By:  Leach, Martinez H.B. No. 2585

A BILL TO BE ENTITLED

AN ACT

relating to civil works projects and other construction projects of governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter B, Chapter 2269, Government Code, is amended by adding Section 2269.0525 to read as follows:

Sec. 2269.0525.  PREQUALIFICATION PROCESS FOR CIVIL WORKS PROJECTS. (a) In this section, "civil works project" has the meaning assigned by Section 2269.351.

(b)  A governmental entity may implement a prequalification process to eliminate unqualified offerors from and prequalify potential offerors meeting minimum standards for consideration for a civil works project under a competitive bidding method authorized by this chapter. A governmental entity that implements a prequalification process under this section shall advertise or publish notice of the prequalification process along with a request for qualifications 30 days before the invitation for bids is issued in a manner prescribed by law. In addition, the governmental entity may directly solicit qualifications from potential offerors if the competitive requirements of this chapter and other applicable law are followed.

(b-1)  The implementation of a prequalification process under Subsection (b) does not affect the authority of a governmental entity to determine the responsiveness of any subsequent bid or to reject any and all bids.

(c)  If a governmental entity considers a contract for a civil works project using competitive bidding under this chapter, in implementing a prequalification process under Subsection (b), the governmental entity:

(1)  shall establish minimum qualification requirements for potential offerors and a scoring process with a final pass or fail determination to identify qualified potential offerors who may submit competitive bids; and

(2)  may not short-list or rank potential offerors or combine qualification scores with competitive bids in considering the award of a contract.

(d)  A governmental entity may consider the following factors during the prequalification process:

(1)  the potential offeror's experience with other construction projects of similar size and scope;

(2)  whether the potential offeror's commercial and financial history, stability, and capability are appropriate for the size and scope of the project;

(3)  the potential offeror's ability to self-perform the construction project services;

(4)  the potential offeror's familiarity and experience with subcontractors and suppliers in the area served by the governmental entity;

(5)  whether the potential offeror has been involved in litigation or arbitration with a governmental entity related to a construction project awarded to the potential offeror during the preceding five years;

(6)  whether the potential offeror has ever failed to complete a project for a governmental entity;

(7)  the qualifications and experience of the potential offeror's management or project team; and

(8)  the potential offeror's safety record for the previous three years, including actions taken to prevent future incidents, and any other related information.

(e)  If a potential offeror has been involved in litigation or arbitration as described by Subsection (d)(5), the potential offeror shall provide to the governmental entity the name of the parties involved and a brief description of the nature and outcome of the litigation or arbitration.

(f)  Notwithstanding a prequalification process implemented by a governmental entity under Subsection (b) for a civil works project, the governmental entity shall consider a potential offeror to be prequalified for consideration for the project if a state agency has prequalified the potential offeror for consideration for a civil works project with a related scope of work.

SECTION 2.  Section 2269.056(b), Government Code, is amended to read as follows:

(b)  The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. The governmental entity shall publish in the request for proposals or qualifications:

(1)  the criteria that will be used to evaluate the offerors;

(2)  the applicable weighted value for each criterion; and

(3)  [~~for state agencies,~~] a detailed methodology for scoring each criterion.

SECTION 3.  Subchapter B, Chapter 2269, Government Code, is amended by adding Section 2269.060 to read as follows:

Sec. 2269.060.  DOCUMENTS RELATED TO EVALUATION AND RANKING. (a) An offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under this chapter may, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission.

(b)  Not later than the 30th day after the date a request is made under Subsection (a), the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

SECTION 4.  Section 2269.103, Government Code, is amended to read as follows:

Sec. 2269.103.  PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

(b)  For civil works projects, before preparing a request for competitive bids under Subsection (a), a governmental entity may use the prequalification process for civil works projects described by Section 2269.0525.

SECTION 5.  Section 2269.153, Government Code, is amended to read as follows:

Sec. 2269.153.  PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

(b)  Except as provided by Subsection (c), for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria.

(c)  If the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 40 percent of the total weighted value of all selection criteria.

SECTION 6.  Section 2269.155, Government Code, is amended by adding Subsection (d) to read as follows:

(d)  Not later than the seventh business day after the date the contract is awarded, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors.

SECTION 7.  Section 2269.452(a), Government Code, is amended to read as follows:

(a)  This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 15th calendar [~~10th~~] day after the date on which the contract is awarded.

SECTION 8.  The change in law made by this Act applies only to a contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation on or after the effective date of this Act. A contract for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation before the effective date of this Act is governed by the law in effect on the date the advertisement or solicitation is made, and that law is continued in effect for that purpose.

SECTION 9.  This Act takes effect September 1, 2019.