

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1499
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Infrastructure Development and Security
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, schools, universities and local political subdivisions are the only entities with the ability to use the design-build method of construction. The design-build method of construction allows an architect, engineer, and builder to form a team and bid on a construction project together with the contractor heading up the team. C.S.S.B. 1499 authorizes the Texas Department of Transportation to use the design-build method for certain transportation projects.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 1 (Section 223.175, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 223, Transportation Code, by adding Subchapter E, as follows:

SUBCHAPTER E. DESIGN-BUILD CONTRACTS FOR TRANSPORTATION PROJECTS

Sec. 223.161. DEFINITIONS. Defines "design-build contract," "design-build firm," "transportation project," and "design criteria package."

Sec. 223.162. POWER TO ENTER INTO DESIGN-BUILD CONTRACTS.

(a) Authorizes TxDOT, for a transportation project that has an estimated total cost of more than \$50 million, to use the design-build method under this subchapter for the design and construction of a transportation project and enter into one or more design-build contracts under this subchapter for the services of one or more design-build firms, notwithstanding any other law of this state.

(b) Requires TxDOT to use the procedures provided in this subchapter in entering into a design-build contract.

Sec. 223.163. DEPARTMENT'S REPRESENTATIVE. Requires TxDOT to designate or retain an engineer independent of the design-build firm to act as its representative, prepare the design criteria package, and advise TxDOT on project delivery systems, project definition, technical specifications, risk allocation and related matters.

Sec. 223.164. REQUEST FOR QUALIFICATIONS. (a) Requires TxDOT to prepare a request for qualifications that includes general information about the transportation project, proposed location, project scope, budget, time schedules, selection criteria, and other information that may assist design-build firms in submitting qualifications for the transportation project and a request for proposals that includes more detailed information about the transportation project.

(b) Requires the preparation of the request for qualifications or the request for proposals requiring engineering or architectural services that constitute the practice of engineering under The Texas Engineering Practice Act (Chapter 1001, Occupations Code) or the practice of architecture under Chapter 478, Acts of the

45th Legislature, Regular Session, 1937 (Article 249a, V.T.C.S.), to be provided in accordance with the applicable law.

Sec. 223.165. EVALUATION AND SELECTION OF DESIGN-BUILD FIRM. (a) Requires TxDOT to evaluate and select a design-build firm in two phases.

(b) Requires TxDOT, in phase one, to prepare a request for qualifications and evaluate each responding design-build firm's experience, technical competence, and capability to perform, the past performance of the design-build firm and the members of that firm, and other appropriate factors submitted by that firm, except that cost-related or price-related evaluation factors are prohibited from being used.

(c) Authorizes TxDOT to interview the design-build firms that respond to the request for qualifications, and if TxDOT interviews firms, requires TxDOT to qualify at least two firms for phase two of the evaluation and selection process.

(d) Requires TxDOT, in phase two, to prepare a request for proposals, including the design criteria package, seeking additional information regarding demonstrated technical competence and qualifications, considerations of the safety and long-term durability of the transportation project, the feasibility of developing the project as proposed, the ability of the offeror to meet schedules, alternate technical concepts to the conceptual design included in the design criteria package, costing methodology, construction cost and any other factor TxDOT considers relevant or necessary that is listed in the design criteria package.

(e) Authorizes TxDOT to require the design-build firms to submit detailed engineering or architectural designs as part of their proposals and authorizes interviewing one or more of the design-build firms responding to the request for proposals.

(f) Requires TxDOT to rank each responding design-build firm on the basis of the criteria in the request for proposals and select the design-build firm submitting the proposal that offers the best value considering price, time for project completion, technical evaluation factors, and any other factor described in the request for proposals.

Sec. 223.166. NEGOTIATIONS WITH SELECTED DESIGN-BUILD FIRM. (a) Requires TxDOT to first attempt to negotiate a contract with the selected design-build firm.

(b) Requires TxDOT to follow certain procedures if TxDOT cannot negotiate a satisfactory contract with the selected design-build firm.

Sec. 223.167. ENVIRONMENTAL CLEARANCE. Authorizes TxDOT to terminate the contract if the project does not receive environmental clearance, such as a Record of Decision or a Finding of No Significant Impact.

Sec. 223.168. ALLOCATION OF RISK. Requires TxDOT to assume certain risks.

Sec. 223.169. COMPLETION OF DESIGN BY SELECTED DESIGN-BUILD FIRM.

(a) Requires the engineers of the design-build firm with which TxDOT contracts to submit all specified design elements for review and determination of scope compliance to TxDOT before or concurrently with construction of the transportation project.

(b) Requires an engineer to have responsibility for compliance with the engineering design requirements and all other applicable requirements of The Texas Engineering Practice Act (Chapter 1001, Occupations Code).

Sec. 223.170. INSPECTION AND TESTING SERVICES. (a) Requires TxDOT, for quality assurance purposes, to provide or contract for, independently of the design-build firm, any inspection services or verification testing services necessary for acceptance of the transportation project.

(b) Provides that Section 2254.004 (Professional and Consulting Services), Government Code, applies to the procurement of services contracted for under Subsection (a).

Sec. 223.171. PERFORMANCE AND PAYMENT BONDS. (a) Provides that if a fixed contract amount or guaranteed maximum price has not been determined when a design-build contract is awarded, the penal sums of the performance and payment bonds or equivalent security or collateral delivered by the design-build firm must be in an amount equal to the transportation project budget, as specified in the request for proposals.

(b) Requires the design-build firm to deliver the bonds not later than the 10th day after the date the design-build firm executes a contract unless the design-build firm furnishes a bid bond or other financial security acceptable to TxDOT to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 223.172. PAYMENT TO UNSUCCESSFUL DESIGN-BUILD FIRMS. (a) Requires TxDOT to pay an unsuccessful design-build firm that submits a response to a request for proposals the stipulated amount computed using the stated methodology for costs incurred in preparing that proposal.

(b) Authorizes TxDOT, after payment of the stipulated amount, to make use of any design contained in the proposal, including the technologies, techniques, methods, processes, and information contained in the design. Provides that the use by TxDOT of any design element contained in an unsuccessful proposal is at the sole risk and discretion of TxDOT and does not confer liability on the recipient of the stipulated amount under this section.

(c) Requires the methodology for computing the stipulated amount to be stated in the request for proposals.

Sec. 223.173. DISADVANTAGED AND SMALL BUSINESSES. Requires TxDOT to ensure that disadvantaged and small businesses have an opportunity to participate in the performance of contracts under this subchapter and use the same procedures that exist for removing barriers to participation by disadvantaged and small businesses in other department construction and design contracts.

Sec. 223.174. PROJECTS FUNDED BY FEDERAL FUNDS. Requires a transportation project procured under this subchapter that is funded wholly or partly by federal funds and subject to federal procurement laws, rules, regulations, and procedures, to have the requirements of this subchapter applied in a manner consistent with the applicable federal procurement laws, rules, regulations, and procedures.

Sec. 223.175. RULES. Requires TxDOT to adopt rules to implement and administer this subchapter.

Sec. 223.176. REPORT. Requires TxDOT, not later than December 1, 2008, to submit a report to the legislature relating to the use of design-build contracts under this subchapter as part of the review of TxDOT in 2009 by the Sunset Advisory Commission under Chapter 325, Government Code (Texas Sunset Act).

SECTION 2. Effective date: September 1, 2003.