

BILL ANALYSIS

Senate Research Center

S.B. 1866
By: Davis
State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Professional Services Procurement Act requires that in retaining professionals to perform services subject to the Act, generally including any matter for which a state license is required, such as accounting, architecture, or engineering, to identify the most highly qualified proposed provider on the basis of "demonstrated competence and qualifications," then try to negotiate a contract with that provider. If the entity is unable to do so, the entity is to notify the provider that it is terminating negotiations and move to the next most highly qualified provider. Competitive bidding is prohibited.

S.B. 1866 amends Chapter 2254 (Professional and Consulting Services), Government Code, to allow a governmental entity to consider whether the hiring of a particular proposed provider would advance the entity's program relating to contracting with minority and historically underutilized businesses, so long as doing so remains consistent with the requirement that the entity hire the most highly qualified provider. Thus, in a situation where the entity believes that two providers were equally highly qualified, the entity would be allowed to take into consideration minority participation goals in deciding which provider to retain.

As proposed, S.B. 1866 amends current law relating to the selection of providers of professional services by 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 Section 2254.003, Government Code, as follows:

Sec. 2254.003. SELECTION OF PROVIDER; FEES. (a) Prohibits a governmental entity from selecting a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but requires that the entity make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

(b) Authorizes a governmental entity, unless inconsistent with the criteria set forth in Subsection (a), in selecting a provider of professional services or a group or association of providers, to consider the impact on the ability of the entity to comply with laws, rules, and policies of the entity relating to historically underutilized and/or minority businesses, the entity's small business development program, or another contracting program approved by the entity, if any. Authorizes the entity to also consider the provider's or group or association of providers' principal place of business if, in the entity's governing body's judgment,

the location of the principal place of business will impact the most efficient and economical provision of the services.

(c) Creates this subsection from existing text. Prohibits the professional fees under the contract from exceeding any maximum provided by law.

SECTION 2. Amends Section 2254.004, Government Code, as follows:

Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR. (a) Requires a governmental entity, in procuring architectural, engineering, or land surveying services, to:

(1) first select the most highly qualified provider of those services on the basis of the factors set forth in Section 2254.003, rather than on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) Requires the entity, if a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, to:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) Requires the entity to continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

SECTION 3. Effective date: September 1, 2011.