

By: Thompson of Brazoria

H.B. No. 1787

A BILL TO BE ENTITLED

AN ACT

relating to the method used to select engineers and general contractors for certain state highway construction projects.

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

SECTION 1. Chapter 223, Transportation Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD

Sec. 223.301. DEFINITION. In this subchapter, "construction manager-general contractor method" means a delivery method by which the department contracts with an engineer for design and construction phase services and contracts separately with a construction manager to serve as the general contractor and to provide consultation during the design and construction of a state highway.

Sec. 223.302. USE OF CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD. Notwithstanding any other law requiring a particular procurement procedure, including Subchapter A of this chapter, the department may use the construction manager-general contractor method to select a general contractor for a state highway project as provided by this subchapter.

Sec. 223.303. CONSTRUCTION MANAGER. (a) For purposes of this subchapter, a construction manager may be a sole proprietorship, partnership, corporation, or other legal entity.

(b) A construction manager serves as the general contractor

1 for a state highway project and assumes the risk for the
2 construction of the state highway at the contracted price.

3 (c) A construction manager shall provide consultation to
4 the department regarding construction of a state highway project
5 during and after the design of the project, including consultation
6 regarding preconstruction services such as scheduling, pricing,
7 phasing, technical innovations, site investigation, and risk
8 mitigation.

9 (d) The contracted price may be a guaranteed maximum price
10 or converted to a lump sum.

11 Sec. 223.304. USE OF ENGINEER. (a) On or before the
12 selection of a construction manager, the department shall select an
13 engineer to prepare the construction documents for the state
14 highway project.

15 (b) The engineer selected for a state highway project under
16 Section 223.041 may not serve, alone or in combination with another
17 person, as the construction manager for that project.

18 (c) Subsection (b) does not prohibit the engineer from
19 providing customary construction phase services under the
20 engineer's contract with the department in accordance with
21 applicable licensing laws.

22 Sec. 223.305. ADOPTION OF CRITERIA AND RULES. (a) The
23 department shall adopt weighted selection criteria and rules for
24 the selection process and award of contracts under this subchapter,
25 which may include interviews with top-ranked offerors.

26 (b) The rules adopted under Subsection (a) must address the
27 selection process applicable to the award of a contract for

1 preconstruction services and for construction management and
2 construction services, including the process for contract
3 negotiations with the construction manager for construction of the
4 project or work packages associated with the project in accordance
5 with contract documents.

6 Sec. 223.306. EVALUATION TEAM. (a) Before preparing a
7 request under Section 223.307 for a state highway project, the
8 director shall appoint a team of at least three members to assist
9 the department in evaluating proposals and qualifications received
10 by the department. The members may be department employees or
11 outside consultants.

12 (b) At least one-half, or as near one-half as possible, of
13 the team members must be engineers registered in this state. An
14 engineer who serves on the team and is not a department employee may
15 not otherwise be involved in the project for which the request is
16 prepared under Section 223.307.

17 (c) The team must include at least one person who is a senior
18 management employee of a general contractor that:

19 (1) is registered as a prequalified general contractor
20 under department rules;

21 (2) is not involved in the project for which the
22 request is prepared under Section 223.307; and

23 (3) has no other conflict of interest as determined by
24 the department.

25 Sec. 223.307. SELECTION PROCESS. (a) The department may
26 select the construction manager in a one-step or two-step process.

27 (b) The department shall prepare a single request for

1 proposals, in the case of a one-step process, and an initial request
2 for qualifications followed by a request for proposals and any
3 required interviews, in the case of a two-step process. A request
4 prepared under this subsection must include:

5 (1) a statement as to whether the selection process is
6 a one-step or two-step process;

7 (2) information regarding the project's location,
8 scope, and limits;

9 (3) publicly available cost estimates and a budget for
10 the project;

11 (4) information regarding funding that may be
12 available for the project;

13 (5) the selection criteria adopted under Section
14 223.305 and the relative weighted value for each criterion;

15 (6) the time and place for receipt of qualifications
16 or proposals, as applicable; and

17 (7) any other information that may assist the
18 department in the selection of a construction manager.

19 (c) If a one-step process is used, the department may
20 request, as part of the offeror's proposal, the offeror's:

21 (1) proposed billable rates for preconstruction
22 services personnel;

23 (2) proposed fee for home office overhead; and

24 (3) profit fee on the negotiated construction price
25 for performing construction services.

26 (d) If a two-step process is used, the department may not
27 request proposed billable rates, fees, or prices in step one. In

1 step two, the department may request that five or fewer offerors,
2 selected on the basis of qualifications, experience, technical
3 competence, and ability to develop the project, provide additional
4 information, including the offeror's:

5 (1) proposed billable rates for preconstruction
6 services and general conditions personnel;

7 (2) proposed fee for home office overhead; and

8 (3) profit fee on the negotiated construction price
9 for performing construction services.

10 (e) If a one-step process is used, proposed billable rates
11 for general conditions personnel must be negotiated on selection of
12 the construction manager.

13 Sec. 223.308. SELECTION OF CONSTRUCTION MANAGER. (a) The
14 department shall:

15 (1) rank the offerors in accordance with the selection
16 criteria provided in the request for proposals under Section
17 223.307(b)(5); and

18 (2) select the offeror that submits the proposal with
19 the highest ranking.

20 (b) The award of a preconstruction services contract under
21 Subsection (a) authorizes the construction manager to:

22 (1) provide consultation to the department and project
23 engineer; and

24 (2) enter into open and transparent negotiations with
25 the department during the design phase of the project to refine the
26 project's cost and schedule for the construction management and
27 construction services contract.

1 (c) The department shall use the services of an independent
2 cost estimator for each work package associated with the project to
3 validate the negotiated costs for the construction management and
4 construction services contract. The independent cost estimator
5 shall follow procedures outlined in the Federal Highway
6 Administration Major Project Program Cost Estimating Guidance, as
7 it existed on September 1, 2023, and as adapted by the department.

8 (d) On successful negotiations under Subsection (b)(2), the
9 department shall execute a construction management and
10 construction services contract with the construction manager for
11 either construction of the project or selected work packages
12 associated with the project.

13 (e) Negotiations under Subsection (b)(2) shall be
14 terminated if the department is unable to reach a price agreement
15 with the construction manager. If negotiations are terminated, the
16 department may competitively bid the construction of the project in
17 accordance with the department's procedures under Subchapter A.

18 (f) Not later than the seventh day after the date a
19 preconstruction services contract is awarded under this section,
20 the department shall make public the selection rankings determined
21 under Subsection (a).

22 Sec. 223.309. PERFORMANCE OF WORK. (a) A construction
23 manager shall perform a minimum percentage of construction work,
24 excluding general conditions work, as required by the department's
25 rules regarding standard specifications for highway and bridge
26 construction.

27 (b) A construction manager shall publicly advertise for

1 bids or proposals and receive bids or proposals from subcontractors
2 for the performance of the remaining construction work.

3 Sec. 223.310. PERFORMANCE OR PAYMENT BOND. The
4 construction manager shall deliver any performance and payment
5 bonds not later than the 10th day after the date the construction
6 manager is awarded a preconstruction services contract under
7 Section 223.308 unless the construction manager furnishes a bid
8 bond or other financial security acceptable to the department to
9 ensure that the construction manager will furnish the required
10 performance and payment bonds when a guaranteed maximum price is
11 established.

12 SECTION 2. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2023.