

BILL ANALYSIS

C.S.H.B. 628
By: Callegari
Government Efficiency & Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Cities, counties, school districts, and other political subdivisions 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.

C.S.H.B. 628 proposes to consolidate alternate project delivery processes 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, certain port authorities, and others; authorize construction manager-at-risk and competitive sealed proposals for construction services to be used for all types of projects, 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 2.09 of this bill.

ANALYSIS

C.S.H.B. 628 amends numerous codes to add or amend provisions relating to government contracting and related professional services and to public works performance and payment bonds.

Provisions Relating to Public Works and Payment Bonds

C.S.H.B. 628 amends the Government Code to prohibit the use of a reverse auction procedure to obtain services related to a public work contract for which a performance or payment bond is required under existing law. The bill defines "reverse auction procedure" by reference.

Provisions Relating to Contracts by Governmental Entities

C.S.H.B. 628 amends the Education Code to establish that a prohibition on the use of school district resources for the design, construction, or renovation of improvement to real property does not prohibit a school district board of trustees from entering into an agreement 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.

C.S.H.B. 628 excludes services other than construction services from the requirement for school

district contracts for the purchase of certain goods and services valued at \$50,000 or more in the aggregate for each 12-month period to be by the method, from among a list of specified methods, that provides the best value for the district. The bill includes the method set out in the bill's provisions for construction services among the specified methods and removes a design/build contract; a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction-manager; and a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility. The bill exempts from this provision a contract for the professional services of an engineer.

C.S.H.B. 628 authorizes a school district to use competitive bidding to select a vendor and exempts the school district competitive bidding process from statutory provisions governing competitive bidding on public works contracts by local governments, except for those provisions relating to the opening of bids, the rejection of bids, and the consideration of a bidder's safety record. 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, which may include consideration of factors other than price alone.

C.S.H.B. 628 requires the district to prepare a request for competitive sealed proposals that includes information vendors may require to respond to the request and to state in the request for proposals the selection criteria to be used in selecting the successful offeror. The bill establishes procedural requirements for the receipt, public opening, and reading aloud of the names of the offerors and prices stated in each proposal; the selection of the offeror that offers the best value based on the published selection criteria; and subsequent contract negotiation. The bill establishes that a district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

C.S.H.B. 628 authorizes a district to approve change orders 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 and to grant general authority to an administrative official to approve the change orders. The bill sets out certain restrictions on increases in the total contract price resulting from such change orders.

C.S.H.B. 628 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 and authorizes the commissioner to join in the action on behalf of the state to protect the state's share in the action. The bill provides for the distribution of proceeds from such an action. The bill defines "net proceeds" and "state's share."

C.S.H.B. 628 amends the Government Code to prohibit any agreement between a governmental entity and a purchasing cooperative from being used to purchase engineering or architectural services. The bill authorizes an interlocal contract or another agreement between a governmental entity and a purchasing cooperative to be used for job order contracting services if the work orders under the contract comply with the bill's requirements for job order contracts for facilities and the governmental entity publishes notice of intent to authorize an interlocal agreement in a manner consistent with a direct contract for job order contracting services.

C.S.H.B. 628 authorizes an interlocal contract or another agreement between a governmental entity and a purchasing cooperative to be used for construction services limited to a maintenance, repair, or replacement project for an existing building if the governmental entity publishes notice of the proposed agreement before authorizing a contract for a construction services contract of \$50,000 or more and the governing body of the governmental entity accepts the terms of the proposed agreement in an open meeting for which notice has been posted.

C.S.H.B. 628 prohibits the comptroller of public accounts from listing a multiple award contract

on a multiple award contract schedule if the goods or services provided by that contract are engineering services or architectural services.

C.S.H.B. 628 provides that the method of contracting allowed for design and construction services for state buildings is any method provided by the bill's provisions and removes the requirement for Texas Facility Commission rules on the circumstances for using each method of contracting.

C.S.H.B. 628 establishes contracting and delivery procedures for construction projects applicable to a public work contract made by a governmental entity or quasi-governmental entity authorized by state law to make a public work contract, including a state agency, a local government, a public junior college, and a board of trustees for certain harbor or port facilities. The bill defines "architect," "engineer," "facility," "general conditions," "general contractor," and "public work contract."

C.S.H.B. 628 establishes that its provisions relating to contracting and delivery procedures for public works construction projects prevail over any other law relating to a public work contract. The bill establishes that its provisions do not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business; over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility under certain procurement procedures; any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services that applies to a river authority or to a conservation and reclamation district unless the governing body of that authority or district elects to permit the bill's provisions to supersede the law, rule, or regulation; or a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of such an authority or district that owns electric generation capacity in excess of 2,500 megawatts.

C.S.H.B. 628 exempts from these provisions a contract entered into by the Texas Department of Transportation, a project that receives state money from a state or federal highway fund, an institution of higher education other than a public junior college, a university system, a regional tollway authority, an improvement project undertaken by or through a local government corporation exempt from competitive bidding requirements or restrictions under the Texas Transportation Corporation Act, or a regional mobility authority. The bill defines "institution of higher education," "public junior college," and "university system" by reference to the Education Code.

C.S.H.B. 628 authorizes a governmental entity to adopt rules as necessary to implement the bill's provisions relating to contracting and delivery procedures for construction projects. The bill requires a governmental entity to advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law and sets out applicable public notice requirements for different categories of entities.

C.S.H.B. 628 authorizes the governing body of a governmental entity to delegate its authority regarding an action authorized or required under the bill's provisions to a designated representative, committee, or other person and requires the governmental entity to provide notice of the delegation, the limits of the delegation, and the name or title of each person designated by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

C.S.H.B. 628 prohibits a governmental entity, in engaging in an activity to which these provisions apply, from considering whether a person is a member of or has another relationship with any organization and further requires the entity to ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish a person's right to work because of the person's membership or other relationship status with respect to an organization.

C.S.H.B. 628 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 historically underutilized businesses, 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 the request for bids, proposals, or qualifications. The bill requires a governmental entity, in determining the award of a contract, to consider and apply any existing laws related to historically underutilized businesses and consider and apply any existing laws, rules, or applicable municipal charters related to the use of women, minority, small, or disadvantaged businesses.

C.S.H.B. 628 requires the governing body of a governmental entity that considers a construction contract using a method authorized by the bill's provisions other than competitive bidding to determine, before advertising, which method provides the best value and to base its selection among offerors on applicable criteria listed for the particular method used. The bill requires a governmental entity to publish in the request for proposals or qualifications the criteria to be used in evaluating the offerors and the applicable weighted value for each criterion, document the basis of its selection, and make the evaluations public not later than the seventh day after the date the contract is awarded.

C.S.H.B. 628 sets out provisions for the selection or designation of an architect or engineer and certain other professional services in accordance with existing law. The bill requires a person who submits a bid, proposal, or qualification to a governmental entity to seal it before delivery.

C.S.H.B. 628 authorizes a governmental entity, except as otherwise provided, to contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract, receives competitive bids, and awards the contract to the lowest responsible bidder. The bill requires such governmental entity to select or designate an architect or engineer to prepare the construction documents required for a project to be awarded by competitive bidding. The bill establishes requirements for the preparation of a request for competitive bids; the receipt, public opening, and reading of the offerors' names and bids; and documentation and public release of the basis for a selection. The bill exempts the governmental entity competitive bidding process conducted under the bill's provisions from Local Government Code provisions governing competitive bidding on public works contracts by local governments, except for those provisions relating to the opening of bids, the rejection of bids, and the consideration of a bidder's safety record. The bill defines "competitive bidding."

C.S.H.B. 628 authorizes the use of competitive sealed proposals and requires a governmental entity to follow the procedures set out by the bill in selecting a contractor through competitive sealed proposals. The bill requires a governmental entity to select or designate an architect or engineer to prepare construction documents for the project and establishes requirements for the preparation of a request; the receipt, public opening, and reading of the offerors' names and monetary proposals; and the selection of the offeror that submits the proposal that offers the best value and subsequent contract negotiations. The bill defines "competitive sealed proposals."

C.S.H.B. 628 authorizes the retention of a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility, defines "construction manager-agent method," and provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services for the project. The bill sets out provisions for and restrictions on the contract agent and establishes that the construction manager-agent represents the governmental entity in a fiduciary capacity. The bill requires the governmental entity to select an architect or engineer to prepare the construction documents for the project, places restrictions on the governmental entity's architect or engineer serving as the construction manager-agent, and requires the construction manager-agent's services relating to the practice of architecture or engineering to be conducted by a licensed architect or engineer. The bill establishes requirements for the selection of general contractors and of a construction

manager-agent. 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.H.B. 628 authorizes the use of a construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility, defines "construction manager-at-risk method," and provides that a construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the project at the contracted price as a general contractor and 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 the governmental entity, on or before the selection of a construction manager-at-risk, to select an architect or engineer to prepare the construction documents for the project and places restrictions on the governmental entity's architect or engineer serving as the construction manager-at-risk. The bill establishes procedural requirements for the selection process, the selection of the offeror that submits the proposal that offers the best value based on the published selection criteria and on its ranking evaluation, and subsequent contract negotiations.

C.S.H.B. 628 requires a construction manager-at-risk to publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that is included in the general conditions and authorizes a construction manager-at-risk to seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value. The bill sets out requirements for the construction manager-at-risk's review of bids or proposals.

C.S.H.B. 628 authorizes a construction manager-at-risk to itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected. The bill sets out provisions for performance or payment bonds.

C.S.H.B. 628 sets out provisions authorizing the use of the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure, including an electric utility structure and excluding certain civil engineering construction projects and any building or structure that is incidental to a project that is primarily a civil engineering construction project. The bill defines "design-build."

C.S.H.B. 628 requires a governmental entity, in using that method for the construction or improvement of such a building or structure, to enter into a single contract with a design-build firm for that design and construction. 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 and requires a 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 establishes requirements for the preparation of a request for qualifications and related design criteria; the evaluation and ranking of design-build firms; the selection of the design-build firm that submits the proposal offering the best value; and subsequent contract negotiations. The bill defines "costing methodology."

C.S.H.B. 628 requires, after selection of the design-build firm, that firm's architects or engineers to submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer before or concurrently with construction and to supply a set of construction documents, noting any changes made during construction, for the completed project to the governmental entity at the conclusion of construction. The bill provides that a payment or performance bond is not required and is prohibited from providing coverage for the design portion of the design-build contract with the

design-build firm and provides for the furnishing of performance or payment bonds by the design-build firm.

C.S.H.B. 628 sets out provisions authorizing the use of the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project by a governmental entity that has a population of more than 100,000 within the entity's geographic boundary or service area or is a board of trustees for certain harbor or port facilities. The bill defines "civil works project," "design-build firm," and "design-criteria package."

C.S.H.B. 628 restricts a design-build contract to a single integrated project; prohibits a governmental entity from entering into a contract for aggregated projects at multiple locations; and specifies that a project involving a bus rapid transit system or a water treatment plant that includes treatment facilities, well fields, and pipelines is a single integrated project. The bill sets out criteria that a governmental entity is required to use as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project; requires a governmental entity to make a formal finding on the criteria before preparing a request for qualifications; and limits the number of projects that may be undertaken by certain governmental entities under a design-build contract before September 1, 2013, before September 1, 2015, and thereafter.

C.S.H.B. 628 requires a governmental entity to select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The bill requires the governmental entity to provide or contract for, independently of the design-build firm, certain professional services as necessary for the acceptance of the civil works project by the entity. The bill establishes requirements for the preparation of a request for qualifications and a design criteria package to be used in the selection of a design-build firm, the evaluation and selection of design-build firms, the combination of technical and cost proposals, and subsequent contract negotiation.

C.S.H.B. 628 requires the governmental entity to assume all risks and costs associated with scope changes and modifications requested by the governmental entity; unknown or differing site conditions unless otherwise provided by the governmental entity in the request for proposals and final contract; regulatory permitting, if the governmental entity is responsible for those risks and costs by law or contract; natural disasters and other force majeure events unless otherwise provided by the governmental entity in the request for proposals and final contract; and all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

C.S.H.B. 628 establishes that the design-build firm retains all rights to the work product submitted in a proposal and prohibits the governmental entity from releasing or disclosing to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The bill requires the governmental entity to return all copies of the proposal and other information submitted to an unsuccessful offeror and prohibits the governmental entity or its agents from making use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal unless the entity acquires a license from the unsuccessful offeror. The bill provides for the voiding of a contract for a violation and makes the governmental entity liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of an unsuccessful offeror's work product. The bill authorizes any interested party to bring an action for an injunction, declaratory relief, or damages for a violation and entitles the prevailing party in an action to reasonable attorney's fees as approved by the court.

C.S.H.B. 628 authorizes the governmental entity to offer an unsuccessful design-build firm that submits a response to the entity's request for additional information a stipend for preliminary engineering costs associated with the proposal's development equal to one-half of one percent of

the contract amount, which stipend must be specified in the initial request for proposals. The bill authorizes the governmental entity, if the offer is accepted and paid, to make use of any work product contained in the proposal and establishes that use of any design element in an unsuccessful proposal is at the entity's sole risk and discretion. The bill makes work product in an unsuccessful proposal confidential and prohibits its release unless a stipend offer has been accepted and paid.

C.S.H.B. 628 establishes requirements for the submission of all design elements for review, the signing and sealing of construction documents before the documents are released for construction, and the furnishing by the design-build firm to the entity a record set of construction documents for the project. The bill establishes requirements for performance or payment bonds, which are not required for the portion of a design-build contract that includes design services only.

C.S.H.B. 628 authorizes the use of job order contracting for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility, the design and construction of which is governed by accepted building codes, or an associated structure or land, other than certain types of projects associated with civil engineering construction, 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 defines "job order contracting." The bill requires a governmental entity to establish the maximum aggregate contract price when it advertises the proposal and requires the entity's governing body to approve each job, task, or purchase order that exceeds \$500,000.

C.S.H.B. 628 authorizes a 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.

C.S.H.B. 628 authorizes the use of the competitive sealed proposal method for job order contracts and authorizes a governmental entity to award job order contracts to one or more job order contractors in connection with each solicitation of proposals. The bill limits the use of a job order contract to the accomplishment of work only for the governmental entity that awards the contract unless the solicitation for the job order 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 a governmental entity, if a job order contract or an order issued under the contract requires architectural or engineering services, to select or designate an architect or engineer to prepare the construction documents for the project.

C.S.H.B. 628 caps a base term for a job order contract at a maximum of two years and authorizes the governmental entity to renew the contract annually for a maximum of 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 authorizes the order to 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.H.B. 628 makes a contract, including a job order, entered into in violation of the bill's contracting provisions voidable as against public policy. The bill provides for the enforcement of the bill's contracting provisions, other than the enforcement of a contract entered into by a state agency, through an action for declaratory or injunctive relief filed not later than the 10th day after the date on which the contract is awarded. The bill defines "state agency" by reference.

C.S.H.B. 628 amends the Local Government Code to authorize the governing body of a

municipality with a population of 500,000 or more to grant general authority to an administrative official of the municipality to approve a change order for a public works contract if the change order involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance.

C.S.H.B. 628 authorizes the governing body of an issuer of a certificate of obligation to use a method of project delivery authorized by this bill's provisions as an alternative to submitting the proposed contract to competitive procurement if the issuer enters into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county of more than \$50,000.

C.S.H.B. 628 changes a general prohibition on increasing an original contract price by more than 25 percent to instead prohibit a contract with an original contract price of \$1 million or more from being increased by more than 25 percent in a change order and, 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, to prohibit subsequent change orders from increasing the revised contract amount by more than 25 percent. The bill removes a prohibition against decreasing the price by more than 25 percent without the consent of the contractor.

Provisions Relating to Additional Exemptions

C.S.H.B. 628 amends the Education Code, Government Code, Local Government Code, Special District Local Laws Code, Transportation Code, and Water Code to exempt energy saving performance contracts and construction contracts, as applicable, for each of the following types of facilities and projects from its provisions relating to contracting and delivery methods: public school and higher education facilities, state and local government facilities, sports and community venue district facilities, hybrid delivery systems for certain construction projects by metropolitan mass transit authorities, professional and other services provided to a regional transportation authority consisting of one subregion governed by a subregional board, except that such an authority is authorized to adopt design-build procedures that do not materially conflict with the bill's provisions, and purchase contracts and competitive bidding procurement by navigation districts and port authorities.

C.S.H.B. 628 repeals the following sections in the Education Code:

- Section 44.0315
- Section 44.035
- Section 44.036
- Section 44.037
- Section 44.038
- Section 44.039
- Section 44.040
- Section 44.041

C.S.H.B. 628 repeals the following sections in the Government Code:

- Section 2166.2511
- Section 2166.2526
- Section 2166.2531
- Section 2166.2532
- Section 2166.2533

- Section 2166.2535

C.S.H.B. 628 repeals Subchapters H and J, Chapter 271, Local Government Code and Section 431.101(e), Transportation Code.

C.S.H.B. 628 redefines "governmental agency" by reference and makes other conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 628 differs from the original by authorizing the use of an interlocal contract or another agreement between a governmental entity and a purchasing cooperative for job order contracting services if the work orders comply with the bill's provisions governing contracting and delivery procedures for public works construction projects and the governmental entity publishes notice of intent to authorize an interlocal agreement in a manner consistent with a direct contract for job order contracting services, whereas the original prohibits the use of such a contract to purchase construction services unless the services are in connection with the construction of a specific facility to be jointly owned, used, or financed by the parties to the contract or the services are in connection with a job order contract, the governing body of the governmental entity for whom the work will 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 bill's provisions.

C.S.H.B. 628 contains a provision not included in the original authorizing the use of an interlocal contract or another agreement between a governmental entity and a purchasing cooperative for construction services limited to a maintenance, repair, or replacement project for an existing building under certain conditions.

C.S.H.B. 628, in a provision making the bill's provisions for contracting and delivery procedures for construction projects applicable to a public work contract made by a governmental entity or quasi-governmental entity, including certain specified entities, omits from the list of specified entities included in the original a municipally-owned entity and any entity that owns or operates a facility for the benefit of a municipality or county.

C.S.H.B. 628 contains a provision not included in the original establishing that the bill's provisions relating to contracting and delivery procedures for public works construction projects do not prevail over any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services that applies to a river authority or to a conservation and reclamation district unless the governing body of that authority or district elects to permit the bill's provisions to supersede the law, rule, or regulation. The substitute contains a provision not included in the original establishing that the bill's provisions do not prevail over a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of such an authority or district that owns electric generation capacity in excess of 2,500 megawatts.

C.S.H.B. 628 contains provisions not included in the original exempting an improvement project undertaken by or through a local government corporation that is exempt from competitive bidding requirements or restrictions under the Texas Transportation Corporation Act and a regional mobility authority from the bill's provisions for contracting and delivery procedures for public works construction projects.

C.S.H.B. 628 differs from the original, in provisions setting out requirements for building using

the design-build method, by referencing architectural or engineering designs, rather than detailed architectural or engineering designs, in the prohibition against a governmental entity requiring offerors to submit such designs as part of a proposal or a response to a request for qualifications.

C.S.H.B. 628 differs from the original, in provisions setting out requirements for job order contracts for certain facilities, by requiring the governing body of a governmental entity to approve each job, task, or purchase order that exceeds \$500,000, whereas the original requires the entity's governing body to approve each job order that exceeds \$500,000 under the contract or a lesser amount as established by the governing body.

C.S.H.B. 628 omits provisions included in the original making bonds issued in connection with a contract entered into in violation of the bill's provisions voidable as against public policy and establishing that an action to void a contract does not excuse the governmental entity's obligation 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.

C.S.H.B. 628 omits a provision included in the original exempting a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project from the bill's provisions relating to contracting and delivery procedures for public works construction projects.

C.S.H.B. 628 contains a provision not included in the original authorizing a regional transportation authority consisting of one subregion governed by a subregional board to adopt design-build procedures that do not materially conflict with the bill's provisions.