

BILL ANALYSIS

C.S.H.B. 2585
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the fairness and consistency of the process for establishing contractor qualifications in various procurement and project delivery methods for civil works projects. C.S.H.B. 2585 seeks to address these concerns by revising statutory provisions relating to contracting and delivery procedures to ensure that the state and local government construction purchasing process is fair, consistent, and transparent.

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. 2585 amends the Government Code to authorize a governmental entity to implement a prequalification process to eliminate unqualified offerors from and prequalify potential offerors meeting minimum standards for consideration for a civil works project under an authorized competitive bidding method. The bill requires the entity to advertise or publish notice of the process along with a request for qualifications 30 days before the invitation for bids is issued in a manner prescribed by law and authorizes the entity to directly solicit qualifications from potential offerors if applicable state competitive bidding requirements are followed. The bill establishes that the implementation of a prequalification process does not affect a governmental entity's authority to determine the responsiveness of any subsequent bid or to reject any and all bids.

C.S.H.B. 2585 requires a governmental entity that considers a civil works contract using competitive bidding, in the implementation of a prequalification process, to establish minimum qualification requirements for potential offerors and a scoring process with a final pass or fail determination to identify qualified potential offerors who may submit competitive bids. The bill prohibits the entity from short-listing or ranking potential offerors or from combining qualification scores with competitive bids in considering the award of a contract in implementing that process. The bill sets out the factors the entity may consider during the prequalification process.

C.S.H.B. 2585 requires a potential offeror that has been involved in litigation or arbitration with a governmental entity related to a construction project during the preceding five years to provide to the entity the name of the parties involved and a brief description of the nature and outcome of the litigation or arbitration. The bill authorizes a governmental entity to use the prequalification process for civil works projects before preparing a request for competitive bids.

C.S.H.B. 2585 requires a governmental entity to publish in its request for proposals or qualifications for a construction contract using a method other than competitive bidding a detailed methodology for scoring each applicable criterion used to select among offerors. The bill authorizes an offeror who submits a bid, proposal, or response to a request for qualifications for a government construction contract to make a written request to the governmental entity after the contract is awarded to provide documents related to the evaluation of the offeror's submission. The bill requires the entity, not later than the 30th day after the date the request is made, to deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

C.S.H.B. 2585 requires the weighted value assigned to price for a civil works project included in a governmental entity's request for competitive sealed proposals to be at least 50 percent of the total weighted value of all selection criteria. The bill authorizes a governing body that determines that assigning a lower weighted value to price is in the public interest to assign to price a weighted value of not less than 40 percent of the total weighted value of all selection criteria. The bill requires a governmental entity selecting an offeror using a competitive sealed proposal method, not later than the seventh business day after the date the construction contract is awarded, to make the evaluations, including any scores, public and to provide them to all offerors.

C.S.H.B. 2585 establishes that the filing deadline for an action for declaratory or injunctive relief for the enforcement of applicable state law governing contracting and delivery procedures for construction projects is the 15th calendar day after the date on which a contract is awarded.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2585 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 includes a provision authorizing the prequalification process to prequalify potential offers that meet minimum standards.

The substitute includes a provision establishing that the implementation of the prequalification process does not affect the authority of the applicable governmental entity to determine the responsiveness of any subsequent bid or to reject any and all bids.

The substitute revises the provision setting out certain required and prohibited actions of a governmental entity considering a contract using competitive bidding when implementing a prequalification process to:

- prohibit the entity from short-listing or combining qualification scores; and
- require the entity to establish minimum qualification requirements and a certain scoring process to identify potential offerors who may submit competitive bids.

The substitute revises the factors that may be considered during the prequalification process.

The substitute includes a provision authorizing a governing body to assign a certain lower weighted value to price for civil works projects if the governing body determines that doing so is in the public interest.

The substitute revises the information made public and provided to potential offerors regarding the bidding process and establishes that a deadline is calculated using calendar days.