

By: Bell of Kaufman

H.B. No. 2518

A BILL TO BE ENTITLED

AN ACT

relating to public work contracts, including contracts on public property leased to a nongovernmental entity.

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

SECTION 1. Sections 2253.001(3) and (4), Government Code, are amended to read as follows:

(3) "Prime contractor" means a person, firm, or corporation that makes a public work contract with:

(A) a governmental entity; or

(B) a person who leases any public property.

(4) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work, including work performed on property owned by a governmental entity or on public property leased by the governmental entity to a nongovernmental entity.

SECTION 2. Section 2253.002, Government Code, is amended to read as follows:

Sec. 2253.002. EXEMPTION. This chapter does not apply to a public work contract entered into by:

(1) a state agency relating to an action taken under Subchapter F or I, Chapter 361, Health and Safety Code, or Subchapter I, Chapter 26, Water Code; or

(2) a nongovernmental entity to lease public property from a river authority created under Section 59, Article XVI, Texas

1 Constitution, that owns electric generation capacity in excess of
2 1,000 megawatts.

3 SECTION 3. Section 2253.021(a), Government Code, is amended
4 to read as follows:

5 (a) A governmental entity that enters into [~~makes~~] a public
6 work contract with a prime contractor or authorizes a
7 nongovernmental entity leasing public property from the
8 governmental entity to enter into a public works contract with a
9 prime contractor shall require the contractor, at least 10 days
10 before beginning the work, to execute to the governmental entity:

11 (1) a performance bond if the contract is in excess of
12 \$100,000; and

13 (2) a payment bond if:

14 (A) the contract is in excess of \$25,000, and the
15 governmental entity is not a municipality or a joint board created
16 under Subchapter D, Chapter 22, Transportation Code; or

17 (B) the contract is in excess of \$50,000, and the
18 governmental entity is a municipality or a joint board created
19 under Subchapter D, Chapter 22, Transportation Code.

20 SECTION 4. Sections 2253.024(a) and (b), Government Code,
21 are amended to read as follows:

22 (a) A prime contractor, on the written request of a person
23 who provides public work labor or material and when required by
24 Subsection (c), shall provide to the person:

25 (1) the name and last known address of the
26 governmental entity or nongovernmental leasehold tenant with whom
27 the prime contractor contracted for the public work;

1 (2) a copy of the payment and performance bonds for the
2 public work, including bonds furnished by or to the prime
3 contractor; and

4 (3) the name of the surety issuing the payment bond and
5 the performance bond and the toll-free telephone number maintained
6 by the Texas Department of Insurance under Subchapter B, Chapter
7 521, Insurance Code, for obtaining information concerning licensed
8 insurance companies.

9 (b) A subcontractor, on the written request of a
10 governmental entity, a nongovernmental leasehold tenant with whom
11 the prime contractor contracted, the prime contractor, a surety on
12 a bond that covers the public work contract, or a person providing
13 work under the subcontract and when required by Subsection (c),
14 shall provide to the person requesting the information:

15 (1) the name and last known address of each person from
16 whom the subcontractor purchased public work labor or material,
17 other than public work material from the subcontractor's inventory;

18 (2) the name and last known address of each person to
19 whom the subcontractor provided public work labor or material;

20 (3) a statement of whether the subcontractor furnished
21 a bond for the benefit of its subcontractors and materialmen;

22 (4) the name and last known address of the surety on
23 the bond the subcontractor furnished; and

24 (5) a copy of that bond.

25 SECTION 5. Section 2253.027, Government Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) Notwithstanding Subsection (a), a governmental entity

1 is not liable as a surety under Subsection (a)(1) if a prime
2 contractor of a nongovernmental entity leasing property from the
3 governmental entity fails to submit to the governmental entity the
4 notice of commencement required by Section 2253.0405.

5 SECTION 6. Subchapter C, Chapter 2253, Government Code, is
6 amended by adding Section 2253.0405 to read as follows:

7 Sec. 2253.0405. NOTICE OF COMMENCEMENT REQUIRED FOR CERTAIN
8 PUBLIC WORKS CONTRACTS. A nongovernmental entity leasing public
9 property from a governmental entity that enters into a public works
10 contract with a prime contractor shall require the contractor at
11 least 10 days before beginning the work to submit to the
12 governmental entity a notice of commencement that:

- 13 (1) identifies the contract;
14 (2) identifies the specific leasehold at which the
15 work will be performed;
16 (3) describes the work to be performed; and
17 (4) states the total cost of the work to be performed.

18 SECTION 7. Section 2253.071(a), Government Code, is amended
19 to read as follows:

20 (a) The proceeds of a public work contract are not payable,
21 until all costs of completion of the contract work are paid by the
22 contractor or the contractor's surety, to a contractor who
23 furnishes a bond required by this chapter if:

24 (1) the contractor abandons performance of the
25 contract; or

26 (2) the contractor's right to proceed with performance
27 of the contract is lawfully terminated by the awarding governmental

1 entity or nongovernmental entity leasing public property from the
2 governmental entity because of the contractor's default.

3 SECTION 8. The changes in law made by this Act apply only to
4 a public work contract or construction project for which a
5 governmental entity or a nongovernmental entity leasing public
6 property from the governmental entity first advertises or otherwise
7 requests bids, proposals, offers, or qualifications, or makes a
8 similar solicitation, on or after the effective date of this Act.

9 SECTION 9. This Act takes effect September 1, 2023.