

By: Zaffirini, et al.

S.B. No. 769

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. Subsection (a), Section 2113.102, Government  
6 Code, is amended to read as follows:

7 (a) A state agency may not use appropriated money to  
8 contract with a person to audit ~~the financial records or accounts~~  
9 ~~of~~ the agency except:

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

11 ~~(1)~~ Subsections (b), (c), and (d); and

12 (2) in accordance with Section 321.020 [Chapter 466,

13 ~~pertaining to the state lottery,~~

14 ~~(3) Chapter 2306, pertaining to the Texas Department~~

15 ~~of Housing and Community Affairs; and~~

16 ~~(4) Chapter 361, Transportation Code, pertaining to~~

17 ~~the Texas Turnpike Authority division of the Texas Department of~~  
18 ~~Transportation].~~

19 SECTION 2. Subsection (a), Section 2162.103, Government  
20 Code, is amended to read as follows:

21 (a) In comparing the cost of providing a service, the  
22 council shall consider the:

23 (1) cost of supervising the work of a private  
24 contractor; ~~[and]~~

3 (A) the costs of the comptroller, attorney  
4 general, and other support agencies; and

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

13 SECTION 3. Section 2177.052, Government Code, is amended by  
14 amending Subsections (b), (c), and (f) and adding Subsection (g) to  
15 read as follows:

16 (b) Each state agency shall provide the commission:

17 (1) copies of the following documents:

25 (A) the name of the contractor:

(B) the contract value:

27 (c) the beginning date and end date of the

1 contract;

2 (D) a description of any amendments made to the

3 contract;

4 (E) cumulative payments and encumbrances under

5 the contract;

6 (F) key contract terms that are out of compliance

7 in terms of timeliness standards; and

8 (G) any other information that the commission

9 considers necessary.

10 (c) The commission shall include in the information posted  
11 on the electronic procurement marketplace:

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

18 (f) The commission shall make the information searchable by  
19 contract value, state agency, [and] vendor, and date, including  
20 both the beginning date and the end date of the contract. The  
21 commission may make the information searchable by other subjects as  
22 appropriate.

23 (g) The commission shall set appropriate criteria to  
24 determine when and what information should be updated.

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

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

(A) is employed by a state agency; and

(B) has significant contract management duties  
[redacted] as determined by the agency in consultation  
[redacted] [redacted].

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

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

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

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS.

13 (a) The commission by rule shall establish threshold requirements  
14 that exclude small or routine contracts, including purchase orders,  
15 from the application of this chapter.

16                   (b) This chapter does not apply to an enrollment contract  
17 described by 1 T.A.C. Section 391.183 as that section existed on May  
18 1, 2007.

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

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

22 SECTION 7. Section 2262.053, Government Code, is amended by  
23 amending Subsections (a) and (d) and adding Subsections (e), (f),  
24 and (g) to read as follows:

25 (a) In coordination with the comptroller, Department of  
26 Information Resources, [and] state auditor, and Health and Human  
27 Services Commission, the commission or a private vendor selected by

1       the commission shall develop [or administer] a training program for  
2 contract managers.

3           (d) The commission [~~Texas Building and Procurement~~  
4 ~~Commission~~] shall administer the training program under this  
5 section.

6           (e) The commission shall certify contract managers who have  
7 completed the contract management training required under this  
8 section and keep a list of those contract managers.

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

11           (g) A state agency or educational entity may develop  
12 qualified contract manager training to supplement the training  
13 required under this section. The commission may incorporate the  
14 training developed by the agency or entity into the training  
15 program under this section.

16           SECTION 8. Subchapter B, Chapter 2262, Government Code, is  
17 amended by adding Section 2262.0535 and Sections 2262.055 through  
18 2262.066 to read as follows:

19           Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The  
20 commission or a private vendor selected by the commission shall  
21 adapt the program developed under Section 2262.053 to develop an  
22 abbreviated program for training the members of the governing  
23 bodies of state agencies. The training may be provided together  
24 with other required training for members of state agency governing  
25 bodies.

26           (b) All members of the governing body of a state agency  
27 shall complete at least one course of the training developed under

1    this section. This subsection does not apply to a state agency that  
2    does not enter into any contracts.

3            Sec. 2262.055. FEES FOR TRAINING. The commission shall set  
4    and collect a fee from state agencies that receive training under  
5    this subchapter in an amount that recovers the commission's costs  
6    for the training.

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

9            Sec. 2262.057. REPORTING            CONTRACTOR            PERFORMANCE.  
10          (a) After a contract is completed or otherwise terminated, each  
11    state agency shall review the contractor's performance under the  
12    contract.

13          (b) Using the forms developed by the team under Sections  
14    2262.104 and 2262.105, the state agency shall report to the  
15    commission on the results of the review regarding the contractor's  
16    performance under the contract.

17          Sec. 2262.058. CONTRACTOR PERFORMANCE DATABASE. (a) The  
18    commission shall store in a database contractor performance reviews  
19    as provided by this section.

20          (b) The commission shall evaluate the contractor's  
21    performance based on the information reported under Section  
22    2262.057 and criteria established by the commission.

23          (c) The commission shall establish an evaluation process  
24    that allows vendors who receive an unfavorable performance review  
25    to protest any classification given by the commission.

26          (d) The commission shall develop a database that  
27    incorporates the performance reviews and aggregates the reviews for

1     each contractor.

2                 (e) A state agency may use the performance review database  
3 to determine whether to award a contract to a contractor reviewed in  
4 the database.

5                 Sec. 2262.059. EXCLUDING CONTRACTOR FROM SOLICITATION  
6 PROCESS. Based on its own contractor performance reviews and on  
7 information in the database developed under Section 2262.058, a  
8 state agency may exclude a contractor from the solicitation process  
9 for a contract if the agency determines the contractor has  
10 performed poorly on a previous state contract without regard to  
11 whether the contractor has been barred under Section 2155.077.

12                 Sec. 2262.060. PERFORMANCE MEASURES; REPORTS. (a) Each  
13 state agency shall develop a plan for incorporating performance  
14 measures into all contracts entered into by the agency. This  
15 includes ensuring that performance measures are written into each  
16 contract prior to execution.

17                 (b) Not later than March 1 of each year, each state agency  
18 shall report to the team, governor, lieutenant governor, and  
19 speaker of the house of representatives regarding performance  
20 measures in the agency's contracts. The report must describe the  
21 agency's efforts to include performance-based provisions in the  
22 agency's contracts.

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

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

1 agency.

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

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

9        Sec. 2262.062. APPROVAL OF CONTRACTS.    (a) Each state  
10 agency shall establish formal guidelines regarding who may approve  
11 a contract for the agency.

12        (b) Each state agency shall adopt administrative rules to  
13 establish a monetary threshold above which agency contracts and  
14 amendments to or extensions of agency contracts require written  
15 authorization by the agency executive director.

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

19        (d) Each state agency shall annually report to the  
20 commission a list of each person authorized to approve contracts at  
21 the agency. The list must include the person's name, position, and  
22 supervisory responsibility, if any.

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

26        Sec. 2262.064. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN  
27 CONTRACTS.    (a) If a state agency determines that a proposed

1 contract or proposed contract extension or amendment would  
2 outsource existing services or functions performed by the agency  
3 that have a value of \$10 million or more, or that would lead to the  
4 loss of 100 or more existing state employee positions, the agency  
5 shall create an optimized model for the identified functions or  
6 services to determine how and at what cost the agency could most  
7 efficiently provide the functions or services.

8       (b) The model must show consideration of all relevant  
9 factors, including:

10       (1) best practices in Texas and other states;  
11       (2) available technology;  
12       (3) access to benefits and services for clients;  
13       (4) program integrity; and  
14       (5) assessment of state agency skills available  
15 throughout the life of the project.

16       (c) An agency that develops an optimized model under this  
17 section shall use it as the basis for cost comparison when deciding  
18 whether to outsource the identified functions or services.

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

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

27       (b) If a state agency determines that a proposed contract or

1     proposed contract extension or amendment would outsource existing  
2     services or functions performed by the agency that have a value of  
3     \$10 million or more, or would lead to the loss of 100 or more  
4     existing state employee positions, then before the agency may issue  
5     a competitive solicitation for the contract or amend or extend the  
6     contract the agency shall contract with the State Council on  
7     Competitive Government for its staff to perform an analysis to  
8     determine if any of the services or functions to be performed under  
9     the contract or contract extension or amendment are inherently  
10    governmental in nature.

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

16                  (1) contract with a private entity to perform the  
17                  service or function; or

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

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

25            (e) A state agency may contract with a private entity to  
26            perform a service or function or amend or extend an existing  
27            contract to allow a private entity to perform a service or function

1    that the State Council on Competitive Government determines to be  
2    inherently governmental in nature if the chief administrative  
3    officer of the agency issues a report stating that there is a  
4    compelling state interest in outsourcing the service or function.

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

11            (1) conduct a full and fair cost comparison to  
12    determine whether a private entity could perform the service or  
13    function with a comparable or better level of quality at a cost  
14    savings to the state; and

15            (2) prepare a business case providing the initial  
16    justification for the proposed contract or proposed contract  
17    extension or amendment that includes:

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

20            (B) the anticipated return on investment in terms  
21    of cost savings and efficiency for the proposed contract or  
22    proposed contract extension or amendment.

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

25            (1) contract with the State Council on Competitive  
26    Government to have its staff perform the comparison; or  
27            (2) use the methodology provided in Section 2162.103.

1                   (c) A state agency shall submit the business case required  
2 under Subsection (a)(2) to the governor, lieutenant governor,  
3 speaker of the house of representatives, Legislative Budget Board,  
4 and standing committees of the legislature that have primary  
5 jurisdiction over the agency, over state appropriations, and over  
6 state purchasing.

7                   SECTION 9. Section 2262.101, Government Code, is amended to  
8 read as follows:

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

12                   (1) ~~[reviewing the solicitation of major contracts by~~  
13 ~~state agencies;~~

14                   ~~[+2]~~ reviewing any findings or recommendations made  
15 by the state auditor, including those made under Section  
16 2262.052(b), regarding a state agency's compliance with the  
17 contract management guide; ~~[and]~~

18                   (2) ~~[+3]~~ providing recommendations to the commission  
19 regarding:

20                   (A) the development of the contract management  
21 guide; and

22                   (B) the training under Section 2262.053; and

23                   (3) certifying that state agencies have complied with  
24 Sections 2262.064 and 2262.066.

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

1 SECTION 10. Subsection (a), Section 2262.102, Government  
2 Code, is amended to read as follows:

3 (a) The team consists of the following six [~~five~~] members:

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

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

6 (3) one member from the Department of Information  
7 Resources;

8 (4) one member from the Texas Building and Procurement  
9 Commission; [~~and~~]

10 (5) one member from the governor's office; and

11 (6) one member from the State Council on Competitive  
12 Government.

13 SECTION 11. Subchapter C, Chapter 2262, Government Code, is  
14 amended by adding Sections 2262.104 and 2262.105 to read as  
15 follows:

16 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The  
17 team shall develop and publish a uniform set of definitions for use  
18 as applicable in state contracts.

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

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

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

## SUBCHAPTER D. CONTRACT PROVISIONS

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

Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

6       (a) The team shall develop recommendations for contract terms  
7       regarding penalties for contractors who do not comply with a  
8       contract, including penalties for contractors who do not disclose  
9       conflicts of interest under Section 2262.201. The team may develop  
10      recommended contract terms that are generally applicable to state  
11      contracts and terms that are applicable to important types of state  
12      contracts.

13                   **(b) A state agency may include applicable recommended terms**  
14                   in a contract entered into by the agency.

15 Sec. 2262.153. REQUIRED PROVISION RELATING TO  
16 SUBCONTRACTOR COMPLIANCE. Each state agency contract must require  
17 that each contractor provide a list of all subcontractors for the  
18 contract and include a provision that:

27 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;

1     STATE AGENCY EMPLOYEES. Before entering into a contract with the  
2     state, a contractor and subcontractor shall disclose each employee:

3             (1) who was employed by:

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

7                 (B) the contractor or subcontractor at any time  
8     during the year before the date of the disclosure and is now  
9     employed by the state; and

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

12                 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;  
13     OUTSOURCING. (a) Each contract entered into by a state agency  
14     must include a provision requiring disclosure of any services  
15     materially necessary to fulfill the contract, including services  
16     performed by a subcontractor, that will be or are performed in a  
17     country other than the United States. This section does not apply  
18     to services that are occasional, minor, or incidental to fulfilling  
19     the contract.

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

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

26                 (2) the contractor does not disclose in the contract  
27     that the service will be performed in a country other than the

1        United States.

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

6                (1) the governor;  
7                (2) the lieutenant governor;  
8                (3) the speaker of the house of representatives; and  
9                (4) the team.

10            (d) A contractor may replace a subcontractor without  
11        termination of a contract under this section if the contractor  
12        determines that the subcontractor is performing a service  
13        materially necessary to fulfill the contract in a country other  
14        than the United States and did not disclose that fact to the  
15        contractor.

16            Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN  
17        LARGE CONTRACTS. If a state agency determines that a proposed  
18        contract or proposed contract extension or amendment would  
19        outsource existing services or functions performed by the agency  
20        that have a value of \$10 million or more, or that would lead to the  
21        loss of 100 or more existing state employee positions, the contract  
22        or contract amendment must contain a provision that requires the  
23        contractor to give preference in hiring to former employees of a  
24        state agency:

25                (1) whose employment is terminated because of the  
26        contract or contract extension or amendment;  
27                (2) who satisfy the contractor's hiring criteria for

1       that position; and

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

4               SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

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

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

11       Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING  
12       CLASS. Each executive director of a state agency shall annually  
13       complete the ethics and contracting class developed under Section  
14       2262.053(f). This section does not apply to a state agency that  
15       does not enter into any contracts.

16               SUBCHAPTER F. CHANGES TO CONTRACTS

17       Sec. 2262.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE  
18       ORDERS. (a) An extension of or amendment to a contract, including  
19       a change order, is subject to the same approval processes as the  
20       original contract.

21               (b) A state agency may not extend or amend a contract  
22       unless:

23                (1) the agency complies with the same approval  
24       processes for the extension or amendment as required for the  
25       original contract; and

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

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

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

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

11      Sec. 2262.253. CERTAIN CONTRACT EXTENSIONS. This  
12      subchapter does not apply to contract extensions that are  
13      specifically established as a component of the original  
14      procurement.

15      SUBCHAPTER G. STATE OFFICE OF CONTRACT MANAGEMENT

16      Sec. 2262.301. DEFINITIONS. In this subchapter:

17      (1) "High-risk contract" means a state agency contract  
18      that:

19          (A) has a value of at least \$10 million; or  
20          (B) has a value of less than \$10 million, but has  
21      high-risk factors as identified by the office.

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

24      (3) "Office" means the state office of contract  
25      management.

26      (4) "Quality assurance team" means the quality  
27      assurance team established under Section 2054.158.

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

4                   Sec. 2262.302. ESTABLISHMENT; GENERAL DUTIES. The  
5 commission shall establish a state office of contract management  
6 to:

7                   (1) develop criteria for identifying high-risk  
8 factors in contracts;

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

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

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

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

19                   (1) publicly releasing solicitation documents;

20                   (2) executing a final contract; and

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

23                   (b) In determining whether to approve an action described by  
24 Subsection (a), the office shall review related documentation to  
25 ensure that potential risks related to the high-risk contract have  
26 been identified and mitigated.

27                   (c) The commission by rule may adopt criteria for waiving

1       the review and approval requirements under Subsections (a) and (b).

2           Sec. 2262.304. SOLICITATION AND CONTRACT CANCELLATION.

3       After review of and comment on the matter by the Legislative Budget

4       Board and the governor, the office may recommend the cancellation

5       of a solicitation or a contract during the review process under

6       Section 2262.303 if:

7            (1) a proposed solicitation is not in the best  
8       interest of the state;

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

11        (3) an executed contract is experiencing performance  
12      failure or payment irregularities.

13           SECTION 13. Section 2262.003, Government Code, is  
14       transferred to Subchapter D, Chapter 2262, Government Code, as  
15       added by this Act, is redesignated as Section 2262.157, Government  
16       Code, and is amended to read as follows:

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

20            (1) the state auditor may conduct an audit or  
21       investigation of any entity receiving funds from the state directly  
22       under the contract or indirectly through a subcontract under the  
23       contract;

24            (2) acceptance of funds directly under the contract or  
25       indirectly through a subcontract under the contract acts as  
26       acceptance of the authority of the state auditor, under the  
27       direction of the legislative audit committee, to conduct an audit

1 or investigation in connection with those funds; and

2 (3) under the direction of the legislative audit  
3 committee, an entity that is the subject of an audit or  
4 investigation by the state auditor must provide the state auditor  
5 with access to any information the state auditor considers relevant  
6 to the investigation or audit.

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

9 SECTION 14. Section 51.923, Education Code, is amended to  
10 read as follows:

11 Sec. 51.923. QUALIFICATIONS OF CERTAIN BUSINESS ENTITIES TO  
12 ENTER INTO CONTRACTS WITH AN INSTITUTION OF HIGHER EDUCATION.

13 (a) In this section:

14 (1) "Business entity [corporation]" means any entity  
15 recognized by law through which business for profit is conducted,  
16 including a sole proprietorship, partnership, firm, corporation,  
17 limited liability company, holding company, joint stock company,  
18 receivership, or trust [a corporation for profit organized under  
19 the laws of this state or under laws other than the laws of this  
20 state].

21 (2) "Governing board" has the meaning assigned by  
22 Section 61.003 of this code.

23 (3) "Institution of higher education" has the meaning  
24 assigned by Section 61.003 of this code.

25 (4) "Nonprofit corporation" means any organization  
26 exempt from federal income tax under Section 501 of the Internal  
27 Revenue Code of 1986 that does not distribute any part of its income

1 to any member, director, or officer.

2 (b) A nonprofit corporation is not disqualified from  
3 entering into a contract or other transaction with an institution  
4 of higher education even though one or more members of the governing  
5 board of the institution of higher education also serves as a  
6 member, ~~[or]~~ director, ~~or~~ officer of the nonprofit corporation.

7 (c) A business entity ~~[corporation]~~ is not disqualified  
8 from entering into a contract or other transaction with an  
9 institution of higher education even though one or more members of  
10 the governing board of the institution of higher education has a  
11 substantial interest in the business entity ~~[also serves as a~~  
12 ~~stockholder or director of the corporation provided that no member~~  
13 ~~of the governing board owns or has a beneficial interest in more~~  
14 ~~than five percent of the corporation's outstanding capital stock~~  
15 ~~and further provided that the contract or transaction is:~~

16 ~~[+1) an affiliation, licensing, or sponsored research~~  
17 ~~agreement, or~~

18 ~~[+2) awarded by competitive bidding or competitive~~  
19 ~~sealed proposals].~~

20 (d) An institution of higher education is not prohibited  
21 from entering into a contract or other transaction with a business  
22 entity in which a member of the governing board of the institution  
23 of higher education has a substantial interest ~~[described in this~~  
24 ~~section]~~ if the ~~[any]~~ board member ~~[having an interest described in~~  
25 ~~this section in the contract or transaction]~~ discloses that  
26 interest in a meeting held in compliance with Chapter 551,  
27 Government Code, and refrains from voting on the contract or

1 transaction. Any such contract or transaction requiring board  
2 approval must be approved by an affirmative majority of the board  
3 members voting on the contract or transaction.

4 (e) For purposes of this section, a member of a governing  
5 board has a substantial interest in a business entity if:

6 (1) the member owns 10 percent or more of the voting  
7 stock or shares of the business entity or owns either 10 percent or  
8 more or \$15,000 or more of the fair market value of the business  
9 entity;

10 (2) funds received by the member from the business  
11 entity exceed 10 percent of the member's gross income for the  
12 previous year; or

13 (3) an individual related to the member in the first  
14 degree by consanguinity or affinity, as determined under Chapter  
15 573, Government Code, has an interest in the business entity as  
16 described by Subdivision (1) or (2).

17 (f) A violation of this section does not render an action of  
18 the governing board voidable unless the contract or transaction  
19 that was the subject of the action would not have passed the  
20 governing board without the vote of the member who violated this  
21 section.

22 (g) This section preempts the common law of conflict of  
23 interests as applied to members of a governing board of an  
24 institution of higher education.

25 SECTION 15. Subsection (f), Section 2262.051, Government  
26 Code, is repealed.

27 SECTION 16. (a) Sections 2262.063 through 2262.066 and

1 2262.154, Government Code, and Subchapter G, Chapter 2262,  
2 Government Code, as added by this Act, apply only to a contract for  
3 which a state agency first advertises or otherwise solicits bids,  
4 proposals, offers, or qualifications on or after the effective date  
5 of this Act.

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

12 SECTION 17. Not later than May 1, 2008, the Texas Building  
13 and Procurement Commission shall develop the training program,  
14 including the ethics and contracting class, required by Section  
15 2262.053, Government Code, as amended by this Act, and Section  
16 2262.0535, Government Code, as added by this Act.

17 SECTION 18. A member of a governing body of a state agency  
18 is not required to complete the training developed under Section  
19 2262.0535, Government Code, as added by this Act, until September  
20 1, 2009.

21 SECTION 19. An executive director of a state agency is not  
22 required to comply with Section 2262.202, Government Code, as added  
23 by this Act, until September 1, 2009.

24 SECTION 20. A contract manager is not required to be  
25 certified under Chapter 2262, Government Code, as amended by this  
26 Act, until September 1, 2009.

27 SECTION 21. (a) As soon as practicable, and not later than

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1 May 1, 2008, the Contract Advisory Team shall develop the forms,  
2 criteria, recommendations, and provisions required by this Act,  
3 including Sections 2262.104, 2262.105, and 2262.152 and Subsection  
4 (b), 2262.201, Government Code, as added by this Act.

5 (b) A state agency is not required to comply with Sections  
6 2262.056 through 2262.062 and Sections 2262.153, 2262.155, and  
7 2262.156, Government Code, as added by this Act, until September 1,  
8 2009. A state agency may comply earlier if the forms, electronic  
9 requirements, database, or other items are available before that  
10 date.

11 SECTION 22. This Act takes effect November 1, 2007.