

## **BILL ANALYSIS**

Senate Research Center

S.B. 1331  
By: Ratliff  
State Affairs  
7/14/2003  
Enrolled

### **DIGEST AND PURPOSE**

Currently, provisions in the Government Code relating to construction manager-at-risk and construction manager-agency do not conform with the language in the Education Code. S.B. 1331 aligns the Education Code and Government Code provisions and adds language to the Government Code which authorizes public entities to use a construction manager-agent to represent the owner in a fiduciary capacity. This bill also modifies the Education Code and Government Code sections on construction manager-at-risk if the engineer or architect is selected through a separate procurement process.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter F, Chapter 2166, Government Code, by adding Section 2166.2535, as follows:

Sec. 2166.2535. CONSTRUCTION MANAGER-AGENT. (a) Authorizes the Texas Building and Procurement Commission (TBPC) to use the construction manager-agent method for a project. Requires TBPC to follow the procedures prescribed by this section, in using that method and in entering into a contract for the services of a construction manager-agent.

(b) Provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to TBPC regarding construction, rehabilitation, alteration, or repair of a facility. Authorizes TBPC, when using the construction manager-agent method, to, under the contract between TBPC and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. Provides that a construction manager-agent represents TBPC in a fiduciary capacity.

(c) Requires TBPC, before or concurrently with selecting a construction manager-agent, to select or designate an engineer or architect to prepare the construction documents for the project and to have full responsibility for complying with Chapter 1001(Engineers) or 1051 (Architects), Occupations Code, as applicable. Requires TBPC to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), if the engineer or architect is not a full-time employee of TBPC. Prohibits a TBPC engineer or architect from serving, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit a TBPC engineer or architect from providing customary construction

phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) Requires TBPC to select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004.

(e) Requires TBPC, when using the construction manager-agent method, to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) Requires TBPC or the construction manager-agent to procure, in accordance with Section 2254.004, all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by TBPC.

SECTION 2. Amends Section 2166.2532(c), Government Code, to prohibit TBPC's engineer or architect for a project from serving, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit a TBPC engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws. Makes a conforming change.

SECTION 3. Amends Section 44.038(c), Education Code, to prohibit a school district's engineer, architect, or construction manager-agent for a project from serving, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit the district's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws. Makes a conforming change.

SECTION 4. Amends Section 44.040, Education Code, as follows:

Sec. 44.040. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE BIDDING. (a) Authorizes a school district to use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility, except to the extent prohibited by other law and to the extent consistent with this subchapter.

(b) Provides that except as otherwise specifically provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Provides that Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process under this subchapter.

(c) Requires the district to select or designate an engineer or architect to prepare construction documents for the project. Provides that the selected or designated engineer or architect has full responsibility for complying with Chapter 1001 and Chapter 1051, Occupations Code, as applicable.

(d) Creates this subsection from existing text.

SECTION 5. Amends Section 51.782(c), Education Code, to prohibit an institution of higher education's engineer, architect, or construction manager-agent for a project from serving, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent

procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit the institution's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

SECTION 6. (a) and (b) Make application of this Act prospective.

SECTION 7. Effective date: September 1, 2003.