

SUBJECT: Relating to compliance with certain terms of state purchasing contracts

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 6 ayes — Harper-Brown, Capriglione, Stephenson, Taylor, Scott Turner, Vo
0 nays
1 absent — Perry

WITNESSES: For — Thomas Kelly, Fluor Corporation
Against — None

BACKGROUND: Government Code, ch. 2155 establishes rules and procedures for state agencies to follow when purchasing goods and services. It also establishes types of contracts, such as bulk purchasing, that are permissible.

DIGEST: CSHB 3648 would require that contracts for goods and services under Government Code, ch. 2155 substantially comply with the terms in the solicitation and the terms considered in awarding the contract. This would apply to terms related to the cost of materials or labor, duration, price, schedule, and scope.

After evaluating bids in response to a contract solicitation but before a contract was awarded, a state agency's governing body would have to meet to consider any proposed material change to the contract terms. A material change would be defined as extending completion of a contract for six months or more, or increasing the contract price by 10 percent or more.

The bill would take effect immediately if the bill finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. The bill would only apply to contracts with bids that were solicited on or after the bill's effective date.

**SUPPORTERS
SAY:**

The bill would establish standards regarding substantive changes made in the time between the solicitation of bids and the final signing of a contract. This would ensure these changes were in the best interest of the state and taxpayers. Under current law, the rules governing the process are not stringent enough to guard against contract manipulation.

While large-scale projects necessitate flexibility in making adjustments to the terms and conditions of a contract, changes should not be made to such an extent that the project is vastly different from the one described in the solicitation document. When significant changes like this occur, potential bidders are discouraged from competing due to concerns that a low-ball bidder could be rewarded with a later contract renegotiation.

**OPPONENTS
SAY:**

The bill would limit the ability of state agencies with governing boards to effectively engage in procurement. A state agency would have to wait until the next meeting of the governing board in order for a material change to a contract to be reviewed.