

## **BILL ANALYSIS**

C.S.S.B. 1110  
By: Jackson, Mike  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, cities, counties, school districts, and other agencies have several alternatives to traditional low-bid delivery of certain construction projects. These alternatives include construction manager-agent, competitive sealed proposals for construction services, construction manager-at-risk, design-build, and job order contracting. All of these methods are listed in different statutes for different governmental entities.

This bill seeks to: consolidate alternate project delivery process for most governmental entities into a single chapter of the Government Code; expand the types of entities that are authorized to use these procedures to include hospital districts, junior colleges, and others; authorize construction manager-at-risk and competitive sealed proposals for construction services to be used for all types of projects (horizontal and vertical) including water, wastewater, transportation, utilities, and other improvements to real property; prohibit reverse auctions for certain contracts where bonds are required; authorize job order contracting to be used for the maintenance, repair, alteration, renovation, or minor construction of an existing facility; limit the use of interlocal agreements for design and construction services, which are site-specific by nature; and make other technical and conforming changes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to a governmental entity in SECTION 2.12 of this bill.

### **ANALYSIS**

C.S.S.B. 1110 amends the Government Code to add a chapter relating to contracting and delivery procedures for public works contracting by a governmental entity or quasi-governmental entity including a state agency, county, municipality, school district, special district or authority, another political subdivision, a public junior college, or an entity owned by a municipality or an entity that owns or operates a facility for the benefit of a municipality or county. The bill, for purposes of the chapter generally, defines "architect," "engineer," "facility," "general conditions," "general contractor," and "public work contract."

C.S.S.B. 1110, in the new chapter, contains provisions clarifying the applicability and inapplicability of the chapter, and in such provisions defines "institution of higher education," "public junior college," and "university system." The bill establishes that the new chapter is inapplicable to a university system, any institution of higher education other than a public junior college, a regional tollway authority, or a contract entered into by the Texas Department of Transportation or a project that receives money from a state or federal highway fund. The bill contains related amendatory provisions, outside the new chapter, amending other parts of the Government Code as well as the Education Code, Local Government Code, the Transportation Code, and the Water Code. The bill establishes that the new chapter is inapplicable also to:

- a comprehensive development agreement of a regional mobility authority;

- a regional transportation authority consisting of one subregion, governed by a subregional board, under specified provisions of the Transportation Code;
- the law, with respect to metropolitan rapid transit authorities, relating to a hybrid delivery system for certain construction projects;
- the law on competitive bidding requirements for a port authority district whose port commission has adopted that law;
- the law, with respect to navigation districts, relating to purchase contracts;
- an energy savings performance contract by a state agency, a school district, or an institution of higher education, or the law on such a contract in the case of a county, municipality, or other political subdivision; or
- certain law relating to more than one type of local government and concerning sports and community venue districts.

C.S.S.B. 1110 establishes that the new chapter prevails over any other law relating to a public works contract, except for a conflicting provision in a law relating to contracting with a historically underutilized business (HUB). The bill establishes that the new chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility that requires the use of competitive bidding or competitive sealed proposals or that prescribes a conflicting design-build procurement procedure.

C.S.S.B. 1110 authorizes a governmental entity to adopt rules as necessary to implement the new chapter. The bill requires a governmental entity contracting for public works projects to advertise or publish notice of requests for bids, proposals, or qualifications and establishes detailed notice requirements. The bill authorizes a governmental entity, on proper notice, to delegate authority under the chapter. The bill establishes certain right to work provisions applicable to the governmental entity.

C.S.S.B. 1110 authorizes a governmental entity, in determining the award of a contract, to consider the price, the offeror's experience and reputation, the quality of the offeror's goods or services, the impact on the ability of the governmental entity to comply with rules relating to HUBs, the offeror's safety record, the offeror's proposed personnel, whether the offeror's financial capability is appropriate to the size and scope of the project, and any other relevant factor specifically listed in request for bids, proposals, or qualifications. The bill requires the governmental entity, in determining the award of a contract, to consider existing laws related to HUBs and existing laws, rules, or municipal charters related to the use of women, minority, small, or disadvantaged businesses.

C.S.S.B. 1110 provides that an architect or engineer selected or designated under the chapter has full responsibility for complying with occupational regulation statutes. The bill requires the governmental entity, if the selected or designated architect or engineer is not its full-time employee, to select the architect or engineer on the basis of demonstrated competence and qualifications. The bill requires the governmental entity, independently of a contractor, construction manager-at-risk, or design-build firm, to provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of a facility by the governmental entity. The bill establishes requirements for how the governmental entity selects such services if contracted.

C.S.S.B. 1110 defines "competitive bidding" as a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder. The bill establishes requirements relating to bid advertisements and bid awards. The bill requires the governmental entity to select or designate an architect or engineer to prepare required construction documents.

The bill sets forth provisions relating to the request for bids, the evaluation of offerors, and the selection of an offeror. The bill establishes which Local Government Code provisions relating to competitive bidding on certain public works contracts apply and do not apply to a competitive bidding process conducted under the new chapter by a county, school district, hospital district or authority, housing authority, or an agency or instrumentality thereof.

C.S.S.B. 1110 requires a governmental entity that considers a construction contract using a method other than competitive bidding to determine, before advertising, which of the methods authorized by the new chapter provides the best value. The bill requires the governmental entity to base its selection on applicable criteria listed for the particular method used. The bill requires the governmental entity to publish, in the request for proposals or qualifications, the evaluation criteria that will be used and the applicable weighted value for each criterion. The bill requires the governmental entity to document the basis of its selection and to make the evaluations public by a specified deadline after award of the contract.

C.S.S.B. 1110 defines "competitive sealed proposals" as a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility. The bill requires a governmental entity to select or designate an architect or engineer to prepare construction documents. The bill sets forth other requirements including requirements for the preparation of the request and the evaluation of offerors. The bill requires the governmental entity to select the offeror that submits the proposal that offers the best value based on the selection criteria in the request for proposal, the weighted value for those criteria, and the governmental entity's ranking evaluation. The bill sets forth requirements for negotiations with the selected offeror or, if such negotiations are unsuccessful, with the next offeror in the order of the selection ranking.

C.S.S.B. 1110 defines the "construction manager-agent method" as a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors. The bill establishes that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity. The bill sets forth provisions relating to the contract between a governmental entity and the construction manager-agent, the fiduciary capacity of a construction manager-agent, and the use of architects or engineers. The bill prohibits a construction manager-agent from self-performing any aspect of the construction, rehabilitation, alteration, or repair of the facility, or from being a party to a construction subcontract for such activities or from providing or being required to provide performance and payment bonds for such activities. The bill requires a governmental entity to procure a general contractor or trade contractors to serve as the prime contractor for specified work portions and to provide performance and payment bonds. The bill requires the governmental entity to select a construction manager-agent on the basis of demonstrated competence and qualifications. The bill requires a construction manager-agent to maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

C.S.S.B. 1110 defines "construction manager-at-risk method" as a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. The bill establishes that a construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair at the contracted price as a general contractor and that provides consultation to the governmental entity regarding construction during and after the design of the facility. The bill authorizes the contracted price to be a guaranteed maximum price. The bill requires a governmental entity before selection of a construction manager-at-risk to select or designate an architect or engineer to prepare construction documents. The bill

prohibits the architect or engineer from serving, alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process. The bill establishes that such provisions do not prohibit the architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement. The bill requires the governmental entity to select the construction manager-at-risk in a one-step or two-step process, and sets forth provisions and requirements governing each process. The bill requires the governmental entity to select the offeror that submits the proposal that offers the best value based on the published selection criteria and the governmental entity's ranking evaluation. The bill sets forth requirements for negotiation with the selected offeror or, if such negotiations are unsuccessful, with the next offeror in the order of the selection ranking. The bill requires the governmental entity to make the rankings public by a specified deadline after award of the contract. The bill sets forth provisions relating to the solicitation by the construction manager-at-risk of bids or proposals from trade contractors or subcontractors for the performance of major elements of the work and specifies the situations in which a construction manager-at-risk may seek to perform portions of the work. The bill sets forth provisions governing the review of trade contractor or subcontractor bids or proposals and governing the response to a default work performance or subcontract execution by a trade contractor or subcontractor. The bill provides that if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications. The bill includes related bond delivery provisions.

C.S.S.B. 1110 defines "design-build" as a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. The bill establishes that its design-build provisions apply only to a facility that is a building or an associated structure, including an electric utility structure, and do not apply to a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction, or to a building or structure that is incidental to a project that is primarily a civil engineering construction project. The bill requires a governmental entity using the method to enter into a single contract with a design-build firm for the design and construction of the building or associated structure. The bill requires a design-build firm to be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor. The bill requires the governmental entity to select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project. The bill sets forth provisions governing the request for qualifications, the preparation of the design criteria package, the evaluation of design-build firms, and the ranking of proposals. The bill requires the governmental entity to select the design-build firm that submits the proposal offering the best value on the basis of the published selection criteria and the governmental entity's ranking evaluations. The bill sets forth requirements for negotiations with the selected firm or, if such negotiations are unsuccessful, with the next firm in the order of the selection ranking. The bill requires the governmental entity to make its rankings public by a specified deadline after award of the contract. The bill requires the design-build firm's architects or engineers, after selection of the firm and before or concurrently with construction, to submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer. The bill requires the firm to supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction, and requires such documents to note any changes made during construction. The bill provides that a payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. The bill provides that if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the

governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package. The bill includes related bond delivery provisions.

C.S.S.B. 1110 sets forth other design-build procedures for certain civil works projects, applicable to a governmental entity with a population of more than 100,000 in its geographic boundary or service area. The bill defines a "civil works project" as roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, airport runways and taxiways, storm drainage and flood control projects, or transit projects, as well as types of projects or facilities related to such civil works and associated with civil engineering construction, and buildings or structures that are incidental to such civil works projects, or facilities that are primarily civil engineering construction projects. The bill also defines "design-build firm" and "design criteria package." The bill sets forth provisions relating to contracts, a limitation on the number of projects, the use of an engineer, the use of other professional services, the request for qualifications, the evaluation of design-build firms, the selection of the design-build firm, procedures for the combination of technical and cost proposals, contract negotiation, the governmental entity's assumption of risks, the stipend amount for unsuccessful offerors, the completion of the design, final construction documents, and the performance or payment bond.

C.S.S.B. 1110 defines "job order contracting" as a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. The bill establishes that the provisions relating to job order contracts apply only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. The bill establishes that such provisions do not apply to a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction or a building or structure that is incidental to a project that is primarily a civil engineering construction project.

C.S.S.B. 1110 authorizes a governmental entity to award job order contracts for applicable work on a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks. The bill requires the governmental entity to establish the maximum aggregate contract price when it advertises the proposal. The bill requires the governmental entity's governing body to approve each job order that exceeds either \$500,000 under the contract or a lesser amount as established by the governing body. The bill authorizes the governmental entity to establish contractual unit prices for a job order contract by specifying one or more published construction unit price books and the applicable divisions or line items or by providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal. The bill authorizes a governmental entity to use the new chapter's competitive sealed proposal method for job order contracts. The bill requires the governmental entity to advertise for, receive, and publicly open sealed proposals for job order contracts. The bill authorizes the governmental entity to require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology. The bill authorizes the governmental entity to award job order contracts to one or more job order contractors in connection with each solicitation of proposals. The bill allows a job order contract to be used to accomplish work only for the governmental entity that awards the contract unless the solicitation for the contract and the contract specifically provide for use by other persons or the governmental entity enters into an interlocal agreement that provides otherwise. The bill requires the governmental entity to select or designate an architect or engineer to prepare a construction document if a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture or the practice of engineering, as applicable. The bill limits the base term for a job order contract to no more than two years, and authorizes the governmental entity

to renew the contract annually for not more than three additional years. The bill requires an order for a job or project under a job order contract to be signed by the governmental entity's representative and the contractor, and provides that the order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or a unit price order based on the quantities and line items delivered. The bill requires the contractor to provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

C.S.S.B. 1110 establishes that a contract, including a job order, entered into in violation of the new chapter, and any bonds issued in connection with the contract, are voidable as against public policy. The bill establishes that an action to void a contract does not excuse the obligation of the governmental entity to pay for any service performed or material delivered in good faith by a contractor, architect, engineer, design-builder, or construction manager before the date on which the contract is determined to be void. The bill establishes that the new chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date on which the contract is awarded, and provides that such provisions relating to declaratory or injunctive relief do not apply to enforcement of a contract entered into by a state agency, including the Texas Facilities Commission.

C.S.S.B. 1110 amends the Government Code to prohibit a reverse auction procedure from being used to obtain services related to a public work contract for which a bond is required under certain code provisions. The bill defines "reverse auction procedure."

C.S.S.B. 1110, amending provisions of existing law that prohibit an interlocal contract between a governmental entity and a purchasing cooperative from being used to purchase engineering or architectural services, extends the prohibition to any other agreement between a governmental entity and a purchasing cooperative. The bill prohibits an interlocal contract from being used to purchase construction services unless the services are in connection with the design or construction of a specific facility to be jointly owned, used, or financed by the parties to the contract or unless the services are in connection with a job order contract, the governing body of the governmental entity for whom the work will ultimately be performed approves the purchase in open session, public notice is provided in a manner consistent with a direct contract for job order contracting services, and work orders under the contract comply with the requirements for job order contracts as added by the new Government Code chapter.

C.S.S.B. 1110 prohibits the Texas Facilities Commission from listing a multiple award contract on a schedule of multiple award contracts if the goods or services provided by the contract are engineering or architectural services. The bill requires the commission to list a multiple award contract on a schedule for lighting and authorizes the commission to negotiate a price for the lighting listed that offers the best value. The bill requires the commission or another state agency, if it is available and cost effective, to purchase lighting for state use that meets or exceeds the federal Energy Star standards designated by the U.S. Environmental Protection Agency. The bill defines lighting as illumination that achieves a minimum energy efficiency of 60 percent above standard incandescent lighting with a minimum life expectancy of forty thousand hours.

C.S.S.B. 1110, amending provisions that relate to state building projects, removes a requirement that the Texas Facilities Commission adopt rules that determine the circumstances for use of the design-build, construction manager-at-risk, competitive sealed proposal, construction manager-agent, and other contracting methods, and establishes that the allowed method of contracting is any method provided by the new Government Code chapter. The bill makes conforming changes.

C.S.S.B. 1110 amends the Local Government Code to establish that if a change order for a public works contract in a municipality with a population of 500,000 or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, the governing

body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

C.S.S.B. 1110, in an amendment to the Certificate of Obligation Act of 1971, in the Local Government Code, relating to the requirement that the governing body of a municipality, county, or hospital district, before entering a contract above a specified threshold, submit the proposed contract to competitive bidding, gives the governing body the option of using another method of project delivery as authorized by the new Government Code chapter. The bill raises from \$25,000 to \$50,000 the expenditure, obligation, or liability threshold above which the governing body must use competitive bidding or, under the amendment, one of the alternative methods. The bill, under provisions of the same act relating to change orders for construction contracts, applies the prohibition in existing law against increasing the contract price by more than 25 percent only to a contract with an original price of \$1 million or more. The bill specifies that if a change order for a contract with an original contract price of less than \$1million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent. The bill removes a provision prohibiting the original price from being decreased by more than 25 percent without the consent of the contractor.

C.S.S.B. 1110 amends the Education Code to establish that the board of trustees of a school district is not prohibited from entering into an agreement authorizing the use of school district employees, property, or resources for the design, construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. The bill provides that benefits to real property owned or leased by the district include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the real property owned or leased by the district.

C.S.S.B. 1110 amends provisions relating to school district contracts other than the purchases of produce or vehicle fuel, to increase from \$25,000 to \$50,000 the aggregate 12-month threshold value equal to or above which contracts are required to be made by the method that provides the best value, and to limit the threshold provision to contracts for the purchase of goods and services. The bill requires the best method value for construction services, for a contract reaching that threshold value, to be a method provided by the new Government Code chapter, and makes conforming changes eliminating references to design-build, construction manager, and job order contract methods. The bill limits the use of competitive bidding and competitive sealed proposals for contracts reaching that threshold, under Education Code provisions regarding such methods, to services other than construction services. The bill adds, as a potential best value method for contracts reaching the threshold, a catalogue purchase. The bill establishes that the Education Code provisions relating to school district purchasing contracts do not apply to a contract for the professional services of an engineer.

C.S.S.B. 1110 authorizes a school district, with certain exceptions, to use competitive bidding to select a vendor. The bill establishes which provisions of the Public Property Finance Act do and do not apply to such competitive bidding. The bill requires a school district to award a competitively bid contract at the bid amount to the bidder offering the best value for the district. The bill establishes that in determining the best value for the district, the district is not restricted to considering price alone, but may consider any other factors stated in the selection criteria. The bill authorizes such selection criteria to include the purchase price, the reputation of the vendor and of the vendor's goods or services, the quality of the vendor's goods or services, the extent to which the goods or services meet the district's needs, the vendor's past relationship with the district, the impact on the ability of the district to comply with laws and rules relating to HUBs, the total long-term cost to the district to acquire the vendor's goods or services, and any other relevant factor specifically listed in the request for bids or proposals.

C.S.S.B. 1110 establishes requirements for a school district that selects a vendor through competitive sealed proposals. The bill requires the district to prepare a request for competitive

sealed proposals and to state in it the selection criteria that will be used in selecting the successful offeror. The bill requires the district to receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. The bill requires the district, not later than the 45th day after the date on which the proposals are opened, to evaluate and rank each proposal submitted in relation to the published selection criteria. The bill requires the district to select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The bill sets forth requirements for negotiations with the selected offeror of a contract or, if such negotiations are unsuccessful, with the next offeror in the order of the selection ranking. The bill establishes that the district, in determining the best value for the district, is not restricted to considering price alone, but may consider any other factors stated in the selection criteria.

C.S.S.B. 1110 authorizes a school district, if a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, to approve change orders. The bill prohibits the total contract price from being increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. The bill authorizes the district to grant general authority to an administrative official to approve the change orders. The bill prohibits a contract with an original contract price of \$1 million or more from being increased by more than 25 percent. The bill prohibits a subsequent change order, if the change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, from increasing the revised contract amount by more than 25 percent of the original contract price.

C.S.S.B. 1110 requires a school district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance to provide the commissioner of education with written notice of the action. The bill authorizes the commissioner to join in the action on behalf of the state to protect the state's share in the action. The bill requires a school district to use the net proceeds from such an action to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. The bill defines "net proceeds" and "state's share." The bill establishes that the standards established by the commissioner for adequacy of school facilities apply to such repairs. The bill establishes that state's share is state property. The bill requires the school district to send to the comptroller of public accounts any portion of the state's share not used by the school district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. The bill establishes that provisions relating to the recovery of overallocated funds apply to the state's share.

C.S.S.B. 1110 amends provisions relating to the qualifications of certain business entities to enter into contracts with an institution of higher education, to remove the definition of "corporation" and to add a definition of "business entity" to mean an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, firm, corporation, limited liability company, holding company, joint stock company, receivership or trust. The bill makes conforming changes. The bill establishes that a nonprofit corporation is not disqualified from entering into a contract or other transaction with an institution of higher education even though one or more members of the governing board of the institution of higher education also serves as an officer or employee of the nonprofit corporation. The bill establishes that a business entity is not disqualified from entering into a contract or other transaction with an institution of higher education even though one or more members of the governing board of the institution of higher education has an interest in the business entity, and establishes that an institution of higher education is not prohibited from entering into a contract or other transaction with a business entity in which a member of the governing board of the institution of higher education has an interest if the interest is not substantial. The bill applies the established protocol for dealing with a member of the governing board of the institution with an interest in a



corporation to situations where the a member's interest in the business entity is considered substantial. The bill establishes that a member of a governing board has a substantial interest in a business entity if: the member owns 10 percent or more of the voting stock or shares of the business entity or 10 percent or more or \$15,000 or more of the fair market value of the business entity; the member received from the business entity more than 10 percent of the member's gross income for the previous year; the member is an officer, director, or member of the governing board of the business entity; or an individual related to the member in the first degree by consanguinity or affinity has an interest in the business entity as described above. The bill establishes that a violation of the provisions relating to the qualifications of business entities to enter into contracts with institutions of higher education does not render an action of the governing board voidable unless the contract or transaction that was the subject of the action would not have passed the governing board without the vote of the member who violated such provisions.

C.S.S.B. 1110 amends the Transportation Code, conforming to the bill's repeal of certain Local Government Code provisions, to prohibit rules adopted by a regional tollway authority relating to the award of contracts, by means of competitive bidding, for the construction or maintenance of a turnpike, from materially conflicting with the design-build procedures of the bill's new Government Code chapter. The bill prohibits design-build procedures adopted by a regional mobility authority, relating to a procurement for a transportation project, from materially conflicting with the design-build procedures of that same chapter. The bill includes other conforming amendments to the Local Government Code.

C.S.S.B. 1110 repeals the following provisions of the Education Code:

- Section 44.0315, containing certain purchasing and contracting definitions relating to school district financial management
- Section 44.035, the law on school district evaluation of bids and proposals for construction services
- Section 44.036, the law on school district design-build contracts for facilities
- Section 44.037, the law on school district contracts for facilities using a construction manager-agent
- Section 44.038, the law on school district contracts for facilities using a construction manager-at-risk
- Section 44.039, the law on school district selection of a contractor for construction services through competitive sealed proposals
- Section 44.040, the law on school district selection of a contractor for construction services through competitive bidding
- Section 44.041, the law of school district job order contracts for facilities construction or repair

C.S.S.B. 1110 repeals the following provisions of the Government Code:

- Section 2166.2511, containing certain definitions applicable to state building construction and acquisition laws relating to project authorization and bidding and contracting procedures
- Section 2166.2526, relating to Texas Facilities Commission evaluation of bids and proposals for construction services
- Section 2166.2531, authorizing the Texas Facilities Commission to use the design-build method on a building project
- Section 2166.2532, authorizing the Texas Facilities Commission to use the construction manager-at-risk method on a building project

- Section 2166.2533, authorizing the Texas Facilities Commission to use the competitive sealed proposal method on a building project
- Section 2166.2535, authorizing the Texas Facilities Commission to use the construction manager-agent method on a building project

C.S.S.B. 1110 repeals the following provisions of the Local Government Code:

- Section 252.043(d-1), the law, with respect to municipal purchasing and contracting, authorizing the award of contacts using the competitive sealed proposal procedure, if the expenditure is no more than \$1.5 million, for the construction of highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution and conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, related types of projects associated with civil engineering construction, and buildings or structures incidental to projects that are primarily civil engineering construction projects
- Subchapter H, Chapter 271, relating to the purchasing and contracting authority of municipalities, counties, and certain other local governments, and concerning alternative project delivery methods for certain projects
- Subchapter J, Chapter 271, relating to the purchasing and contracting authority of municipalities, counties, and certain other local governments, and concerning design-build procedures for certain civil works projects

C.S.S.B. 1110 repeals the following provision of the Transportation Code:

- Section 431.101(e), making exemptions from certain legal requirements and restrictions applicable to property and improvements owned by a local government corporation and to each contract awarded by the local government corporation

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1110 adds a provision not in the original increasing from \$25,000 to \$50,000 the aggregate 12-month threshold value equal to or above which certain school district contracts are required to be made by specified methods providing the best value.

C.S.S.B. 1110 differs from the original, in provisions authorizing school district change orders, by providing that if a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original price, whereas the original provides that if a change order for a contract with that original price increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

C.S.S.B. 1110 differs from the original by amending provisions relating to the qualifications of certain business entities to enter into contracts with an institution of higher education, whereas the original makes no changes to those provisions.

C.S.S.B. 1110 adds provisions not in the original prohibiting the Texas Facilities Commission from listing a multiple award contract on a schedule of multiple award contracts if the goods or services provided by the contract are engineering or architectural services and establishing that the commission is required to list a multiple award contract on a such a schedule for lighting and is authorized to negotiate a price for the lighting listed that offers the best value. The substitute

adds a provision not included in the original requiring the commission or another state agency to purchase lighting for state use that meets or exceeds the federal Energy Star standards designated by the U.S. Environmental Protection Agency, if available and cost-effective. The substitute adds a meaning of lighting not included in the original.

C.S.S.B. 1110 differs from the original, in provisions amending the Certificate of Obligation Act of 1971, by requiring the governing body of a municipality, county, or hospital district, before entering into a contract involving an expenditure, obligation, or liability of more than \$50,000, to submit the proposed contract to competitive bidding or use an alternate method for project delivery, whereas the original retains the \$25,000 threshold in existing law.

C.S.S.B. 1110 removes a provision included in the original establishing that the new Government Code chapter relating to contracting and delivery procedures for construction projects does not apply to certain agreements relating to airports, airport facilities, and air navigation facilities that are allowed without competitive bidding.

C.S.S.B. 1110 adds provisions not in the original prohibiting rules adopted by a regional tollway authority relating to the award of contracts, by means of competitive bidding, for the construction or maintenance of a turnpike, from materially conflicting with the design-build procedures of the bill's new Government Code chapter. The substitute adds provisions not in the original prohibiting design-build procedures adopted by a regional mobility authority relating to a procurement for a transportation project from materially conflicting with the design-build procedures of the bill's new Government Code chapter.

C.S.S.B. 1110 differs from the original in nonsubstantive ways by making technical changes and using language reflective of certain bill drafting conventions.