

## **BILL ANALYSIS**

C.S.S.B. 943  
By: Watson  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been a cause of concern that recent decisions from the Texas Supreme Court may have reduced the public's ability to remain informed with respect to government spending and government contracting and that high-profile contracting scandals have served to compound those concerns. It is suggested that increasing transparency and accountability in contracting are key to avoiding waste, fraud, and abuse. C.S.S.B. 943 seeks to restore transparency to state and local government contracting by making certain contracting information public information that must be released under state public information law unless expressly excepted.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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.S.B. 943 amends the Government Code to make certain contracting information as set out by the bill public information that must be released under state public information law unless excepted from disclosure under state public information law. The bill excludes from state public information law under certain specified circumstances an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts. The bill includes the following as a governmental body subject to that law:

- a confinement facility operated under a contract with any division of the Texas Department of Criminal Justice;
- a civil commitment housing facility owned, leased, or operated by a vendor under a state contract; and
- an entity that receives public funds in the current or preceding state fiscal year to manage the daily operations or restoration of the Alamo, or an entity that oversees such an entity.

C.S.S.B. 943 excepts from the public availability requirement of state public information law qualifying proprietary contracting information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification. The bill sets out provisions relating to the assertion of that disclosure and the refusal of a governmental body to release the applicable information. The bill makes the exception inapplicable to the following:

- information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or
- information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on the governmental body's behalf.

C.S.S.B. 943 revises the exception to the public availability requirement for certain information related to competition or bidding to exempt information from that requirement if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes that the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.

C.S.S.B. 943 revises the exception to the public availability requirement for trade secrets to set out what constitutes a trade secret and to exempt information from that requirement if it is demonstrated based on specific factual evidence that the information is a trade secret. The bill makes this exception and the exception provided for proprietary information inapplicable to specified types of contracting information and sets out a related provision.

C.S.S.B. 943 authorizes an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts to assert the exception to the public availability requirement for certain economic development information with respect to information that is in the economic development entity's custody or control by submitting in writing to the attorney general the reasons why the information should be withheld.

C.S.S.B. 943, in a provision applicable to a contract that has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body or that results in the expenditure of at least \$1 million in public funds for the purchase of goods or services in a governing body's fiscal year, requires a governmental body that is a party to such a contract that receives a written request for public information related to the contract to request that the applicable entity provide the requested information to the governmental body if the written request is for contracting information that is in the possession of the entity and not maintained by the governmental body. The bill establishes certain procedural deadlines in service of that requirement. The bill sets out the circumstances under which that requirement does not apply and establishes that nothing in these provisions affects the deadlines or duties of a governmental body relating to a request for an attorney general decision under state public information law regarding whether requested information may be withheld from public disclosure under an authorized exception, including contracting information.

C.S.S.B. 943 does the following with respect to such a contract:

- sets out provisions relating to the contents of the contract and contract bids of entities;
- prohibits a governmental body from accepting a bid for or awarding the contract to certain bad actors unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with applicable requirements;
- provides for certain notice of noncompliance with provisions of the bill applicable to the contract;
- provides for the termination of the contract for continued noncompliance; and
- sets out the circumstances under which a governmental body may not terminate the contract.

The bill establishes that its provisions relating to such a contract do not prevent a governmental

body from including and enforcing more stringent requirements in a contract to increase accountability or transparency and do not create a cause of action to contest a bid for or the award of a state contract with a governmental body.

C.S.S.B. 943 authorizes a requestor to file suit for a writ of mandamus compelling a governmental body or an entity to comply with the requirements of those bill provisions.

**EFFECTIVE DATE**

January 1, 2020.

**COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 943 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute clarifies that the contracting information excepted from disclosure that is not subject to release under the bill's provisions is information excepted from disclosure under state public information law.

The substitute includes an exception to the applicability of the requirement established by the bill regarding a request for information from a governmental entity that has executed an applicable contract with an entity that is not a governmental body regarding that contract. The substitute includes a provision that establishes that nothing in its provisions regarding such a request affects the deadlines or duties of a governmental body related to a request for a certain attorney general decision under state public information law. The substitute, with respect to the bill provision requiring a contracting entity to preserve all contracting information related to the contract for the duration of the contract, adds a specification to that provision that such preservation is as provided by the records retention requirements applicable to the governmental body.