

By: Kacal

H.B. No. 2581

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 for which a request for bids, proposals, or qualifications is authorized by this chapter. At least once a year, 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 in a manner prescribed by law. In addition, the governmental entity may directly solicit qualifications from potential offerors 30 days before the project solicitation is issued if the competitive requirements of this chapter and other applicable law are followed.

(c) A governmental entity may prequalify potential offerors for consideration for civil works projects more than once a year if:

(1) the governmental entity annually provides notice

1 of the prequalification process as required by Subsection (b); and
2 (2) the prequalification process remains open until at
3 least the 14th day preceding the date responses to a project
4 solicitation are due for a civil works project.

5 (d) The implementation of a prequalification process under
6 Subsection (b) or (c) does not affect the authority of a
7 governmental entity to determine the responsiveness of any
8 subsequent bid or to reject any and all bids.

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

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

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

20 SECTION 2. Section [2269.056](#)(b), Government Code, is amended
21 to read as follows:

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

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

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

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

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

7 Sec. 2269.060. DOCUMENTS RELATED TO EVALUATION AND RANKING.

8 (a) An offeror who submits a bid, proposal, or response to a
9 request for qualifications for a construction contract under this
10 chapter may, after the contract is awarded, make a request in
11 writing to the governmental entity to provide documents related to
12 the evaluation of the offeror's submission.

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

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

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

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

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

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

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

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

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

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

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

26 (a) This chapter may be enforced through an action for
27 declaratory or injunctive relief filed not later than the 15th

1 calendar [~~10th~~] day after the date on which the contract is awarded.

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

12 SECTION 9. This Act takes effect September 1, 2021.