

- SUBJECT:** Restricting eligibility of certain people to contract with a state agency
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 8 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis, Goodman, Lewis  
0 nays  
1 absent — Villarreal
- WITNESSES:** For — *(Registered but did not testify:)* Linda Sickels, Trinity Industries  
Against — *(On original version:)* James Clark, The Garland Co.; Rodney Ruebsahm, ARMKO Industries
- BACKGROUND:** Government Code, chapter 2155 outlines state agency purchasing requirements and procedures, including competitive bidding requirements. Under sec. 2155.004, a state agency cannot accept a bid from or award a contract to a person whom the agency paid to help prepare the specifications or request for proposals (RFP) on which the bid or contract is based. An agency may award a contract to a person who has provided free technical assistance on bid specifications or RFPs. Under sec. 2155.077, a vendor may be barred from participating in state contracts because of substandard performance under a contract, material misrepresentations in a bid, fraud, or breach of contract.
- DIGEST:** CSHB 593 would prohibit a state agency from accepting a bid from or awarding a contract to a person who had participated in preparing bid specifications or an RFP that required a work plan, project design, or other criteria or that defined the scope of required goods and services so narrowly that it was specific to that person or was likely to limit or exclude competitors who provided similar goods and services. An agency could not accept a bid from or award a contract to a person or business barred from participating in state contracts under Government Code, sec. 2155.077.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 593 would encourage open, competitive markets for state government contracting by ensuring that all interested parties had the same opportunities to bid for and win contracts from state agencies. Under current law, outside entities paid to help draft bid specifications or RFPs for state agencies may not bid on those contracts, but these prohibitions do not apply to people or companies who do not accept a fee for those services. While such people or companies may not realize immediate financial benefits from their involvement, they gain a critical advantage that may help them win state contracts and realize significant financial benefits in the future. For example, those who have participated in developing bid specifications or RFPs have advance knowledge of submission deadlines weeks or months before other bidders, giving them a head start on preparing appropriate bids. CSHB 593 would eliminate this advantage and would make the bidding process more fair for anyone who wanted to participate.

The bill would not prohibit agencies from awarding contracts to people or businesses that had been involved indirectly in developing bid contracts or RFPs by providing information to agency staff. State agency personnel are expected to consult with outside specialists in developing broad contract specifications. Only companies or people who actually had participated in preparing the bid specification or RFP would be prohibited from bidding for the contract, and only if the specifications were likely to limit or exclude competitors who provided similar goods and services.

**OPPONENTS  
SAY:**

CSHB 593 could increase state agencies' costs and lower the quality of goods and services received, particularly in highly technical and complex industries. Instead of being able to depend on unpaid assistance from sophisticated potential bidders, agencies would have to pay for assistance in developing complex bids and RFPs, which could create significantly higher costs for the state. The quality of goods and services could be compromised without this specialized assistance in developing bid specifications.

**NOTES:**

As filed, HB 593 would have prohibited an agency from accepting a bid from or awarding a contract to a person who had participated "to any extent" in preparing bid specifications or an RFP.