

By: Alvarado

S.B. No. 794

A BILL TO BE ENTITLED

AN ACT

relating to the method used to select engineers and general contractors for certain transportation-related 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.

1 (b) A construction manager serves as the general contractor
2 for a state highway project and assumes the risk for the
3 construction of the state highway at the contracted price.

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

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

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

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

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

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

27 (b) The rules adopted under Subsection (a) must address the

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (5) the selection criteria adopted under Section
15 223.305 and the relative weighted value for each criterion;

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

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

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

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

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

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

27 (d) If a two-step process is used, the department may not

1 request proposed billable rates, fees, or prices in step one. In
2 step two, the department may request that five or fewer offerors,
3 selected on the basis of qualifications, experience, technical
4 competence, and ability to develop the project, provide additional
5 information, including the offeror's:

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

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

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

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

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

16 (1) rank the offerors in accordance with the selection
17 criteria provided in the request for proposals under Section
18 223.307(b)(5); and

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

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

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

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

construction services contract.

(c) The department shall use the services of an independent cost estimator for each work package associated with the project to validate the negotiated costs for the construction management and construction services contract. The independent cost estimator shall follow procedures outlined in the Federal Highway Administration Major Project Program Cost Estimating Guidance, as it existed on September 1, 2025, and as adapted by the department.

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

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

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

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

1 (b) A construction manager shall publicly advertise for
2 bids or proposals and receive bids or proposals from subcontractors
3 for the performance of the remaining construction work.

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

13 SECTION 2. Chapter 370, Transportation Code, is amended by
14 adding Subchapter L to read as follows:

15 SUBCHAPTER L. CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD

16 Sec. 370.451. DEFINITION. In this subchapter,
17 "construction manager-general contractor method" means a delivery
18 method by which an authority contracts with an engineer for design
19 and construction phase services and contracts separately with a
20 construction manager to serve as the general contractor and to
21 provide consultation during the design and construction of a
22 transportation project.

23 Sec. 370.452. USE OF CONSTRUCTION MANAGER-GENERAL
24 CONTRACTOR METHOD. Notwithstanding any other law requiring a
25 particular procurement procedure, including Subchapter E of this
26 chapter, an authority may use the construction manager-general
27 contractor method to select a general contractor for a

1 transportation project as provided by this subchapter.

2 Sec. 370.453. CONSTRUCTION MANAGER. (a) For purposes of
3 this subchapter, a construction manager may be a sole
4 proprietorship, partnership, corporation, or other legal entity.

5 (b) A construction manager serves as the general contractor
6 for a transportation project and assumes the risk for the
7 construction of the project at the contracted price.

8 (c) A construction manager shall provide consultation to an
9 authority regarding construction of a transportation project
10 during and after the design of the project, including consultation
11 regarding preconstruction services such as scheduling, pricing,
12 phasing, technical innovations, site investigation, and risk
13 mitigation.

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

16 Sec. 370.454. USE OF ENGINEER. On or before the selection
17 of a construction manager, an authority shall select an engineer to
18 prepare the construction documents for the transportation project.

19 Sec. 370.455. ADOPTION OF CRITERIA AND RULES. (a) An
20 authority shall adopt weighted selection criteria and rules for the
21 selection process and award of contracts under this subchapter,
22 which may include interviews with top-ranked offerors.

23 (b) The rules adopted under Subsection (a) must address the
24 selection process applicable to the award of a contract for
25 preconstruction services and for construction management and
26 construction services, including the process for contract
27 negotiations with the construction manager for construction of the

1 project or work packages associated with the project in accordance
2 with contract documents.

3 Sec. 370.456. EVALUATION TEAM. (a) Before preparing a
4 request under Section 370.457 for a transportation project, an
5 authority shall appoint a team of at least three members to assist
6 the authority in evaluating proposals and qualifications received
7 by the authority. The members may be authority employees or outside
8 consultants.

9 (b) At least one-half, or as near one-half as possible, of
10 the team members must be engineers registered in this state. An
11 engineer who serves on the team and is not an authority employee may
12 not otherwise be involved in the project for which the request is
13 prepared under Section 370.457.

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

16 (1) is registered as a prequalified general contractor
17 under department rules;

18 (2) is not involved in the project for which the
19 request is prepared under Section 370.457; and

20 (3) has no other conflict of interest as determined by
21 the authority.

22 Sec. 370.457. SELECTION PROCESS. (a) An authority may
23 select the construction manager in a one-step or two-step process.

24 (b) An authority shall prepare a single request for
25 proposals, in the case of a one-step process, and an initial request
26 for qualifications followed by a request for proposals and any
27 required interviews, in the case of a two-step process. A request

prepared under this subsection must include:

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

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

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

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

(5) the selection criteria adopted under Section 370.455 and the relative weighted value for each criterion;

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

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

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

(1) proposed billable rates for preconstruction services personnel;

(2) proposed fee for home office overhead; and

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

(d) If a two-step process is used, an authority may not request proposed billable rates, fees, or prices in step one. In step two, an authority may request that five or fewer offerors, selected on the basis of qualifications, experience, technical competence, and ability to develop the project, provide additional

information, including the offeror's:

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

(2) proposed fee for home office overhead; and

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

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

Sec. 370.458. SELECTION OF CONSTRUCTION MANAGER. (a) An authority shall:

(1) rank the offerors in accordance with the selection criteria provided in the request for proposals under Section 370.457(b)(5); and

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

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

(1) provide consultation to the authority and project engineer; and

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

(c) An authority shall use the services of an independent cost estimator for each work package associated with the project to validate the negotiated costs for the construction management and

construction services contract. The independent cost estimator shall follow procedures outlined in the Federal Highway Administration Major Project Program Cost Estimating Guidance, as it existed on September 1, 2025, and as adapted by the department.

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

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

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

Sec. 370.459. PERFORMANCE OR PAYMENT BOND. The construction manager shall deliver any performance and payment bonds not later than the 10th day after the date the construction manager is awarded a preconstruction services contract under Section 370.458 unless the construction manager furnishes a bid bond or other financial security acceptable to the authority to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2025.