

1-1 By: Madla, et al. S.B. No. 1499
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Infrastructure Development
1-4 and Security; April 30, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 1;
1-6 April 30, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1499 By: Madla

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to contracts for the design and construction of
1-11 transportation projects by the Texas Department of Transportation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 223, Transportation Code, is amended by
1-14 adding Subchapter E to read as follows:

1-15 SUBCHAPTER E. DESIGN-BUILD CONTRACTS FOR TRANSPORTATION PROJECTS

1-16 Sec. 223.161. DEFINITIONS. In this subchapter:

1-17 (1) "Design-build contract" means a single contract
1-18 for any combination of the following:

1-19 (A) preconstruction services, including
1-20 planning, environmental review, right-of-way services, design
1-21 services, and engineering services;

1-22 (B) construction services, including design
1-23 during construction; and

1-24 (C) postconstruction services, including
1-25 operations and maintenance.

1-26 (2) "Design-build firm" means a legal entity or team
1-27 that includes:

1-28 (A) an engineering firm registered under Chapter
1-29 1001, Occupations Code; and

1-30 (B) a builder qualified to engage in highway
1-31 construction in this state.

1-32 (3) "Transportation project" means an improvement,
1-33 addition, or extension to the state highway system, or a turnpike
1-34 project, that is undertaken by the department.

1-35 (4) "Design criteria package" means a set of documents
1-36 that provides sufficient information to permit a design-build firm
1-37 to prepare a response to the department's request for
1-38 qualifications and request for proposals and includes the criteria
1-39 for selection. A design criteria package shall include a
1-40 description of the project site, survey information, cost or budget
1-41 requirements, time schedules, conceptual design, a geotechnical
1-42 baseline report, quality assurance and quality control
1-43 requirements, special material requirements, applicable
1-44 ordinances, provisions for utilities, and any other applicable
1-45 information, as appropriate.

1-46 Sec. 223.162. POWER TO ENTER INTO DESIGN-BUILD CONTRACTS.

1-47 (a) Notwithstanding any other law of this state, for a
1-48 transportation project that has an estimated total cost of more
1-49 than \$50 million, the department may:

1-50 (1) use the design-build method under this subchapter
1-51 for the design and construction of a transportation project; and

1-52 (2) enter into one or more design-build contracts
1-53 under this subchapter for the services of one or more design-build
1-54 firms.

1-55 (b) In entering into a design-build contract, the
1-56 department shall use the procedures provided in this subchapter.

1-57 Sec. 223.163. DEPARTMENT'S REPRESENTATIVE. The department
1-58 shall designate or retain an engineer independent of the
1-59 design-build firm to act as its representative, prepare the design
1-60 criteria package, and advise the department on project delivery
1-61 systems, project definition, technical specifications, risk
1-62 allocation and related matters.

2-1 Sec. 223.164. REQUEST FOR QUALIFICATIONS. (a) The
2-2 department shall prepare:

2-3 (1) a request for qualifications that includes general
2-4 information about the transportation project, proposed location,
2-5 project scope, budget, time schedules, selection criteria, and
2-6 other information that may assist design-build firms in submitting
2-7 qualifications for the transportation project; and

2-8 (2) a request for proposals that includes a design
2-9 criteria package and more detailed information about the
2-10 transportation project.

2-11 (b) If the preparation of the request for qualifications or
2-12 the request for proposals requires engineering or architectural
2-13 services that constitute the practice of engineering under Chapter
2-14 1001, Occupations Code, or the practice of architecture under
2-15 Chapter 1051, Occupations Code, those services must be provided in
2-16 accordance with the applicable law.

2-17 Sec. 223.165. EVALUATION AND SELECTION OF DESIGN-BUILD
2-18 FIRM. (a) The department shall evaluate and select a design-build
2-19 firm in two phases.

2-20 (b) In phase one, the department shall prepare a request for
2-21 qualifications and evaluate each responding design-build firm's
2-22 experience, technical competence, and capability to perform, the
2-23 past performance of the design-build firm and the members of that
2-24 firm, and other appropriate factors submitted by that firm, except
2-25 that cost-related or price-related evaluation factors may not be
2-26 used.

2-27 (c) The department may interview the design-build firms
2-28 that respond to the request for qualifications. The department
2-29 shall qualify at least two and a maximum of five firms to
2-30 participate in phase two of the evaluation and selection process.

2-31 (d) In phase two, the department shall prepare a request for
2-32 proposals, including the design criteria package, seeking
2-33 additional information regarding demonstrated technical competence
2-34 and qualifications, considerations of the safety and long-term
2-35 durability of the transportation project, the feasibility of
2-36 developing the project as proposed, the ability of the offeror to
2-37 meet schedules, alternate technical concepts to the conceptual
2-38 design included in the design criteria package, costing
2-39 methodology, construction cost, and any other factor the department
2-40 considers relevant or necessary that is listed in the design
2-41 criteria package.

2-42 (e) The department may require the design-build firms to
2-43 submit detailed engineering or architectural designs as part of
2-44 their proposals and may interview the design-build firms responding
2-45 to the request for proposals.

2-46 (f) The department shall rank each responding design-build
2-47 firm on the basis of the criteria in the request for proposals and
2-48 select the design-build firm submitting the proposal that offers
2-49 the best value considering price, time for project completion,
2-50 technical evaluation factors, and any other factor described in the
2-51 request for proposals.

2-52 Sec. 223.166. NEGOTIATIONS WITH SELECTED DESIGN-BUILD
2-53 FIRM. (a) The department shall first attempt to negotiate a
2-54 contract with the selected design-build firm.

2-55 (b) If the department cannot negotiate a satisfactory
2-56 contract with the selected design-build firm, it shall:

2-57 (1) formally and in writing end negotiations with that
2-58 firm; and

2-59 (2) attempt to negotiate with the next design-build
2-60 firm in the order of the selection ranking until:

2-61 (A) a contract is entered into;
2-62 (B) negotiations with all ranked firms end; or
2-63 (C) the department determines that it is no
2-64 longer in the best interest of this state to enter into a
2-65 design-build contract for the proposed transportation project.

2-66 Sec. 223.167. ENVIRONMENTAL CLEARANCE. The department may
2-67 terminate the contract if the project does not receive
2-68 environmental clearance, such as a record of decision or a finding
2-69 of no significant impact.

3-1 Sec. 223.168. ALLOCATION OF RISK. The department shall
3-2 assume all risks associated with:

- 3-3 (1) scope changes and modifications;
- 3-4 (2) regulatory compliance and permitting; and
- 3-5 (3) differing site conditions.

3-6 Sec. 223.169. COMPLETION OF DESIGN BY SELECTED DESIGN-BUILD
3-7 FIRM. (a) The engineers of the design-build firm with which the
3-8 department contracts shall submit all specified design elements for
3-9 review and determination of scope compliance to the department
3-10 before or concurrently with construction of the transportation
3-11 project.

3-12 (b) An engineer shall have responsibility for compliance
3-13 with the engineering design requirements and all other applicable
3-14 requirements of Chapter 1001, Occupations Code.

3-15 Sec. 223.170. INSPECTION AND TESTING SERVICES. (a) For
3-16 quality assurance purposes, the department shall provide or
3-17 contract for, independently of the design-build firm, any
3-18 inspection services or verification testing services necessary for
3-19 acceptance of the transportation project.

3-20 (b) Section 2254.004, Government Code, applies to the
3-21 procurement of services contracted for under Subsection (a).

3-22 Sec. 223.171. PERFORMANCE AND PAYMENT BONDS. (a) If a
3-23 fixed contract amount or guaranteed maximum price has not been
3-24 determined when a design-build contract is awarded, the penal sums
3-25 of the performance and payment bonds or equivalent security or
3-26 collateral delivered by the design-build firm must be in an amount
3-27 equal to the transportation project budget, as specified in the
3-28 request for proposals.

3-29 (b) The design-build firm shall deliver the bonds not later
3-30 than the 10th day after the date the design-build firm executes a
3-31 contract unless the design-build firm furnishes a bid bond or other
3-32 financial security acceptable to the department to ensure that the
3-33 design-build firm will furnish the required performance and payment
3-34 bonds when a guaranteed maximum price is established.

3-35 Sec. 223.172. PAYMENT TO UNSUCCESSFUL DESIGN-BUILD FIRMS.
3-36 (a) The department shall pay an unsuccessful design-build firm
3-37 that submits a complete response to a request for proposals the
3-38 stipulated amount computed using the stated methodology for costs
3-39 incurred in preparing that proposal.

3-40 (b) After payment of the stipulated amount, the department
3-41 may make use of any design contained in the proposal, including the
3-42 technologies, techniques, methods, processes, and information
3-43 contained in the design. The use by the department of any design
3-44 element contained in an unsuccessful proposal is at the sole risk
3-45 and discretion of the department and does not confer liability on
3-46 the recipient of the stipulated amount under this section.

3-47 (c) The methodology for computing the stipulated amount of
3-48 the stipend must be stated in the request for proposals.

3-49 Sec. 223.173. DISADVANTAGED AND SMALL BUSINESSES. The
3-50 department shall:

3-51 (1) ensure that disadvantaged and small businesses
3-52 have an opportunity to participate in the performance of contracts
3-53 under this subchapter; and

3-54 (2) use the same procedures that exist for removing
3-55 barriers to participation by disadvantaged and small businesses in
3-56 other department construction and design contracts.

3-57 Sec. 223.174. PROJECTS FUNDED BY FEDERAL FUNDS. If a
3-58 transportation project procured under this subchapter is funded
3-59 wholly or partly by federal funds and subject to federal
3-60 procurement laws, rules, regulations, and procedures, the
3-61 requirements of this subchapter shall be applied in a manner
3-62 consistent with the applicable federal procurement laws, rules,
3-63 regulations, and procedures.

3-64 Sec. 223.175. RULES. The department shall adopt rules to
3-65 implement and administer this subchapter.

3-66 Sec. 223.176. REPORT. Not later than December 1, 2008, the
3-67 department shall submit a report to the legislature relating to the
3-68 use of design-build contracts under this subchapter as part of the
3-69 review of the department in 2009 by the Sunset Advisory Commission

4-1 under Chapter 325, Government Code (Texas Sunset Act).
4-2 SECTION 2. This Act takes effect September 1, 2003.

4-3

* * * * *