

BILL ANALYSIS

C.S.H.B. 3648
By: Harper-Brown
Government Efficiency & Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law sets out the requirements and procedures applicable to purchases of goods and services by state agencies, including the types of bids and contracts that are permissible and the processes that must be followed by state agencies. These provisions are intended to provide a fair and equitable bidding process, to ensure that the state and its taxpayers receive the highest quality product at the greatest achievable value, and to maintain transparency.

Interested parties note that fairness and transparency may be compromised because the requirements applicable to the period between selection of a bidder and the signing of the final contract are not sufficiently stringent, but they also point out that the ability to make minor adjustments to any large-scale project contract is an absolute necessity. However, the parties assert that the terms and conditions should not be modified to such an extent that the final project differs dramatically from what was described in the solicitation documents. The parties further assert that, if the purchasing process in Texas is to be fair to all participants, there must be some limitations placed on the ability of state agencies to change the terms under which a contract was awarded.

C.S.H.B. 3648 seeks to ensure that additional standards are put in place to protect the fairness of the state purchasing process, without unduly compromising flexibility or efficiency.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3648 amends the Government Code to require the performance of a contract for goods or services awarded by the state to comply substantially with the terms contained in the written solicitation for the contract and the terms considered in evaluating responses to the solicitation. The bill requires the governing body of a state agency, after the evaluation of responses to a solicitation is completed but before a contract for goods or services is awarded, to hold a meeting to consider any proposed material change to such terms. The bill establishes that any change to such terms that has the effect of extending the length of or postponing the completion of a contract for six months or more or has the effect of increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services, constitutes a material change.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3648 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.088 to read as follows:

Sec. 2155.088. MATERIAL CHANGES TO CONTRACTS.

(a) Notwithstanding any other law, the performance of a contract for goods or services awarded under this chapter must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in awarding the contract, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After a contract for goods or services is awarded under this chapter,

a state agency, including the comptroller,

must hold a public hearing before approving a material change to the contract.

For purposes of this section, a material change includes:

(1) extending the length of or postponing the completion of a contract for six months or more; or

(2) increasing the total consideration to be paid under a contract by at least five percent, including by substituting certain goods, materials, products, or services.

SECTION 2. Section 2155.088, Government Code, as added by this Act, applies only to a contract for goods or services awarded under Chapter 2155, Government Code, on or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.088 to read as follows:

Sec. 2155.088. MATERIAL CHANGES TO CONTRACT SOLICITATION TERMS.

(a) Notwithstanding any other law, the performance of a contract for goods or services awarded under this chapter must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in evaluating responses to the solicitation, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After the evaluation of responses to a solicitation is completed but before a contract for goods or services is awarded under this chapter, the governing body of a state agency, if applicable, must hold a meeting to consider any proposed material change to a term described by Subsection (a) before the agency approves the change.

For purposes of this section, a material change includes any change to a term described by Subsection (a) that has the effect of:

(1) extending the length of or postponing the completion of the contract for six months or more; or

(2) increasing the total consideration to be paid under the contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

SECTION 2. Section 2155.088, Government Code, as added by this Act, applies only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation on or after the effective date of this Act.

SECTION 3. Same as introduced version.

house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.