

AN ACT

relating to procurement procedures for construction-related services for public school districts, institutions of higher education, and the Texas Building and Procurement Commission.

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

SECTION 1. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2535 to read as follows:

Sec. 2166.2535. CONSTRUCTION MANAGER-AGENT. (a) The commission may use the construction manager-agent method for a project. In using that method and in entering into a contract for the services of a construction manager-agent, the commission shall follow the procedures prescribed by this section.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the commission regarding construction, rehabilitation, alteration, or repair of a facility. The commission, when using the construction manager-agent method, may, under the contract between the commission 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. A construction manager-agent represents the commission in a fiduciary capacity.

(c) Before or concurrently with selecting a construction

1 manager-agent, the commission shall select or designate an engineer
2 or architect who shall prepare the construction documents for the
3 project and who has full responsibility for complying with Chapter
4 1001 or 1051, Occupations Code, as applicable. If the engineer or
5 architect is not a full-time employee of the commission, the
6 commission shall select the engineer or architect on the basis of
7 demonstrated competence and qualifications as provided by Section
8 2254.004. A commission engineer or architect may not serve, alone
9 or in combination with another person, as the construction
10 manager-agent unless the engineer or architect is hired to serve as
11 the construction manager-agent under a separate or concurrent
12 procurement conducted in accordance with this subchapter. This
13 subsection does not prohibit a commission engineer or architect
14 from providing customary construction phase services under the
15 engineer's or architect's original professional service agreement
16 in accordance with applicable licensing laws.

17 (d) The commission shall select a construction
18 manager-agent on the basis of demonstrated competence and
19 qualifications in the same manner as provided for the selection of
20 engineers or architects under Section 2254.004.

21 (e) When using the construction manager-agent method, the
22 commission shall procure, in accordance with applicable law and in
23 any manner authorized by this chapter, a general contractor, trade
24 contractors, or subcontractors who will serve as the prime
25 contractor for their specific portion of the work.

26 (f) The commission or the construction manager-agent shall
27 procure in accordance with Section 2254.004 all of the testing of

1 construction materials engineering, the inspection services, and
2 the verification testing services necessary for acceptance of the
3 facility by the commission.

4 SECTION 2. Subsection (c), Section 2166.2532, Government
5 Code, is amended to read as follows:

6 (c) Before or concurrently with selecting a construction
7 manager-at-risk, the commission shall select or designate an
8 engineer or architect who shall prepare the construction documents
9 for the project and who has full responsibility for complying with
10 Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering~~
11 ~~Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or~~
12 ~~Chapter 478, Acts of the 45th Legislature, Regular Session, 1937~~
13 ~~(Article 249a, Vernon's Texas Civil Statutes)] , as applicable. If
14 the engineer or architect is not a full-time employee of the
15 commission, the commission shall select the engineer or architect
16 on the basis of demonstrated competence and qualifications as
17 provided by Section 2254.004. The commission's engineer or
18 architect for a project may not serve, alone or in combination with
19 another, as the construction manager-at-risk unless the engineer or
20 architect is hired to serve as the construction manager-at-risk
21 under a separate or concurrent procurement conducted in accordance
22 with this subchapter. This subsection does not prohibit a
23 commission engineer or architect from providing customary
24 construction phase services under the engineer's or architect's
25 original professional service agreement in accordance with
26 applicable licensing laws.~~

27 SECTION 3. Subsection (c), Section 44.038, Education Code,

1 is amended to read as follows:

2 (c) Before or concurrently with selecting a construction
3 manager-at-risk, the district shall select or designate an engineer
4 or architect who shall prepare the construction documents for the
5 project and who has full responsibility for complying with Chapter
6 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act~~
7 ~~(Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts~~
8 ~~of the 45th Legislature, Regular Session, 1937 (Article 249a,~~
9 ~~Vernon's Texas Civil Statutes)] , as applicable. If the engineer or
10 architect is not a full-time employee of the district, the district
11 shall select the engineer or architect on the basis of demonstrated
12 competence and qualifications as provided by Section 2254.004,
13 Government Code. The district's engineer, architect, or
14 construction manager-agent for a project may not serve, alone or in
15 combination with another, as the construction manager-at-risk
16 unless the engineer or architect is hired to serve as the
17 construction manager-at-risk under a separate or concurrent
18 procurement conducted in accordance with this subchapter. This
19 subsection does not prohibit the district's engineer or architect
20 from providing customary construction phase services under the
21 engineer's or architect's original professional service agreement
22 in accordance with applicable licensing laws.~~

23 SECTION 4. Section 44.040, Education Code, is amended to
24 read as follows:

25 Sec. 44.040. SELECTING CONTRACTOR FOR CONSTRUCTION
26 SERVICES THROUGH COMPETITIVE BIDDING. (a) Except to the extent
27 prohibited by other law and to the extent consistent with this

1 subchapter, a school district may use competitive bidding to select
2 a contractor to perform construction, rehabilitation, alteration,
3 or repair services for a facility.

4 (b) Except as otherwise specifically provided by this
5 subsection, Subchapter B, Chapter 271, Local Government Code, does
6 not apply to a competitive bidding process under this subchapter.
7 Sections 271.026, 271.027(a), and 271.0275, Local Government Code,
8 apply to a competitive bidding process under this subchapter.

9 (c) The district shall select or designate an engineer or
10 architect to prepare construction documents for the project. The
11 selected or designated engineer or architect has full
12 responsibility for complying with Chapter 1001 and Chapter 1051,
13 Occupations Code, as applicable.

14 (d) A school district shall award a competitively bid
15 contract at the bid amount to the bidder offering the best value to
16 the district according to the selection criteria that were
17 established by the district. The selection criteria may include
18 the factors listed in Section 44.031(b).

19 SECTION 5. Subsection (c), Section 51.782, Education Code,
20 is amended to read as follows:

21 (c) Before or concurrently with selecting a construction
22 manager-at-risk, the board shall select or designate an engineer or
23 architect who shall prepare the construction documents for the
24 project and who has full responsibility for complying with Chapter
25 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act~~
26 ~~(Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts~~
27 ~~of the 45th Legislature, Regular Session, 1937 (Article 249a,~~

1 ~~Vernon's Texas Civil Statutes~~], as applicable. If the engineer or
2 architect is not a full-time employee of the institution, the board
3 shall select the engineer or architect on the basis of demonstrated
4 competence and qualifications as provided by Section 2254.004,
5 Government Code. The institution's engineer, architect, or
6 construction manager-agent for a project may not serve, alone or in
7 combination with another, as the construction manager-at-risk
8 unless the engineer or architect is hired to serve as the
9 construction manager-at-risk under a separate or concurrent
10 procurement conducted in accordance with this subchapter. This
11 subsection does not prohibit the institution's engineer or
12 architect from providing customary construction phase services
13 under the engineer's or architect's original professional service
14 agreement in accordance with applicable licensing laws.

15 SECTION 6. (a) The changes in law made by this Act apply
16 only to a construction project for which a bid, proposal, offer, or
17 qualification, as applicable, is first advertised or otherwise
18 solicited on or after September 1, 2003.

19 (b) A construction project for which a bid, proposal, offer,
20 or qualification, as applicable, is first advertised or otherwise
21 solicited before September 1, 2003, is governed by the law as it
22 existed immediately before the effective date of this Act, and that
23 law is continued in effect for that purpose.

24 SECTION 7. This Act takes effect September 1, 2003.

S.B. No. 1331

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1331 passed the Senate on April 16, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 21, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1331 passed the House, with amendment, on May 20, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor