

1-1 By: Ratliff S.B. No. 1331
1-2 (In the Senate - Filed March 13, 2003; March 19, 2003, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 7, 2003, reported favorably by the following vote: Yeas 8,
1-5 Nays 0; April 7, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to procurement procedures for construction-related
1-9 services for public school districts, institutions of higher
1-10 education, and the Texas Building and Procurement Commission.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter F, Chapter 2166, Government Code, is
1-13 amended by adding Section 2166.2535 to read as follows:

1-14 Sec. 2166.2535. CONSTRUCTION MANAGER-AGENT. (a) The
1-15 commission may use the construction manager-agent method for a
1-16 project. In using that method and in entering into a contract for
1-17 the services of a construction manager-agent, the commission shall
1-18 follow the procedures prescribed by this section.

1-19 (b) A construction manager-agent is a sole proprietorship,
1-20 partnership, corporation, or other legal entity that provides
1-21 consultation to the commission regarding construction,
1-22 rehabilitation, alteration, or repair of a facility. The
1-23 commission, when using the construction manager-agent method, may,
1-24 under the contract between the commission and the construction
1-25 manager-agent, require the construction manager-agent to provide
1-26 administrative personnel, equipment necessary to perform duties
1-27 under this section, and on-site management and other services
1-28 specified in the contract. A construction manager-agent represents
1-29 the commission in a fiduciary capacity.

1-30 (c) Before or concurrently with selecting a construction
1-31 manager-agent, the commission shall select or designate an engineer
1-32 or architect who shall prepare the construction documents for the
1-33 project and who has full responsibility for complying with Chapter
1-34 1001 or 1051, Occupations Code, as applicable. If the engineer or
1-35 architect is not a full-time employee of the commission, the
1-36 commission shall select the engineer or architect on the basis of
1-37 demonstrated competence and qualifications as provided by Section
1-38 2254.004. A commission engineer or architect may not serve, alone
1-39 or in combination with another person, as the construction
1-40 manager-agent unless the engineer or architect is hired to serve as
1-41 the construction manager-agent under a separate or concurrent
1-42 procurement conducted in accordance with this subchapter. This
1-43 subsection does not prohibit a commission engineer or architect
1-44 from providing customary construction phase services under the
1-45 engineer's or architect's original professional service agreement
1-46 in accordance with applicable licensing laws.

1-47 (d) The commission shall select a construction
1-48 manager-agent on the basis of demonstrated competence and
1-49 qualifications in the same manner as provided for the selection of
1-50 engineers or architects under Section 2254.004.

1-51 (e) When using the construction manager-agent method, the
1-52 commission shall procure, in accordance with applicable law and in
1-53 any manner authorized by this chapter, a general contractor, trade
1-54 contractors, or subcontractors who will serve as the prime
1-55 contractor for their specific portion of the work.

1-56 (f) The commission or the construction manager-agent shall
1-57 procure in accordance with Section 2254.004 all of the testing of
1-58 construction materials engineering, the inspection services, and
1-59 the verification testing services necessary for acceptance of the
1-60 facility by the commission.

1-61 SECTION 2. Subsection (c), Section 2166.2532, Government
1-62 Code, is amended to read as follows:

1-63 (c) Before or concurrently with selecting a construction
1-64 manager-at-risk, the commission shall select or designate an

2-1 engineer or architect who shall prepare the construction documents
 2-2 for the project and who has full responsibility for complying with
 2-3 Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering~~
 2-4 ~~Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or~~
 2-5 ~~Chapter 478, Acts of the 45th Legislature, Regular Session, 1937~~
 2-6 ~~(Article 249a, Vernon's Texas Civil Statutes)]~~, as applicable. If
 2-7 the engineer or architect is not a full-time employee of the
 2-8 commission, the commission shall select the engineer or architect
 2-9 on the basis of demonstrated competence and qualifications as
 2-10 provided by Section 2254.004. The commission's engineer or
 2-11 architect for a project may not serve, alone or in combination with
 2-12 another, as the construction manager-at-risk unless the engineer or
 2-13 architect is hired to serve as the construction manager-at-risk
 2-14 under a separate or concurrent procurement conducted in accordance
 2-15 with this subchapter. This subsection does not prohibit a
 2-16 commission engineer or architect from providing customary
 2-17 construction phase services under the engineer's or architect's
 2-18 original professional service agreement in accordance with
 2-19 applicable licensing laws.

2-20 SECTION 3. Subsection (c), Section 44.038, Education Code,
 2-21 is amended to read as follows:

2-22 (c) Before or concurrently with selecting a construction
 2-23 manager-at-risk, the district shall select or designate an engineer
 2-24 or architect who shall prepare the construction documents for the
 2-25 project and who has full responsibility for complying with Chapter
 2-26 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act~~
 2-27 ~~(Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts~~
 2-28 ~~of the 45th Legislature, Regular Session, 1937 (Article 249a,~~
 2-29 ~~Vernon's Texas Civil Statutes)]~~, as applicable. If the engineer or
 2-30 architect is not a full-time employee of the district, the district
 2-31 shall select the engineer or architect on the basis of demonstrated
 2-32 competence and qualifications as provided by Section 2254.004,
 2-33 Government Code. The district's engineer, architect, or
 2-34 construction manager-agent for a project may not serve, alone or in
 2-35 combination with another, as the construction manager-at-risk
 2-36 unless the engineer or architect is hired to serve as the
 2-37 construction manager-at-risk under a separate or concurrent
 2-38 procurement conducted in accordance with this subchapter. This
 2-39 subsection does not prohibit the district's engineer or architect
 2-40 from providing customary construction phase services under the
 2-41 engineer's or architect's original professional service agreement
 2-42 in accordance with applicable licensing laws.

2-43 SECTION 4. Subsection (c), Section 51.782, Education Code,
 2-44 is amended to read as follows:

2-45 (c) Before or concurrently with selecting a construction
 2-46 manager-at-risk, the board shall select or designate an engineer or
 2-47 architect who shall prepare the construction documents for the
 2-48 project and who has full responsibility for complying with Chapter
 2-49 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act~~
 2-50 ~~(Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts~~
 2-51 ~~of the 45th Legislature, Regular Session, 1937 (Article 249a,~~
 2-52 ~~Vernon's Texas Civil Statutes)]~~, as applicable. If the engineer or
 2-53 architect is not a full-time employee of the institution, the board
 2-54 shall select the engineer or architect on the basis of demonstrated
 2-55 competence and qualifications as provided by Section 2254.004,
 2-56 Government Code. The institution's engineer, architect, or
 2-57 construction manager-agent for a project may not serve, alone or in
 2-58 combination with another, as the construction manager-at-risk
 2-59 unless the engineer or architect is hired to serve as the
 2-60 construction manager-at-risk under a separate or concurrent
 2-61 procurement conducted in accordance with this subchapter. This
 2-62 subsection does not prohibit the institution's engineer or
 2-63 architect from providing customary construction phase services
 2-64 under the engineer's or architect's original professional service
 2-65 agreement in accordance with applicable licensing laws.

2-66 SECTION 5. (a) The changes in law made by this Act apply
 2-67 only to a construction project for which a bid, proposal, offer, or
 2-68 qualification, as applicable, is first advertised or otherwise
 2-69 solicited on or after September 1, 2003.

3-1 (b) A construction project for which a bid, proposal, offer,
3-2 or qualification, as applicable, is first advertised or otherwise
3-3 solicited before September 1, 2003, is governed by the law as it
3-4 existed immediately before the effective date of this Act, and that
3-5 law is continued in effect for that purpose.

3-6 SECTION 6. This Act takes effect September 1, 2003.

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