

## **BILL ANALYSIS**

C.S.H.B. 3681  
By: Smith  
Urban Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law does not allow state agencies to accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based, and the parties contend that local governments should adhere to a similar requirement. C.S.H.B. 3681 seeks to address this concern by amending the current law relating to the acceptance of bids for certain local government contracts.

### **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. 3681 amends the Local Government Code to prohibit a local government subject to competitive bidding requirements from accepting a bid or awarding a contract for an improvement to real property that includes proposed financial participation by a person who received compensation from the local government to participate in preparing the specifications or request for proposals on which the bid or contract is based. The bill sets out a certification statement required to be included on such a bid or award. The bill authorizes the local government, if the local government determines that an individual or business entity holding a local government contract was ineligible to have the contract accepted or awarded, to immediately terminate the contract without further obligation to the vendor. The bill establishes that its provisions do not create a cause of action to contest a bid or award of a local government contract and do not prohibit a bidder or contract participant from providing free technical assistance to a local government. The bill exempts from its provisions a contract for professional services that constitute the practice of architecture or the practice of engineering.

### **EFFECTIVE DATE**

September 1, 2013.

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

While C.S.H.B. 3681 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 Z, Chapter 271, Local Government Code, is amended by

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subchapter Z, Chapter 271, Local Government Code, is amended by

83R 27555

13.126.6

Substitute Document Number: 83R 21367

adding Section 271.909 to read as follows:  
Sec. 271.909. CERTAIN BIDS AND CONTRACTS PROHIBITED.

(a) In this section, "local government" means a municipality, county, or other political subdivision of this state subject to competitive bidding requirements.

(b) A local government may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the local government to participate in preparing the specifications or request for proposals on which the bid or contract is based.

(c) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 271.909, Local Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(d) If a local government determines that an individual or business entity holding a local government contract was ineligible to have the contract accepted or awarded under Subsection (b), the local government may immediately terminate the contract without further obligation to the vendor.

(e) This section does not create a cause of action to contest a bid or award of a local government contract.

(f) This section does not prohibit a bidder or contract participant from providing free technical assistance to a local government.

SECTION 2. The change in law made by this Act applies only to a request for proposals, competitive bidding notice, or other similar request issued by a local government on or after the effective date of this Act.

adding Section 271.909 to read as follows:  
Sec. 271.909. CERTAIN BIDS AND CONTRACTS FOR IMPROVEMENTS TO REAL PROPERTY PROHIBITED.

(a) In this section, "local government" means a municipality, county, or other political subdivision of this state subject to competitive bidding requirements.

(b) A local government may not accept a bid or award a contract for an improvement to real property that includes proposed financial participation by a person who received compensation from the local government to participate in preparing the specifications or request for proposals on which the bid or contract is based.

(c) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 271.909, Local Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(d) If a local government determines that an individual or business entity holding a local government contract was ineligible to have the contract accepted or awarded under Subsection (b), the local government may immediately terminate the contract without further obligation to the vendor.

(e) This section does not create a cause of action to contest a bid or award of a local government contract.

(f) This section does not prohibit a bidder or contract participant from providing free technical assistance to a local government.

(g) This section does not apply to a contract for professional services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect  
September 1, 2013.

SECTION 3. Same as introduced version.