contract increase by more than 35 percent from the original contract, and cost overruns, including a written explanation of why expenditures have increased under a contract.

Sec. 2261.005. CONTRACT REPORTING. (a) Provides that "contract," in this section, includes a construction contract.

(b) Provides that the following sections prescribe reporting requirements for certain contracts: Section 322.020 (Major Contracts Database), Section 2054.008 (Contract Notification), Section 2166.2551 (Contract Notification), Section 2254.006 (Contract Notification), and Section 2254.0301 (Contract Notification).

Sec. 2261.006. CONTRACT MANAGEMENT. Requires a contract manager, general counsel, or executive director of a state agency to manage agency contracts.

Sec. 2261.007. PROFESSIONAL SERVICES. Requires a state agency to procure professional services in accordance with Subchapter A, Chapter 2254.

SECTION 5. Amends Subchapter C, Chapter 2261, Government Code, by adding Sections 2261.103, 2261.104, and 2261.105, as follows:

Sec. 2261.103. USE OF UNIFORM FORMS. Authorizes a state agency to use any forms developed by the comptroller of public accounts of the State of Texas (comptroller) as templates, guides, or samples for contracts entered into by the agency.

Sec. 2261.104. ESSENTIAL PROVISIONS. Provides that the following are required provisions in each contract, other than a grant:

- (1) introduction;
- (2) scope of work;
- (3) indemnification or damage claims;
- (4) price;
- (5) specifications;
- (6) funding out clause;
- (7) antitrust;
- (8) payment;

- (9) affirmation clauses;
- (10) technology access clause;
- (11) dispute resolution;
- (12) term of contract;
- (13) confidential information;
- (14) abandonment or default;
- (15) right to audit;
- (16) force majeure;
- (17) ownership of intellectual property, including rights to data, documents, and computer software;
- (18) independent contractor;
- (19) termination; and
- (20) buy Texas.

Sec. 2261.105. **REQUIRED PROVISIONS.** Provides that a provision required by applicable law to be included in the contract, in any contract for the acquisition of goods and services to which a state agency is a party, is considered to be a part of the executed contract without regard to whether the provision appears on the face of the contract, or whether the contract includes any provision to the contrary.

SECTION 6. Amends the heading to Subchapter E, Chapter 2261, Government Code, to read as follows:

SUBCHAPTER E. CONTRACTING OVERSIGHT

SECTION 7. Amends Subchapter E, Chapter 2261, Government Code, is amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207, 2261.208, and 2261.209, as follows:

Sec. 2261.204. **INFORMATION ON CONTRACTOR PERFORMANCE.** (a) Requires each state agency, after a contract is completed or otherwise terminated, to review the contractor's performance under the contract.

(b) Requires a state agency, using forms made available to the state agency, to report to the comptroller on the results of the review regarding a contractor's performance under a major contract.

(c) Requires a state agency to use any vendor performance tracking system available to state agencies to determine whether to award a contract to a person reviewed in the database.

Sec. 2261.205. **EXCLUDING CONTRACTOR FROM SOLICITATION PROCESS.** Authorizes a state agency, based on its own contractor performance reviews and on information in any vendor performance tracking system available to state agencies, to exclude a contractor from the solicitation process for a contract if the agency determines the contractor has performed poorly on a previous state contract without regard to whether the contractor has been barred under Section 2155.077 (Barring Vendor from Participation in State Contracts).

Sec. 2261.206. **CONTRACT MANAGERS.** (a) Requires each state agency that enters into contracts other than interagency contracts to establish a career ladder program for contract management in the agency.

(b) Authorizes an employee hired as a contract manager to engage in procurement planning, contract solicitation, contract formation, price establishment, and other contract activities.

(c) Requires each state agency to determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager under this chapter.

Sec. 2261.207. **APPROVAL OF CONTRACTS.** (a) Requires each state agency to establish formal guidelines regarding who may approve a contract for the agency, for contract planning and solicitation, for contract negotiations, and for contract management.

(b) Requires each state agency to adopt a policy to establish a monetary threshold above which agency contracts and amendments to or extensions of agency contracts require written authorization by the agency executive director.

(c) Requires the agency executive director to authorize a contract amendment in writing for state agency contracts valued in excess of \$1 million.

(d) Requires each state agency to annually report to the comptroller a list of persons authorized to approve contracts at the agency. Requires that the list include each person's name, position, and supervisory responsibility, if any.

Sec. 2261.208. **NEGOTIATION OF MAJOR CONTRACT BY SINGLE EMPLOYEE PROHIBITED.** Prohibits a state agency from negotiating a major contract with only one employee engaging in the negotiation.

Sec. 2261.209. **CONTRACT REVIEW.** Requires a contract manager to:

(1) periodically review and report on a contractor's performance throughout the term of a contract; and

(2) submit, at a minimum, a quarterly report to the executive director of the agency on the results of the reviews performed under Subdivision (1).

SECTION 8. Amends Chapter 2261, Government Code, by adding Subchapters F and G, as follows:

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2261.251. **CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE ORDERS.** (a) Provides that an extension of or amendment to a contract, including a change order, is subject to the same approval processes as the original contract.

(b) Prohibits a state agency from extending or amending a contract unless the agency complies with the same approval processes for the extension or amendment as required for the original contract and a contract manager for the agency states in writing why the extension or amendment is necessary or advantageous to the state.

(c) Provides that this section does not affect whether a state agency is required to undertake a new solicitation process in the manner required for a new contract in order to extend or amend a contract.

Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST OVERRUNS. (a) Requires the state agency, if a proposed contract amendment or extension changes the monetary value of a contract by at least 35 percent or \$1 million, to obtain review and approval from the Contract Advisory Team and the agency's executive director before the agency amends or extends the contract.

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

(c) Requires that the executive director be timely notified of a contract cost overrun.

Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS. Provides that this subchapter does not apply to contract extensions that are specifically established as a component of the original procurement.

SUBCHAPTER G. TRAINING

Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS. (a) Requires a state agency to require a contract manager to be trained under Section 2262.053 (Training).

(b) Requires a state agency to maintain a list of contract managers who have completed the contract management training.

(c) Authorizes a state agency to develop qualified contract manager training to supplement the training required under this section.

Sec. 2261.302. TRAINING FOR GOVERNING BODIES. Requires all members of the governing body of a state agency to complete at least one course of abbreviated training provided under Section 2262.053. Provides that this section does not apply to a state agency that does not enter into any contracts.

SECTION 9. Transfers Section 2262.003, Government Code, to Subchapter C, Chapter 2261, Government Code, redesignates it as Section 2261.105, Government Code, and amends it as follows:

Sec. 2261.105. New heading: REQUIRED PROVISION RELATING TO AUDITING.
(a)-(b) Makes no changes to these subsections.

SECTION 10. Provides that Sections 2261.006, 2261.104, 2261.105, and 2261.208, Government Code, as added by this Act, apply only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act.

SECTION 11. Provides that a contract manager is not required to complete the training required under Section 2261.301, Government Code, as added by this Act, until September 1, 2015.

SECTION 12. Provides that a member of a governing body of a state agency is not required to complete the training required under Section 2261.302, Government Code, as added by this Act, until September 1, 2015.

SECTION 13. Provides that a state agency is not required to comply with Section 2261.004 and Sections 2261.204-2261.209, Government Code, as added by this Act, until September 1, 2015.

SECTION 14. Effective date: November 1, 2013.