

SUBJECT: Requiring that agencies adopt contract approval guidelines, other changes

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 5 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner

0 nays

2 absent — Taylor, Vo

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: For — None

Against — None

On — Wayne Wilson, Health and Human Services Commission;
(*Registered, but did not testify*: Martin Zelinsky, Department of
Information Resources)

BACKGROUND: Government Code, ch. 2261 sets forth provisions for certain contracts for goods or services made by a state agency, such as those contracts not administered by the comptroller. Government Code, sec. 2262.101 creates the contract advisory team, which assists agencies in improving the management of contracts.

DIGEST: The bill would require state agencies to adopt guidelines for the contract approval process, maintain a central contract repository, and clarify the training process for their contracting employees.

Required contract provisions. Under Government Code, ch. 2261, the definition of contract would include an agreement or other written expression of the terms of an agreement. These other written expressions could include an amendment, modification, or renewal of the agreement by a state agency. Contracts or renewals valued at \$1 million or more would be considered major contracts. The definition of a contract manager would be an employee of a state agency who had significant contract

management duties.

The bill would specify the required provisions for state agency contracts. The required provisions would include dispute resolution and provisions related to legal liability, as well as a provision dealing with independent contractors. A required provision would be considered to be a part of a state agency's contract for goods and services regardless of whether the provision actually appeared in the contract or the contract contained a provision contrary to the required provision.

Internal contract approval process. SB 1680 would require each agency to establish formal guidelines for each stage of the contracting process, which would include who could approve a contract for the agency. An agency would have to adopt a monetary threshold above which contracting decisions would require the approval of the agency's executive director. Amendments to state agency contracts valued at \$1 million or more would require written authorization from the agency's executive director. A state agency could not negotiate a major contract with only one employee engaged in the negotiation.

Contract extensions or amendments would be subject to the same approval process as the original contract. Extensions or amendments, which changed the monetary value of a major contract by at least 35 percent or one million dollars, would have to be submitted to the contract advisory team and the agency's executive director for review prior to being executed.

Central contract repository. The bill would require each agency to maintain a repository with all of the agency's contracts. This would include keeping accurate records on significant contract delays or changes and written explanations regarding cost overruns.

Employee training process. SB 1680 contains provisions related to the training of state agency employees that engage in contracting. A state agency would have to require its contract managers to complete a training program administered by the comptroller. An agency could develop contract manager training to supplement the training received from the comptroller.

Members of the governing board of a state agency would have to complete an abbreviated training course for contract managers.

Other provisions. The bill would expand certain contract management responsibilities of state agencies. Also, state agencies would have to review the performance of contractors. State agency contracts would have to allow for the state auditor to conduct certain audits. Existing requirements for contract reporting and procurement of professional services would also apply to contracts under this chapter.

The bill would take effect on November 1, 2013, and would apply only to contracts in which a state agency first advertised or solicited a bid on or after that date.

**SUPPORTERS
SAY:**

SB 1680 would amend certain definitions, require the adoption of guidelines for the contract approval process, call on state agencies to maintain a central contract repository, and clarify the employee training process. With these additions, the bill would provide greater uniformity in the contracting process. In developing this bill, extensive feedback has been received from interested parties and state agencies.

The bill recognizes the importance of skillfully managing all three stages of the contracting process: solicitation, negotiation, and management. SB 1680 would help mitigate risks, contain costs and ensure the state received the highest quality deliverables. Current law provides for contract oversight by creating the contract advisory team, yet there are relatively few details about certain aspects of the contracting process. SB 1680 would go a long way to improving this.

Central contract repository. The maintaining of contracts in a central repository at each agency would aid the state auditor and the Sunset Advisory Commission in auditing or reviewing an agency. Additionally, this would result in a uniform way of doing business statewide, a method that has proven to be the most effective. Agencies already in compliance with this provision would not have to make changes.

Employee training. The bill's provisions related to the training of state agency employees that engage in contracting would provide needed clarity and improve the quality of state contracts.

**OPPONENTS
SAY:**

Internal contract approval process. During the life of a contract, a number of state agency contracts undergo significant changes. The bill's requirement to submit major contracts undergoing changes in value of at

least 35 percent or \$1 million to the contract advisory team for review would result in some additional costs to the state. An additional employee would have to be hired to support the contract advisory team's increased requirements.

Central contract repository. The bill's requirement for each agency to maintain a repository with all of its contracts is unnecessary. Any state agency involved in major contracting should already be maintaining a central repository with all of its contracts.

NOTES:

The committee substitute differs from the Senate bill by:

- lowering the threshold for contracts defined as major contracts;
- altering the provisions that would be required in state agency contracts;
- adding a provision related to contract monitoring.

SB 1681, a related bill which would require the contract advisory team to review contracts with a value of \$10 million or more, passed the Senate by 30-0 and was reported favorably as substituted by the House Government Efficiency & Reform Committee on May 16.