

By: Gervin-Hawkins

H.B. No. 2148

A BILL TO BE ENTITLED

AN ACT

relating to the construction manager-at-risk and design-build methods of project delivery for a public work contract.

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

SECTION 1. Section 2269.253, Government Code, is amended by amending Subsections (d) and (e) and adding Subsection (e-1) to read as follows:

(d) If a one-step process is used, the governmental entity shall ~~may~~ request, as part of the offeror's proposal:

(1) ~~the~~ proposed fees and prices for fulfilling the general conditions; and

(2) proposed prices and methods for preventing and managing the risk of default by a trade contractor or subcontractor.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity shall ~~may~~ request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's:

(1) proposed fee and prices for fulfilling the general conditions; and

(2) proposed prices and methods for preventing and managing the risk of default by a trade contractor or

1 subcontractor.

2 (e-1) A governmental entity's request for proposals in a
3 one-step process or request for qualifications in a two-step
4 process must clearly provide that the proposed prices for
5 fulfilling the general conditions and the proposed prices for
6 preventing and managing risk of default by a trade contractor or
7 subcontractor are allowable costs for all purposes of the
8 construction contract, including for the purpose of calculating the
9 construction manager-at-risk's fee. A provision of a request for
10 proposals, a request for qualifications, or a construction contract
11 entered into under this subchapter that conflicts with the
12 requirements of this subsection has no effect.

13 SECTION 2. Section [2269.255](#), Government Code, is amended by
14 adding Subsections (c), (d), (e), (f), and (g) to read as follows:

15 (c) Except as provided by Subsection (d), if the
16 governmental entity determines that the construction
17 manager-at-risk's bid or proposal provides the best value under
18 Subsection (b)(2) and that bid or proposal is selected, the
19 governmental entity shall compensate the construction
20 manager-at-risk for the performance of that work in the same manner
21 that the governmental entity would have compensated one of the
22 other competing trade contractors or subcontractors that submitted
23 a bid or proposal for the work, as determined by the governmental
24 entity.

25 (d) If one or more bids or proposals received under this
26 section offer to provide services under a stipulated sum contract
27 and the construction manager-at-risk's bid or proposal is selected

1 as described by Subsection (c):

2 (1) the construction manager-at-risk shall be
3 compensated for the work in the manner that a stipulated sum
4 contract would provide; and

5 (2) the price proposed by the construction
6 manager-at-risk may not be audited.

7 (e) A construction manager-at-risk's compensation for the
8 performance of work under Subsection (b) is considered an allowable
9 trade contractor or subcontractor cost for all purposes of the
10 construction contract, including for purposes of calculating the
11 construction manager-at-risk's fee.

12 (f) For purposes of Subsection (d), a "stipulated sum
13 contract" is a contract in which the contractor agrees to provide
14 services for a fixed price resulting in the contractor bearing
15 substantial risk for any underestimated costs to provide the
16 services and is also known as a lump sum contract.

17 (g) A provision of a request for proposals, an advertisement
18 for bids or proposals, or a construction contract entered into
19 under this subchapter that conflicts with the requirements of
20 Subsection (c), (d), or (e) has no effect.

21 SECTION 3. Section [2269.307](#), Government Code, is amended by
22 amending Subsection (e) and adding Subsection (e-1) to read as
23 follows:

24 (e) Except as provided by Subsection (e-1), the [The]
25 governmental entity may request additional information regarding
26 demonstrated competence and qualifications, considerations of the
27 safety and long-term durability of the project, the feasibility of

implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, policies and pricing for preventing and managing the risk of default by a trade contractor or subcontractor, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

(e-1) The governmental entity may not request a guaranteed maximum price or bid for overall design or construction.

SECTION 4. Subchapter G, Chapter 2269, Government Code, is amended by adding Section 2269.3065 to read as follows:

Sec. 2269.3065. PRICES AND METHODS FOR PREVENTING AND MANAGING RISK OF DEFAULT BY TRADE CONTRACTOR OR SUBCONTRACTOR. (a) Any request for proposals, request for qualifications, or construction contract entered into under this subchapter must clearly provide that:

(1) the selected design-build firm may implement the firm's proposed methods of preventing and managing the risk of default by a trade contractor or subcontractor; and

(2) the proposed prices for the methods described by Subdivision (1) are allowable costs for all purposes of the construction contract, including for purposes of calculating the selected design-build firm's fee.

(b) A provision of a request for proposals, a request for

1 qualifications, or a construction contract entered into under this
2 subchapter that conflicts with the requirements of Subsection (a)
3 has no effect.

4 SECTION 5. Subchapter G, Chapter 2269, Government Code, is
5 amended by adding Section 2269.312 to read as follows:

6 Sec. 2269.312. PERFORMANCE OF WORK. (a) A contract entered
7 into under this subchapter must allow the design-build firm to
8 perform portions of the construction work required by the contract
9 instead of contracting with another person to perform that work.

10 (b) The governmental entity may select the design-build
11 firm to perform portions of the construction work required by the
12 contract if:

13 (1) the design-build firm publicly advertises for bids
14 or proposals for the performance of the construction work required
15 by the contract;

16 (2) the design-build firm receives bids or proposals
17 from trade contractors or subcontractors for that work;

18 (3) the design-build firm submits a bid or proposal
19 for that work; and

20 (4) the governmental entity determines that the
21 design-build firm provides the best value for the governmental
22 entity.

23 (c) Sections 2269.255(c), (d), (e), (f), and (g) apply to
24 the compensation of the design-build firm and the construction
25 contract entered into under this subchapter in the same manner as
26 those laws apply to a construction manager-at-risk's compensation
27 and a construction contract entered into under Subchapter F.

1 (d) A provision of a request for proposals, an advertisement
2 for bids or proposals, or a construction contract entered into
3 under this subchapter that conflicts with this section has no
4 effect.

5 SECTION 6. Subchapters [F](#) and [G](#), Chapter [2269](#), Government
6 Code, as amended by this Act, apply only to a request for
7 qualifications or proposals first advertised on or after the
8 effective date of this Act. A request for qualifications or
9 proposals first advertised before the effective date of this Act is
10 governed by the law in effect on the date the request for
11 qualifications or proposals was first advertised, and the former
12 law is continued in effect for that purpose.

13 SECTION 7. This Act takes effect September 1, 2025.