

A BILL TO BE ENTITLED

AN ACT

relating to contracts for the design and construction of transportation projects by the Texas Department of Transportation.

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

SECTION 1. Chapter 223, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. DESIGN-BUILD CONTRACTS FOR TRANSPORTATION PROJECTS

Sec. 223.161. DEFINITIONS. In this subchapter:

(1) "Design-build contract" means a single contract for any combination of the following:

(A) preconstruction services, including planning, environmental review, right-of-way services, design services, and engineering services;

(B) construction services, including design during construction; and

(C) post-construction services, including operations and maintenance.

(2) "Design-build firm" means a legal entity or team that includes:

(A) an engineer, an architect, or both; and

(B) a builder qualified to engage in highway construction in this state.

(3) "Transportation project" means any project,

1 including an improvement, addition, or extension to the state
2 highway system, that is undertaken by the department.

3 Sec. 223.162. POWER TO ENTER INTO DESIGN-BUILD CONTRACTS.
4 Notwithstanding any other law of this state, for a transportation
5 project that has an estimated total cost of more than \$50 million,
6 the department may:

7 (1) use the design-build method under this subchapter
8 for the design and construction of a transportation project; and

9 (2) enter into one or more design-build contracts
10 under this subchapter for the services of one or more design-build
11 firms.

12 Sec. 223.163. REQUEST FOR QUALIFICATIONS. (a) The
13 department shall prepare:

14 (1) a request for qualifications that includes general
15 information about the transportation project, proposed location,
16 project scope, budget, time schedules, selection criteria, and
17 other information that may assist design-build firms in submitting
18 qualifications for the transportation project; and

19 (2) a request for proposals that includes more
20 detailed information about the transportation project.

21 (b) If the preparation of the request for qualifications or
22 the request for proposals requires engineering or architectural
23 services that constitute the practice of engineering under The
24 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
25 Statutes) or the practice of architecture under Chapter 478, Acts
26 of the 45th Legislature, Regular Session, 1937 (Article 249a,
27 Vernon's Texas Civil Statutes), those services must be provided in

1 accordance with the applicable law.

2 Sec. 223.164. EVALUATION AND SELECTION OF DESIGN-BUILD
3 FIRM. (a) The department shall evaluate and select a design-build
4 firm in two phases.

5 (b) In phase one, the department shall prepare a request for
6 qualifications and evaluate each responding design-build firm's
7 experience, technical competence, and capability to perform, the
8 past performance of the design-build firm and the members of that
9 firm, and other appropriate factors submitted by that firm, except
10 that cost-related or price-related evaluation factors may not be
11 used.

12 (c) Each design-build firm that responds to the request for
13 qualifications:

14 (1) must certify to the department that each engineer
15 or architect who is a member of the design-build firm is authorized
16 to practice engineering or architecture under the applicable law of
17 this state; and

18 (2) shall have responsibility for compliance with the
19 requirements of that law.

20 (d) The department may interview the design-build firms
21 that respond to the request for qualifications, and if the
22 department interviews firms, the department must qualify at least
23 two firms for phase two of the evaluation and selection process.

24 (e) In phase two, the department shall prepare a request for
25 proposals seeking additional information regarding demonstrated
26 technical competence and qualifications, considerations of the
27 safety and long-term durability of the transportation project, the

1 feasibility of developing the project as proposed, the ability of
2 the offeror to meet schedules, costing methodology, and any other
3 factor the department considers relevant or necessary.

4 (f) The department may require the design-build firms to
5 submit detailed engineering or architectural designs as part of
6 their proposals and may interview one or more of the design-build
7 firms responding to the request for proposals.

8 (g) The department shall rank each responding design-build
9 firm on the basis of the criteria in the request for proposals and
10 select the design-build firm submitting the proposal that offers
11 the best value considering price, time for project completion,
12 technical evaluation factors, and any other factor described in the
13 request for proposals.

14 Sec. 223.165. NEGOTIATIONS WITH SELECTED DESIGN-BUILD
15 FIRM. (a) The department shall first attempt to negotiate a
16 contract with the selected design-build firm.

17 (b) If the department cannot negotiate a satisfactory
18 contract with the selected design-build firm, it shall:

19 (1) formally and in writing end negotiations with that
20 firm; and

21 (2) attempt to negotiate with the next design-build
22 firm in the order of the selection ranking until:

23 (A) a contract is entered into;

24 (B) negotiations with all ranked firms end; or

25 (C) the department determines that it is no
26 longer in the best interest of this state to enter into a
27 design-build contract for the proposed transportation project.

1 Sec. 223.166. COMPLETION OF DESIGN BY SELECTED DESIGN-BUILD
2 FIRM. (a) The engineers or architects of the design-build firm
3 with which the department contracts shall submit all specified
4 design elements for review and determination of scope compliance to
5 the department before or concurrently with construction of the
6 transportation project.

7 (b) An engineer shall have responsibility for compliance
8 with the engineering design requirements and all other applicable
9 requirements of The Texas Engineering Practice Act (Article 3271a,
10 Vernon's Texas Civil Statutes).

11 (c) An architect shall have responsibility for compliance
12 with all applicable requirements of Chapter 478, Acts of the 45th
13 Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas
14 Civil Statutes).

15 Sec. 223.167. INSPECTION AND TESTING SERVICES. (a) For
16 quality assurance purposes, the department shall provide or
17 contract for, independently of the design-build firm, any
18 inspection services or verification testing services necessary for
19 acceptance of the transportation project.

20 (b) Section 2254.004, Government Code, applies to the
21 procurement of services contracted for under Subsection (a).

22 Sec. 223.168. PERFORMANCE AND PAYMENT BONDS. (a) If a
23 fixed contract amount or guaranteed maximum price has not been
24 determined when a design-build contract is awarded, the penal sums
25 of the performance and payment bonds or equivalent security or
26 collateral delivered by the design-build firm must be in an amount
27 equal to the transportation project budget, as specified in the

1 request for proposals.

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

8 Sec. 223.169. PAYMENT TO UNSUCCESSFUL DESIGN-BUILD FIRMS.

9 (a) The department shall pay an unsuccessful design-build firm
10 that submits a response to a request for proposals the stipulated
11 amount computed using the stated methodology for costs incurred in
12 preparing that proposal.

13 (b) After payment of the stipulated amount, the department
14 owns the rights to, and at its own risk may reproduce, transfer,
15 publish, or make use of, any design contained in the proposal,
16 including the technologies, techniques, methods, processes, and
17 information contained in the design.

18 (c) The methodology for computing the stipulated amount
19 must be stated in the request for proposals.

20 Sec. 223.170. DISADVANTAGED AND SMALL BUSINESSES. The
21 department shall:

22 (1) ensure that disadvantaged and small businesses
23 have an opportunity to participate in the performance of contracts
24 under this subchapter; and

25 (2) use the same procedures that exist for removing
26 barriers to participation by disadvantaged and small businesses in
27 other department construction and design contracts.

1 Sec. 223.171. PROJECTS FUNDED BY FEDERAL FUNDS. If a
2 transportation project procured under this subchapter is funded
3 wholly or partly by federal funds and subject to federal
4 procurement laws, rules, regulations, and procedures, the
5 requirements of this subchapter shall be applied in a manner
6 consistent with the applicable federal procurement laws, rules,
7 regulations, and procedures.

8 Sec. 223.172. RULES. The department shall adopt rules to
9 implement and administer this subchapter.

10 SECTION 2. This Act takes effect September 1, 2003.