

## **BILL ANALYSIS**

Senate Research Center

H.B. 2585  
By: Leach et al. (Zaffirini)  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law establishes the factors that may be considered when evaluating contractor qualifications in various procurement and project delivery methods. Unfortunately, there often is a lack of clarity, objectivity, and process in some cases with regard to the use of qualifications, which can lead to overly subjective evaluations and contract awards. What's more, although current law is permissive and allows the prequalification of contractors in concert with competitive bidding, there are not any parameters or standards for this process.

H.B. 2585 makes several changes to existing law to improve transparency and objectivity in civil works procurement processes and allow for better dialogue between public contracting entities and bidders. Specifically, the bill establishes guidelines for the use of prequalification in public works projects, corrects an amendment drafting error from last session that requires only state agencies (rather than all public entities) to explain their methodologies for scoring proposals and qualifications, allows for contractors to request a "de-brief" explaining how their proposal was scored following the awarding of the contract, provides a minimum weight to price as a criterion in competitive sealed proposal processes, establishes for the documentation and release of evaluations in competitive sealed proposal processes, and adjusts the timelines for a contractor to seek injunctive or declaratory relief.

H.B. 2585 amends current law relating to civil works projects and other construction projects of governmental entities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 2269, Government Code, by adding Section 2269.0525, as follows:

Sec. 2269.0525. PREQUALIFICATION PROCESS FOR CIVIL WORKS PROJECTS.

(a) Defines "civil works project" for purposes of this section.

(b) Authorizes 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 a competitive bidding method authorized by this chapter (Contracting and Delivery Procedures For Construction Projects). Requires a governmental entity that implements a prequalification process under this section to advertise or publish notice of the prequalification process along with a request for qualifications 30 days before the invitation for bids is issued in a manner prescribed by law. Authorizes the governmental entity, in addition, to directly solicit qualifications from potential offerors if the competitive requirements of this chapter and other applicable law are followed.

(b-1) Provides that the implementation of a prequalification process under Subsection (b) does not affect the authority of a governmental entity to determine the responsiveness of any subsequent bid or to reject any and all bids.

(c) Provides that if a governmental entity considers a contract for a civil works project using competitive bidding under this chapter, in implementing a prequalification process under Subsection (b), the governmental entity:

(1) is required 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 are authorized to submit competitive bids; and

(2) is prohibited from short-listing or ranking potential offerors or combining qualification scores with competitive bids in considering the award of a contract.

(d) Authorizes a governmental entity to consider the following factors during the prequalification process:

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

(2) whether the potential offeror's commercial and financial history, stability, and capability are appropriate for the size and scope of the project;

(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 or arbitration with a governmental entity related to a construction project awarded to the potential offeror during the preceding five years;

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

(7) the qualifications and experience of the potential offeror's management or project team; and

(8) the potential offeror's safety record for the previous three years, including actions taken to prevent future incidents, and any other related information.

(e) Requires a potential offeror, if the potential offeror has been involved in litigation or arbitration as described by Subsection (d)(5), to provide to the governmental entity the name of the parties involved and a brief description of the nature and outcome of the litigation or arbitration.

(f) Requires the governmental entity, notwithstanding a prequalification process implemented by a governmental entity under Subsection (b) for a civil works project, to consider a potential offeror to be prequalified for consideration for the project if a state agency has prequalified the potential offeror for consideration for a civil works project with a related scope of work.

SECTION 2. Amends Section 2269.056(b), Government Code, as follows:

(b) Requires the governmental entity to publish in the request for proposals or qualifications:

(1)–(2) makes no changes to these subdivisions; and

(3) a detailed methodology for scoring each criterion, rather than for state agencies a detailed methodology for scoring each criterion.

SECTION 3. Amends Subchapter B, Chapter 2269, Government Code, by adding Section 2269.060, as follows:

Sec. 2269.060. DOCUMENTS RELATED TO EVALUATION AND RANKING. (a) Authorizes an offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under this chapter to, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission.

(b) Requires the governmental entity, not later than the 30th day after the date a request is made under Subsection (a), to deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

SECTION 4. Amends Section 2269.103, Government Code, as follows:

Sec. 2269.103. PREPARATION OF REQUEST. (a) Creates this subsection from existing text and makes no further changes.

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

SECTION 5. Amends Section 2269.153, Government Code, as follows:

Sec. 2269.153. PREPARATION OF REQUEST. (a) Creates this subsection from existing text and makes no further changes.

(b) Requires the weighted value assigned to price for civil works projects, except as provided by Subsection (c), to be at least 50 percent of the total weighted value of all selection criteria.

(c) Authorizes the governmental entity, if the governing body of a governmental entity 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.

SECTION 6. Amends Section 2269.155, Government Code, by adding Subsection (d) to require the governmental entity, not later than the seventh business day after the date the contract is awarded, to make the evaluations, including any scores, public and provide them to all offerors.

SECTION 7. Amends Section 2269.452(a), Government Code, to authorize this chapter to be enforced through an action for declaratory or injunctive relief filed not later than the 15th calendar day, rather than not later than the 10th calendar day, after the date on which the contract is awarded.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2019.