

BILL ANALYSIS

C.S.H.B. 3250
By: Leach
Government Transparency & Operation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that a lack of clarity and objectivity exists in civil works contracting law regarding the consideration of contractor qualifications in various procurement and project delivery methods and call for parameters for the process of prequalifying contractors for those seeking certain civil works contracts. C.S.H.B. 3250 seeks to provide a framework by creating a clear authority and process for the use of contractor prequalification for those seeking certain civil works contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3250 amends the Government Code to authorize a governmental entity to implement a prequalification process to eliminate unqualified offerors from consideration for a civil works project under a method authorized by provisions relating to contracting and delivery procedures for construction projects. The bill requires a governmental entity that implements such a prequalification process to advertise or publish notice of the process along with a request for qualifications in a manner prescribed by law and authorizes the governmental entity to directly solicit qualifications from potential offerors if applicable competitive requirements are followed. The bill prohibits a governmental entity that considers a contract for a civil works project using competitive bidding from ranking potential offerors in implementing a prequalification process and requires the entity, in that implementation, to determine if any potential offerors meet minimum qualification requirements for completing the civil works project. The bill sets out certain factors that a governmental entity may consider during the prequalification process. The bill authorizes a governmental entity to use the prequalification process for civil works projects before preparing a request for competitive bids or for competitive sealed proposals.

C.S.H.B. 3250 specifies that the offeror's experience that a governmental entity may consider in determining the award of a public work contract is the offeror's experience with similar construction projects and requires a governmental entity, in determining the award of such a contract, to consider good faith efforts to comply with laws, rules, or applicable municipal charters related to the use of women, minority, small, or disadvantaged businesses. The bill defines "good faith effort" for such purposes as documented evidence of outreach to enlist services, or bids and proposals, from available, certified, and qualified businesses. The bill requires a governmental entity that considers a construction contract using a method other than

competitive bidding to publish in the request for proposals or qualifications the detailed methodology for scoring each criterion used to evaluate the offerors.

C.S.H.B. 3250 authorizes an offeror who submits a bid, proposal, or qualification for a construction contract to a governmental entity and who is not awarded the contract to make a request in writing to the governmental entity to provide an explanation of its evaluation and, if applicable, ranking of the offeror's submission if the submission was evaluated or ranked differently than a comparable submission from the offeror to the governmental entity during the preceding year, was developed using the same data that was used to develop the offeror's previous submission, and was evaluated or ranked using the same criteria that was used to evaluate or rank the offeror's previous submission. The bill requires the governmental entity, not later than the 30th day after the date a request is made, to deliver to the offeror a written explanation of its evaluation and, if applicable, ranking of the offeror's submission, including an explanation of why the submission was evaluated or ranked differently than the offeror's previous submission to the governmental entity.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3250 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 2269, Government Code, is amended by adding Section 2269.0525 to read as follows:

Sec. 2269.0525. PREQUALIFICATION PROCESS.

(a) A governmental entity may implement a prequalification process to eliminate unqualified offerors from consideration for a public work project under a method authorized by this chapter. A governmental entity that implements a prequalification process shall advertise or publish notice of the prequalification process along with a request for qualifications in a manner prescribed by law. In addition, the governmental entity may directly solicit qualifications from potential offerors if the competitive requirements of this chapter and other applicable law are followed.

(b) If a governmental entity considers a construction contract using competitive bidding under this chapter, in implementing a prequalification process under Subsection

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 2269, Government Code, is amended by adding Section 2269.0525 to read as follows:

Sec. 2269.0525. PREQUALIFICATION PROCESS FOR CIVIL WORKS PROJECTS. (a) In this section, "civil works project" has the meaning assigned by Section 2269.351.

(b) A governmental entity may implement a prequalification process to eliminate unqualified offerors from consideration for a civil works project under a method authorized by this chapter. A governmental entity that implements a prequalification process under this section shall advertise or publish notice of the prequalification process along with a request for qualifications in a manner prescribed by law. In addition, the governmental entity may directly solicit qualifications from potential offerors if the competitive requirements of this chapter and other applicable law are followed.

(c) If a governmental entity considers a contract for a civil works project using competitive bidding under this chapter, in implementing a prequalification process

(a), the governmental entity:

(1) may not rank potential offerors; and
(2) shall determine if any potential offerors meet minimum qualification requirements for completing the construction contract.

(c) A governmental entity may consider the following factors during the prequalification process:

(1) the potential offeror's experience with other construction projects for the governmental entity;

(2) the potential offeror's commercial and financial history and stability;

(3) the potential offeror's ability to self-perform the construction project services;

(4) the potential offeror's familiarity and experience with subcontractors and suppliers in the area served by the governmental entity;

(5) whether the potential offeror has been involved in litigation related to a construction project during the preceding five years;

(6) the potential offeror's ability and capacity to provide performance and payment bonds;

(7) whether the potential offeror has ever failed to complete a project for a governmental entity;

(8) the potential offeror's experience with construction projects of similar size and scope; and

(9) the qualifications and experience of the potential offeror's proposed project team.

SECTION 2. Section 2269.055, Government Code, is amended.

SECTION 3. Section 2269.056(b), Government Code, is amended.

SECTION 4. Subchapter B, Chapter 2269, Government Code, is amended.

SECTION 5. Section 2269.103, Government Code, is amended to read as follows:

Sec. 2269.103. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to

under Subsection (b), the governmental entity:

(1) may not rank potential offerors; and
(2) shall determine if any potential offerors meet minimum qualification requirements for completing the civil works project.

(d) A governmental entity may consider the following factors during the prequalification process:

(1) the potential offeror's experience with other construction projects for the governmental entity;

(2) the potential offeror's commercial and financial history and stability;

(3) the potential offeror's ability to self-perform the construction project services;

(4) the potential offeror's familiarity and experience with subcontractors and suppliers in the area served by the governmental entity;

(5) whether the potential offeror has been involved in litigation related to a construction project during the preceding five years;

(6) the potential offeror's ability and capacity to provide performance and payment bonds;

(7) whether the potential offeror has ever failed to complete a project for a governmental entity;

(8) the potential offeror's experience with construction projects of similar size and scope; and

(9) the qualifications and experience of the potential offeror's proposed project team.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Section 2269.103, Government Code, is amended to read as follows:

Sec. 2269.103. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to

submit a bid.

(b) Before preparing a request for competitive bids under Subsection (a), a governmental entity may use the prequalification process described by Section 2269.0525.

SECTION 6. Section 2269.153, Government Code, is amended to read as follows:

Sec. 2269.153. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

(b) Before preparing a request for competitive sealed proposals under Subsection (a), a governmental entity may use the prequalification process described by Section 2269.0525.

SECTION 7. The change in law made by this Act applies only to a public work contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation on or after the effective date of this Act. A public work contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation before the effective date of this Act is governed by the law in effect on the date the advertisement or solicitation is made, and that law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2017.

submit a bid.

(b) Before preparing a request for competitive bids under Subsection (a), a governmental entity may use the prequalification process for civil works projects described by Section 2269.0525.

SECTION 6. Section 2269.153, Government Code, is amended to read as follows:

Sec. 2269.153. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

(b) Before preparing a request for competitive sealed proposals under Subsection (a), a governmental entity may use the prequalification process for civil works projects described by Section 2269.0525.

SECTION 7. The change in law made by this Act applies only to a contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation on or after the effective date of this Act. A contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation before the effective date of this Act is governed by the law in effect on the date the advertisement or solicitation is made, and that law is continued in effect for that purpose.

SECTION 8. Same as introduced version.