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S.B. No. 1503

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 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.

(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 (1) may not rank potential offerors; and

2 (2) shall determine if any potential offerors meet
3 minimum qualification requirements for completing the civil works
4 project, including meeting any requirements related to an
5 experience modification rate for workers' compensation insurance
6 premiums that the governmental entity will allow without additional
7 information and actions taken to prevent future incidents.

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

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

12 (2) the potential offeror's commercial and financial
13 history and stability;

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

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

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

22 (6) the potential offeror's ability and capacity to
23 provide performance and payment bonds;

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

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

1 (9) the potential offeror's safety record for the
2 previous three years.

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

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

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

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

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

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

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

22 Sec. 2269.060. EXPLANATION OF EVALUATION AND RANKING. (a)
23 An offeror who submits a bid, proposal, or response to a request for
24 qualifications for a construction contract under this chapter may,
25 after the contract is awarded, make a request in writing to the
26 governmental entity to provide an explanation of its evaluation of
27 the offeror's submission.

1 (b) Not later than the 30th day after the date a request is
2 made under Subsection (a), the governmental entity shall deliver to
3 the offeror a written explanation of or grant the offeror an
4 interview with a representative of the selection team regarding its
5 evaluation of the submission including, if applicable, its ranking
6 of the submission.

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

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

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

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

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

27 (b) For civil works projects, the weighted value assigned to

1 price must be at least 50 percent of the total weighted value of all
2 selection criteria.

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

5 (d) Not later than the seventh business day after the date
6 the contract is awarded, the governmental entity shall document the
7 basis of its selection and shall make the evaluations public.

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

10 (a) This chapter may be enforced through an action for
11 declaratory or injunctive relief filed not later than the 15th
12 [~~10th~~] day after the date on which the contract is awarded.

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

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