

GOVERNMENT CODE
CHAPTER 2262. STATEWIDE CONTRACT MANAGEMENT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2262.001. DEFINITIONS. In this chapter:

(1) "Team" means the Contract Advisory Team created under Subchapter C.

(1-a) "Commission" means the Texas Building and Procurement Commission.

(2) "Contract management guide" means the guide developed under Section 2262.051.

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

(A) is employed by a state agency; and

(B) has significant contract management duties for the state agency, as determined by the agency in consultation with the state auditor.

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

(5) "State agency" has the meaning provided by Section 2056.001.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.19, eff. June 18, 2003.

Sec. 2262.002. EXEMPTIONS. (a) This chapter does not apply to an institution of higher education as defined by Section 61.003, Education Code.

(b) This chapter does not apply to contracts of the Texas Department of Transportation that:

(1) relate to highway construction or highway engineering; or

(2) are subject to Section 201.112, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.93, eff. June 14, 2005.

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 785, Sec. 44, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 1012, Sec. 2, eff. June 18, 2005.

Sec. 2262.004. REQUIRED NEPOTISM DISCLOSURE. (a) In this section:

(1) "Major stockholder" means a person who directly or indirectly owns or controls more than a 10 percent interest or a pecuniary interest with a value exceeding \$25,000 in a business entity.

(2) "Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding:

(A) contract terms or conditions on a major contract;

(B) who is to be awarded a major contract;

(C) preparation of a solicitation for a major contract; or

(D) evaluation of a bid or proposal.

(b) Before a state agency may award a major contract for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel working on the contract must disclose in writing to the administrative head of the state agency

any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000, or other owner of the business entity that is within a degree described by Section 573.002.

(c) The state auditor shall develop a form for use in reporting a relationship under Subsection (b).

(d) Notwithstanding Section 2262.001 or 2262.002, this section applies to:

(1) an institution of higher education as defined by Section 61.003, Education Code; and

(2) contracts of the Texas Department of Transportation that relate to highway construction or highway engineering.

Added by Acts 2005, 79th Leg., ch. 649, Sec. 1, eff. Sept. 1, 2005.

SUBCHAPTER B. CONTRACT MANAGEMENT

Sec. 2262.051. CONTRACT MANAGEMENT GUIDE; RULES.

Text of subsec. (a) as amended by Acts 2003, ch. 309, Sec. 7.20

(a) In consultation with the attorney general, the Department of Information Resources, the comptroller, and the state auditor, the commission shall develop or periodically update a contract management guide for use by state agencies.

Text of subsec. (a) as amended by Acts 2003, ch. 785, Sec. 45

(a) In consultation with the Texas Building and Procurement Commission, the Department of Information Resources, the comptroller, and the state auditor, the attorney general shall develop and periodically update a contract management guide for use by state agencies. Participation by the state auditor under this subsection is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

(b) The commission may adopt rules necessary to develop or update the guide.

(c) The guide must provide information regarding the primary duties of a contract manager, including how to:

(1) develop and negotiate a contract;

(2) select a contractor; and

(3) monitor contractor and subcontractor performance under a contract.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of this state; and

(3) include maximum contract periods under which a new competitive solicitation is not necessary.

(e) The guide must recommend time frames under which a state agency may issue a competitive solicitation for a major contract in relation to the date on which the contract is to be executed.

(f) The guide must establish procedures by which a state agency is required to consult with the team before issuing a solicitation for a major contract. The procedures must establish a process under which the team is required to review and comment on whether to proceed with the solicitation. As detailed in the procedures, the team may recommend that the agency use the services of the attorney general or private counsel or of private consultants who are experts in any technical matter that is the subject of the major contract.

(g) The guide must establish procedures under which a state agency is required to solicit explanations from qualified potential respondents who did not respond to a competitive solicitation for a contract on which fewer than two qualified bids were received by the agency.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.20, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 785, Sec. 45, eff. Sept. 1, 2003.

Sec. 2262.052. COMPLIANCE WITH GUIDE. (a) Each state agency shall comply with the contract management guide.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.21

- (b) The state auditor shall:
- (1) periodically monitor compliance with this section;
 - (2) report any noncompliance to:
 - (A) the governor;
 - (B) the lieutenant governor;
 - (C) the speaker of the house of representatives;
- and
- (D) the team; and
 - (3) assist, in coordination with the commission and the comptroller, a noncomplying state agency to comply with this section.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 785, Sec. 46

(b) Subject to the legislative audit committee's approval of including the work described by this subsection in the audit plan under Section 321.013(c), the state auditor may:

- (1) periodically monitor compliance with this section;
 - (2) report any noncompliance to:
 - (A) the governor;
 - (B) the lieutenant governor;
 - (C) the speaker of the house of representatives;
- and
- (D) the team; and
 - (3) assist, in coordination with the attorney general and the comptroller, a noncomplying state agency to comply with this section.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.21, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 785, Sec. 46, eff. Sept. 1, 2003.

Sec. 2262.053. TRAINING. (a) In coordination with the comptroller, Department of Information Resources, and state auditor, the commission shall develop or administer a training program for contract managers.

(b) The training must provide the contract manager with information regarding how to:

- (1) fairly and objectively select and negotiate with the most qualified contractor;
- (2) establish prices that are cost-effective and that reflect the cost of providing the service;
- (3) include provisions in a contract that hold the contractor accountable for results;
- (4) monitor and enforce a contract;
- (5) make payments consistent with the contract; and
- (6) comply with any requirements or goals contained in the contract management guide.

(c) Each state agency shall ensure that the agency's contract managers complete the training developed under this section.

(d) The Texas Building and Procurement Commission shall administer the training program under this section.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.22, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 785, Sec. 47, eff. Sept. 1, 2003.

Sec. 2262.054. PUBLIC COMMENT. The commission by rule may establish procedures by which each state agency is required to invite public comment by publishing the proposed technical specifications for major contracts on the Internet through the information service known as the Texas Marketplace or through a suitable successor information service. The guide must define "technical specifications."

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.23, eff. June 18, 2003.

SUBCHAPTER C. CONTRACT ADVISORY TEAM

Sec. 2262.101. CREATION; DUTIES. The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

- (1) reviewing the solicitation of major contracts by state agencies;
- (2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b),

regarding a state agency's compliance with the contract management guide; and

(3) providing recommendations to the commission regarding:

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

(B) the training under Section 2262.053.
Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.24, eff. June 18, 2003.

Sec. 2262.102. MEMBERS. (a) The team consists of the following five members:

- (1) one member from the attorney general's office;
- (2) one member from the comptroller's office;
- (3) one member from the Department of Information Resources;
- (4) one member from the Texas Building and Procurement Commission; and
- (5) one member from the governor's office.

(b) The Legislative Budget Board and the state auditor shall provide technical assistance to the team.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001.

Sec. 2262.103. PERSONNEL. Each agency or officer with representation on the team shall provide, at the request of the team, staff to assist the team in carrying out its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001.