

## **BILL ANALYSIS**

C.S.H.B. 2189  
By: Capriglione  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been a cause of concern that recent decisions from the Texas Supreme Court may have reduced the public's ability to remain informed with respect to government spending and government contracting and that high-profile contracting scandals have served to compound those concerns. It is suggested that increasing transparency and accountability in contracting are key to avoiding waste, fraud, and abuse. C.S.H.B. 2189 seeks to restore transparency to state and local government contracting by making certain contracting information public information that must be released under state public information law unless expressly excepted.

### **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. 2189 amends the Government Code to make certain contracting information as set out by the bill public information that must be released under state public information law unless excepted from disclosure. The bill excludes from state public information law under certain specified circumstances an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts. The bill includes the following as a governmental body subject to that law:

- a confinement facility operated under a contract with any division of the Texas Department of Criminal Justice;
- a civil commitment housing facility owned, leased, or operated by a vendor under a state contract; and
- an entity that receives public funds in the current or preceding state fiscal year to manage the daily operations or restoration of the Alamo, or an entity that oversees such an entity.

C.S.H.B. 2189 excepts from the public availability requirement of state public information law qualifying proprietary contracting information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification. The bill sets out provisions relating to the assertion of that disclosure and the refusal of a governmental body to release the applicable information. The bill makes the exception inapplicable to the following:

- information in a voucher or contract relating to the receipt or expenditure of public funds

by a governmental body; or

- information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on the governmental body's behalf.

C.S.H.B. 2189 revises the exception to the public availability requirement for certain information related to competition or bidding to exempt information from that requirement if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes that the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.

C.S.H.B. 2189 revises the exception to the public availability requirement for trade secrets to set out what constitutes a trade secret and to exempt information from that requirement if it is demonstrated based on specific factual evidence that the information is a trade secret. The bill makes this exception and the exception provided for proprietary information inapplicable to specified types of contracting information and sets out a related provision.

C.S.H.B. 2189 authorizes an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts to assert the exception to the public availability requirement for certain economic development information with respect to information that is in the economic development entity's custody or control by submitting in writing to the attorney general the reasons why the information should be withheld.

C.S.H.B. 2189 requires a governmental body that is a party to a contract that includes the receipt or expenditure of at least \$1 million in public funds for the purchase of goods or services and that receives a written public information request for contracting information that is in the custody or possession of the entity with which the governmental body is contracting and not maintained by the governmental body to request that the entity provide the information to the governmental body. The bill establishes certain procedural deadlines in service of that requirement. The bill does the following with respect to such a major contract:

- sets out provisions relating to the contents of the contract and contract bids of entities;
- prohibits a governmental body from accepting a bid for or awarding the contract to certain bad actors unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with applicable requirements;
- provides for certain notice of noncompliance with provisions of the bill applicable to the contract; and
- provides for the termination of the contract for continued noncompliance.

The bill establishes that these provisions relating to such a major contract do not create a cause of action to contest a bid for or the award of a state contract with a governmental body.

C.S.H.B. 2189 authorizes a requestor to file suit for a writ of mandamus compelling a governmental body or an entity to comply with the requirements of those bill provisions.

### **EFFECTIVE DATE**

January 1, 2020.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2189 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the contracting information subjected to disclosure by the bill.

The substitute does not include provisions subjecting certain listed nongovernmental entities with whom a governmental entity contracts to state public information law and certain related requirements, as set out by the bill. The substitute instead:

- classifies certain of those entities as governmental bodies subject to state public information law;
- makes other disclosure requirements set out by the bill applicable to an entity that executes a contract with a governmental body that includes the receipt or expenditure of at least \$1 million in public funds for the purchase of goods or services;
- revises requirements for bids and contracts for a contract with such a value; and
- changes the date after which an incurred violation of the applicable contracting requirements subjects the contract to termination.

The substitute changes the manner in which an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts is treated under state public information law. The substitute includes a provision relating to the assertion of an exception to the public availability requirement of that law by such an entity.

The substitute includes a provision revising the existing exception to the public availability requirement for trade secrets and provides for a definition of that term.

The substitute changes the information to which the exception to the public availability requirement for certain proprietary contracting information, as established by the bill, applies and the information for which that exception is not applicable.

The substitute includes a provision making the exceptions to the public availability requirement for trade secrets and proprietary information inapplicable to certain specified types of contracting information.