

By: Zaffirini

S.B. No. 68

A BILL TO BE ENTITLED

1 AN ACT
2 relating to contracting issues of state agencies, including ethics
3 issues related to state contracting.

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

5 SECTION 1. Section 322.020, Government Code, is amended by
6 amending Subsections (b), (c), and (e) and adding Subsection (g) to
7 read as follows:

8 (b) Each state agency shall provide the Legislative Budget
9 Board:

10 (1) copies of the following documents:

11 (A) [~~(1)~~] each major contract entered into by the
12 agency; and

13 (B) [~~(2)~~] each request for proposal, invitation
14 to bid, or comparable solicitation related to the major contract;
15 and

16 (2) information regarding each major contract entered
17 into by the agency, including:

18 (A) the name of the contractor;

19 (B) the contract value;

20 (C) the beginning date and end date of the
21 contract;

22 (D) a description of any amendments made to the
23 contract, including the costs of those amendments;

24 (E) cumulative payments and encumbrances under

1 the contract;

2 (F) any anticipated cost savings to the state
3 under the contract and a timeline for achieving those savings;

4 (G) key contract terms that are out of compliance
5 in terms of timeliness standards, deliverables, and failure to meet
6 performance measures; and

7 (H) any other information that the board, in
8 consultation with the Contract Advisory Team and the state office
9 of contract management, considers necessary.

10 (c) The Legislative Budget Board shall post on the Internet:

11 (1) each major contract of a state agency; ~~and~~

12 (2) each request for proposal, invitation to bid, or
13 comparable solicitation related to the major contract; and

14 (3) information provided to the board under Subsection
15 (b)(2) regarding a major contract.

16 (e) The Legislative Budget Board shall make the information
17 searchable by contract value, state agency, ~~and~~ vendor, and date,
18 including both the beginning date and the end date of the contract.

19 The Legislative Budget Board may make the information searchable by
20 other subjects as appropriate.

21 (g) The Legislative Budget Board, in consultation with the
22 Contract Advisory Team and the state office of contract management,
23 shall set appropriate criteria to determine when and what
24 information should be updated.

25 SECTION 2. Section 2113.102(a), Government Code, is amended
26 to read as follows:

27 (a) A state agency may not use appropriated money to

1 contract with a person to audit [~~the financial records or accounts~~
2 ~~of~~] the agency except:

3 (1) as provided by~~+~~

4 ~~[(1)]~~ Subsections (b), (c), and (d); and

5 (2) in accordance with Section 321.020 [~~Chapter 466,~~
6 ~~pertaining to the state lottery,~~

7 ~~[(3)] Chapter 2306, pertaining to the Texas Department~~
8 ~~of Housing and Community Affairs; and~~

9 ~~[(4)] Chapter 361, Transportation Code, pertaining to~~
10 ~~the Texas Turnpike Authority division of the Texas Department of~~
11 ~~Transportation].~~

12 SECTION 3. Section 2162.103(a), Government Code, is amended
13 to read as follows:

14 (a) In comparing the cost of providing a service, the
15 council shall consider the:

16 (1) cost of supervising the work of a private
17 contractor; ~~and~~

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

20 (A) the costs of the comptroller, attorney
21 general, and other support agencies; and

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

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

26 (4) other costs associated with the transition to
27 using a private contractor's goods or services; and

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

3 SECTION 4. Section 2262.001, Government Code, is amended by
4 amending Subdivisions (3) and (4) and adding Subdivision (3-a) to
5 read as follows:

6 (3) "Contract manager" means a person who:

7 (A) is employed by a state agency; and

8 (B) has significant contract management duties
9 for the state agency[, ~~as determined by the agency in consultation~~
10 ~~with the state auditor~~].

11 (3-a) "Executive director" means the administrative
12 head of a state agency.

13 (4) "Major contract" means a contract, including a
14 renewal of a contract, that has a value of at least \$1 million.

15 SECTION 5. Subchapter A, Chapter 2262, Government Code, is
16 amended by adding Section 2262.0015 to read as follows:

17 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. (a)
18 The comptroller by rule shall establish threshold requirements that
19 exclude small or routine contracts, including purchase orders, from
20 the application of this chapter.

21 (b) This chapter does not apply to an enrollment contract
22 described by 1 T.A.C. Section 391.183 as that section existed on
23 November 1, 2007.

24 SECTION 6. The heading to Section 2262.053, Government
25 Code, is amended to read as follows:

26 Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

27 SECTION 7. Section 2262.053, Government Code, is amended by

1 amending Subsections (a) and (d) and adding Subsections (e), (f),
2 and (g) to read as follows:

3 (a) In coordination with the [~~comptroller,~~] Department of
4 Information Resources, [~~and~~] state auditor, and Health and Human
5 Services Commission, the comptroller or a private vendor selected
6 by the comptroller [~~commission~~] shall develop [~~or administer~~] a
7 training program for contract managers.

8 (d) The comptroller [~~Texas Building and Procurement~~
9 ~~Commission~~] shall administer the training program under this
10 section.

11 (e) The comptroller shall certify contract managers who
12 have completed the contract management training required under this
13 section and keep a list of those contract managers.

14 (f) The program developed under this section must include a
15 separate class on ethics and contracting.

16 (g) A state agency or educational entity may develop
17 qualified contract manager training to supplement the training
18 required under this section. The comptroller may incorporate the
19 training developed by the agency or entity into the training
20 program under this section.

21 SECTION 8. Subchapter B, Chapter 2262, Government Code, is
22 amended by adding Section 2262.0535 and Sections 2262.055 through
23 2262.066 to read as follows:

24 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
25 comptroller or a private vendor selected by the comptroller shall
26 adapt the program developed under Section 2262.053 to develop an
27 abbreviated program for training the members of the governing

1 bodies of state agencies. The training may be provided together
2 with other required training for members of state agency governing
3 bodies.

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

8 Sec. 2262.055. FEES FOR TRAINING. The comptroller shall
9 set and collect a fee from state agencies that receive training
10 under this subchapter in an amount that recovers the comptroller's
11 costs for the training.

12 Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency
13 shall maintain in a central location all contracts for that agency.

14 Sec. 2262.057. REPORTING CONTRACTOR PERFORMANCE. (a)
15 After a contract is completed or otherwise terminated, each state
16 agency shall review the contractor's performance under the
17 contract.

18 (b) Using the forms developed by the team under Sections
19 2262.104 and 2262.105, the state agency shall report to the
20 comptroller, governor, lieutenant governor, and speaker of the
21 house of representatives on the results of the review regarding the
22 contractor's performance under the contract.

23 Sec. 2262.058. CONTRACTOR PERFORMANCE DATABASE. (a) The
24 comptroller shall store in a database contractor performance
25 reviews as provided by this section.

26 (b) The comptroller shall evaluate the contractor's
27 performance based on the information reported under Section

1 2262.057 and criteria established by the comptroller.

2 (c) The comptroller shall establish an evaluation process
3 that allows vendors who receive an unfavorable performance review
4 to protest any classification given by the comptroller.

5 (d) The comptroller shall develop a database that
6 incorporates the performance reviews and aggregates the reviews for
7 each contractor.

8 (e) A state agency may use the performance review database
9 to determine whether to award a contract to a contractor reviewed in
10 the database.

11 (f) The comptroller shall make the performance review
12 database accessible to the public on the comptroller's Internet
13 website.

14 Sec. 2262.059. EXCLUDING CONTRACTOR FROM SOLICITATION
15 PROCESS. Based on its own contractor performance reviews and on
16 information in the database developed under Section 2262.058, a
17 state agency may exclude a contractor from the solicitation process
18 for a contract if the agency determines the contractor has
19 performed poorly on a previous state contract without regard to
20 whether the contractor has been barred under Section 2155.077.

21 Sec. 2262.060. PERFORMANCE MEASURES; REPORTS. (a) Each
22 state agency shall develop a plan for incorporating performance
23 measures into all contracts entered into by the agency. This
24 includes ensuring that performance measures are written into each
25 contract prior to execution.

26 (b) Not later than March 1 of each year, each state agency
27 shall report to the team, governor, lieutenant governor, and

1 speaker of the house of representatives regarding performance
2 measures in the agency's contracts. The report must describe the
3 agency's efforts to include performance-based provisions in the
4 agency's contracts.

5 (c) The state agency shall make the report accessible to the
6 public on the agency's website.

7 Sec. 2262.061. CONTRACT MANAGERS. (a) Each state agency
8 that enters into contracts other than interagency contracts shall
9 establish a career ladder program for contract management in the
10 agency.

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

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

18 Sec. 2262.062. APPROVAL OF CONTRACTS. (a) Each state
19 agency shall establish formal guidelines regarding who may approve
20 a contract for the agency.

21 (b) Each state agency shall adopt administrative rules to
22 establish a monetary threshold above which agency contracts and
23 amendments to or extensions of agency contracts require written
24 authorization by the agency executive director.

25 (c) For state agency contracts valued in excess of \$1
26 million the agency executive director must authorize a contract
27 amendment in writing.

1 (d) Each state agency shall annually report to the
2 comptroller a list of each person authorized to approve contracts
3 at the agency. The list must include the person's name, position,
4 and supervisory responsibility, if any.

5 Sec. 2262.063. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
6 PROHIBITED. A state agency may not negotiate a contract with only
7 one employee engaging in the negotiation.

8 Sec. 2262.064. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN
9 CONTRACTS. (a) If a state agency determines that a proposed
10 contract or proposed contract extension or amendment would
11 outsource existing services or functions performed by the agency
12 that have a value of \$10 million or more, or that would lead to the
13 loss of 100 or more existing state employee positions, the agency
14 shall create an optimized model for the identified functions or
15 services to determine how and at what cost the agency could most
16 efficiently provide the functions or services.

17 (b) The model must show consideration of all relevant
18 factors, including:

- 19 (1) best practices in this state and other states;
20 (2) available technology;
21 (3) access to benefits and services for clients;
22 (4) program integrity; and
23 (5) assessment of state agency skills available
24 throughout the life of the project.

25 (c) An agency that develops an optimized model under this
26 section shall use it as the basis for cost comparison under Section
27 2262.066 when deciding whether to outsource the identified

1 functions or services.

2 (d) A model developed under this section is confidential and
3 is not subject to disclosure under Chapter 552 until a final
4 determination has been made to award the contract for which the
5 model was developed.

6 Sec. 2262.065. ANALYSIS OF SERVICES AND FUNCTIONS. (a) In
7 this section, "inherently governmental in nature" means a function
8 or service that involves the exercise or use of governmental
9 authority or discretion.

10 (b) If a state agency determines that a proposed contract or
11 proposed contract extension or amendment would outsource existing
12 services or functions performed by the agency that have a value of
13 \$10 million or more, or would lead to the loss of 100 or more
14 existing state employee positions, then before the agency may issue
15 a competitive solicitation for the contract or amend or extend the
16 contract the agency shall contract with the State Council on
17 Competitive Government for its staff to perform an analysis to
18 determine if any of the services or functions to be performed under
19 the contract or contract extension or amendment are inherently
20 governmental in nature.

21 (c) Except as provided by Subsection (e), if the State
22 Council on Competitive Government determines that a service or
23 function to be performed under the contract or contract extension
24 or amendment is inherently governmental in nature, the state agency
25 may not:

26 (1) contract with a private entity to perform the
27 service or function; or

1 (2) amend or extend the contract, if a private entity
2 is to perform the service or function under the contract extension
3 or amendment.

4 (d) The analysis required under this section must use the
5 standards and policies contained in the Office of Federal
6 Procurement Policy, Policy Letter 92-1, or comparable guidelines
7 developed by the State Council on Competitive Government.

8 (e) A state agency may contract with a private entity to
9 perform a service or function or amend or extend an existing
10 contract to allow a private entity to perform a service or function
11 that the State Council on Competitive Government determines to be
12 inherently governmental in nature if the chief administrative
13 officer of the agency issues a report stating that there is a
14 compelling state interest in outsourcing the service or function.

15 Sec. 2262.066. FULL AND FAIR COST COMPARISON. (a) If a
16 state agency determines that a proposed contract or proposed
17 contract extension or amendment would outsource existing services
18 or functions performed by the agency that have a value of \$10
19 million or more, or that would lead to the loss of 100 or more
20 existing state employee positions, the agency shall:

21 (1) conduct a full and fair cost comparison to
22 determine whether a private entity could perform the service or
23 function with a comparable or better level of quality at a cost
24 savings to the state; and

25 (2) prepare a business case providing the initial
26 justification for the proposed contract or proposed contract
27 extension or amendment that includes:

1 (A) the results of the comparison required under
2 Subdivision (1); and

3 (B) the anticipated return on investment in terms
4 of cost savings and efficiency for the proposed contract or
5 proposed contract extension or amendment.

6 (b) To perform the comparison required by Subsection
7 (a)(1), a state agency may:

8 (1) contract with the State Council on Competitive
9 Government to have its staff perform the comparison; or

10 (2) use the methodology provided in Section 2162.103.

11 (c) Before executing a final contract, a state agency shall
12 submit the business case required under Subsection (a)(2) to the
13 governor, lieutenant governor, speaker of the house of
14 representatives, Legislative Budget Board, state office of
15 contract management, and standing committees of the legislature
16 that have primary jurisdiction over the agency, over state
17 appropriations, and over state purchasing.

18 SECTION 9. Section 2262.101, Government Code, is amended to
19 read as follows:

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

23 (1) ~~[reviewing the solicitation of major contracts by~~
24 ~~state agencies,~~

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

1 contract management guide; ~~and~~

2 (2) ~~[(3)]~~ providing recommendations to the
3 comptroller ~~[commission]~~ regarding:

4 (A) the development of the contract management
5 guide; and

6 (B) the training under Section 2262.053; and

7 (3) certifying that state agencies have complied with
8 Sections 2262.064 and 2262.066.

9 (b) The team shall consult with state agencies in developing
10 forms, contract terms, guidelines, and criteria required under this
11 chapter.

12 SECTION 10. Section 2262.102(a), Government Code, is
13 amended to read as follows:

14 (a) The team consists of the following five members:

15 (1) one member from the attorney general's office;

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

17 (3) one member from the Department of Information
18 Resources;

19 (4) ~~[one member from the Texas Building and~~
20 ~~Procurement Commission, and~~

21 ~~[(5)]~~ one member from the governor's office; and

22 (5) one member from the State Council on Competitive
23 Government.

24 SECTION 11. Subchapter C, Chapter 2262, Government Code, is
25 amended by adding Sections 2262.104 and 2262.105 to read as
26 follows:

27 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The team

1 shall develop and publish a uniform set of definitions for use as
2 applicable in state contracts.

3 (b) The team shall develop and publish a uniform and
4 automated set of forms that a state agency may use in the different
5 stages of the contracting process.

6 Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.
7 As part of the uniform forms published under Section 2262.104, the
8 team shall develop forms for use by state agencies in reporting a
9 contractor's performance under Section 2262.057.

10 SECTION 12. Chapter 2262, Government Code, is amended by
11 adding Subchapters D, E, F, and G to read as follows:

12 SUBCHAPTER D. CONTRACT PROVISIONS

13 Sec. 2262.151. USE OF UNIFORM FORMS. A state agency may use
14 the forms developed under Section 2262.104 as templates, guides, or
15 samples for contracts entered into by the agency.

16 Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

17 (a) The team shall develop recommendations for contract terms
18 regarding penalties for contractors who do not comply with a
19 contract, including penalties for contractors who do not disclose
20 conflicts of interest under Section 2262.201. The team may develop
21 recommended contract terms that are generally applicable to state
22 contracts and terms that are applicable to important types of state
23 contracts.

24 (b) A state agency may include applicable recommended terms
25 in a contract entered into by the agency.

26 Sec. 2262.153. REQUIRED PROVISION RELATING TO
27 SUBCONTRACTOR COMPLIANCE. Each state agency contract must require

1 that each contractor provide a list of all subcontractors for the
2 contract and include a provision that:

3 (1) holds the contractor responsible for the conduct
4 of all subcontractors in complying with the contractor's contract
5 with the state agency; and

6 (2) requires each subcontractor to disclose all
7 potential conflicts of interest to the state agency, according to
8 guidelines developed under Section 2262.201(b), when the
9 subcontractor contracts with or is otherwise hired by the
10 contractor.

11 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
12 STATE AGENCY EMPLOYEES. Before entering into a contract with the
13 state, a contractor and subcontractor shall disclose each employee:

14 (1) who was employed by:

15 (A) the state at any time during the two years
16 before the date of the disclosure and is now employed by the
17 contractor or subcontractor; or

18 (B) the contractor or subcontractor at any time
19 during the year before the date of the disclosure and is now
20 employed by the state; and

21 (2) who is materially involved in the development of
22 the contract terms or the management of the contract.

23 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
24 OUTSOURCING. (a) Each contract entered into by a state agency must
25 include a provision requiring disclosure of any services materially
26 necessary to fulfill the contract, including services performed by
27 a subcontractor, that will be or are performed in a country other

1 than the United States. This section does not apply to services
2 that are occasional, minor, or incidental to fulfilling the
3 contract.

4 (b) The contract must include a provision allowing the state
5 agency to terminate the contract and solicit a new contract, except
6 as provided by Subsection (d), if:

7 (1) the contractor or a subcontractor of the
8 contractor performs a service materially necessary to fulfill the
9 contract in a country other than the United States; and

10 (2) the contractor does not disclose in the contract
11 that the service will be performed in a country other than the
12 United States.

13 (c) A state agency that decides not to solicit a new
14 contract under circumstances in which the agency is authorized to
15 do so under a contract provision required by Subsection (b) shall
16 report this decision to:

17 (1) the governor;

18 (2) the lieutenant governor;

19 (3) the speaker of the house of representatives; and

20 (4) the team.

21 (d) A contractor may replace a subcontractor without
22 termination of a contract under this section if the contractor
23 determines that the subcontractor is performing a service
24 materially necessary to fulfill the contract in a country other
25 than the United States and did not disclose that fact to the
26 contractor.

27 Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN

1 LARGE CONTRACTS. If a state agency determines that a proposed
2 contract or proposed contract extension or amendment would
3 outsource existing services or functions performed by the agency
4 that have a value of \$10 million or more, or that would lead to the
5 loss of 100 or more existing state employee positions, the contract
6 or contract amendment must contain a provision that requires the
7 contractor to give preference in hiring to former employees of a
8 state agency:

9 (1) whose employment is terminated because of the
10 contract or contract extension or amendment;

11 (2) who satisfy the contractor's hiring criteria for
12 that position; and

13 (3) whose salary requirements are competitive with
14 market rates for positions with equivalent skills and experience.

15 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

16 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
17 contractor who responds to a state agency's contract solicitation
18 shall disclose in its response all potential conflicts of interest
19 to the agency.

20 (b) The team shall develop guidelines to aid contractors and
21 state agencies in identifying potential conflicts of interest.

22 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS AND CONTRACTING
23 CLASS. Each executive director of a state agency shall annually
24 complete the ethics and contracting class developed under Section
25 2262.053(f). This section does not apply to a state agency that
26 does not enter into any contracts.

1 SUBCHAPTER F. CHANGES TO CONTRACTS

2 Sec. 2262.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE
3 ORDERS. (a) An extension of or amendment to a contract, including
4 a change order, is subject to the same approval processes as the
5 original contract.

6 (b) A state agency may not extend or amend a contract
7 unless:

8 (1) the agency complies with the same approval
9 processes for the extension or amendment as required for the
10 original contract; and

11 (2) a contract manager for the agency states in
12 writing why the extension or amendment is necessary.

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

16 Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) If a
17 proposed contract amendment or extension changes the monetary value
18 of a contract by \$1 million or more, the state agency must obtain
19 review and approval from the team and the agency's executive
20 director before the agency amends or extends the contract.

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

23 Sec. 2262.253. CERTAIN CONTRACT EXTENSIONS. This
24 subchapter does not apply to contract extensions that are
25 specifically established as a component of the original
26 procurement.

1 SUBCHAPTER G. STATE OFFICE OF CONTRACT MANAGEMENT

2 Sec. 2262.301. DEFINITIONS. In this subchapter:

3 (1) "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 office; or

8 (C) would outsource existing services or
9 functions performed by the agency that have a value of at least \$10
10 million or would lead to a loss of at least 100 existing state
11 employee positions.

12 (2) "Major information resources project" has the
13 meaning assigned by Section 2054.003.

14 (3) "Office" means the state office of contract
15 management.

16 (4) "Quality assurance team" means the quality
17 assurance team established under Section 2054.158.

18 (5) "Solicitation" means a solicitation for bids,
19 offers, qualifications, proposals, or similar expressions of
20 interest for a high-risk contract.

21 Sec. 2262.302. ESTABLISHMENT; GENERAL DUTIES. The
22 comptroller shall establish a state office of contract management
23 to:

24 (1) develop criteria for identifying high-risk
25 factors in contracts;

26 (2) review and approve an action related to a
27 high-risk contract as provided by Section 2262.303;

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

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

6 Sec. 2262.303. REVIEW AND APPROVAL; WAIVER. (a) Each state
7 agency must receive approval from the office before taking the
8 following actions in relation to a high-risk contract:

9 (1) publicly releasing solicitation documents;

10 (2) executing a final contract; and

11 (3) making a payment or a series of payments that equal
12 half of the contract value.

13 (b) In determining whether to approve an action described by
14 Subsection (a), the office shall review related documentation,
15 including, for a contract that would outsource existing services or
16 functions performed by the agency that have a value of at least \$10
17 million or would lead to the loss of at least 100 existing state
18 employee positions, the optimized model developed under Section
19 2262.064 and the cost comparison conducted under Section 2262.066,
20 to ensure that potential risks related to the high-risk contract
21 have been identified and mitigated.

22 (c) The comptroller by rule may adopt criteria for waiving
23 the review and approval requirements under Subsections (a) and (b).

24 Sec. 2262.304. SOLICITATION AND CONTRACT CANCELLATION.
25 After review of and comment on the matter by the Legislative Budget
26 Board and the governor, the office may recommend the cancellation
27 of a solicitation or a contract during the review process under

1 Section 2262.303 if:

2 (1) a proposed solicitation is not in the best
3 interest of the state;

4 (2) a proposed contract would place the state at an
5 unacceptable risk if executed; or

6 (3) an executed contract is experiencing performance
7 failure or payment irregularities.

8 SECTION 13. Section 2262.003, Government Code, is
9 transferred to Subchapter D, Chapter 2262, Government Code, as
10 added by this Act, is redesignated as Section 2262.157, Government
11 Code, and is amended to read as follows:

12 Sec. 2262.157 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
13 RELATING TO AUDITING. (a) Each state agency shall include in each
14 of its contracts a term that provides that:

15 (1) the state auditor may conduct an audit or
16 investigation of any entity receiving funds from the state directly
17 under the contract or indirectly through a subcontract under the
18 contract;

19 (2) acceptance of funds directly under the contract or
20 indirectly through a subcontract under the contract acts as
21 acceptance of the authority of the state auditor, under the
22 direction of the legislative audit committee, to conduct an audit
23 or investigation in connection with those funds; and

24 (3) under the direction of the legislative audit
25 committee, an entity that is the subject of an audit or
26 investigation by the state auditor must provide the state auditor
27 with access to any information the state auditor considers relevant

1 to the investigation or audit.

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

4 SECTION 14. Section 2262.051(f), Government Code, is
5 repealed.

6 SECTION 15. (a) Sections 2262.063 through 2262.066 and
7 2262.154, Government Code, and Subchapter G, Chapter 2262,
8 Government Code, as added by this Act, apply only to a contract for
9 which a state agency first advertises or otherwise solicits bids,
10 proposals, offers, or qualifications on or after the effective date
11 of this Act.

12 (b) Section 2262.201(a), Government Code, as added by this
13 Act, applies only in relation to a contract for which a state agency
14 first solicits bids, proposals, offers, or qualifications on or
15 after the date that the Contract Advisory Team's guidelines
16 regarding potential conflicts of interest take effect.

17 SECTION 16. Not later than May 1, 2012, the comptroller of
18 public accounts shall develop the training program, including the
19 ethics and contracting class, required by Section 2262.053,
20 Government Code, as amended by this Act, and Section 2262.0535,
21 Government Code, as added by this Act.

22 SECTION 17. A member of a governing body of a state agency
23 is not required to complete the training developed under Section
24 2262.0535, Government Code, as added by this Act, until September
25 1, 2013.

26 SECTION 18. An executive director of a state agency is not
27 required to comply with Section 2262.202, Government Code, as added

1 by this Act, until September 1, 2013.

2 SECTION 19. A contract manager is not required to be
3 certified under Chapter 2262, Government Code, as amended by this
4 Act, until September 1, 2013.

5 SECTION 20. (a) As soon as practicable, and not later than
6 May 1, 2012, the Contract Advisory Team shall develop the forms,
7 criteria, recommendations, and provisions required by this Act,
8 including Sections 2262.104, 2262.105, 2262.152, and 2262.201(b),
9 Government Code, as added by this Act.

10 (b) A state agency is not required to comply with Sections
11 2262.056 through 2262.062 and Sections 2262.153, 2262.155, and
12 2262.156, Government Code, as added by this Act, until September 1,
13 2013. A state agency may comply earlier if the forms, electronic
14 requirements, database, or other items are available before that
15 date.

16 SECTION 21. This Act takes effect November 1, 2011.