

## **BILL ANALYSIS**

Senate Research Center

H.B. 2300  
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Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Metropolitan Transit Authorities (authorities) created under Chapter 451 (Metropolitan Rapid Transit Authorities), Transportation Code, are challenged, as are Texas Department of Transportation Regional Mobility Authorities and other entities within this state, to deliver much-needed transportation projects as quickly as possible with constrained budgets. The current purchasing provisions in Chapter 451 do not provide for alternative project delivery methods that could be used to expedite project delivery and reduce costs, change orders, claims, and litigation that frequently afflict large complex transportation infrastructure projects.

This bill allows authorities to utilize an alternative method called a hybrid delivery system, which in essence employs the principles typically found under a design-build project delivery system. It also reflects an agreement reached with the engineering community.

H.B. 2300 allows certain Metropolitan Transit Authorities created under Chapter 451 the option to utilize a hybrid delivery system for transit projects over \$100 million or as identified in a referendum approved by the public, as opposed to competitive bidding.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 451, Transportation Code, by adding Subchapter Q, as follows:

#### **SUBCHAPTER Q. HYBRID DELIVERY SYSTEM FOR CERTAIN CONSTRUCTION PROJECTS**

Sec. 451.801. DEFINITIONS. Defines "civil works components," "system components," "design development," "facility," "facility provider," and "hybrid delivery system."

Sec. 451.802. APPLICABILITY. Provides that this subchapter applies only to a rapid transit authority created under this chapter or under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (authority) in which the principal municipality has a population of more than 1.2 million.

Sec. 451.803. USE PERMITTED. Authorizes an authority, notwithstanding any other law, an authority may use a hybrid delivery system for construction of a facility as provided by this subchapter.

Sec. 451.804. SELECTION OF ENGINEER OR TEAM. (a) Requires an authority to select an engineer or an engineering and architecture team for the design of the civil works components of the facility. Requires the authority to select an engineer or team in accordance with Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code.

(b) Requires a selected engineer or team to comply with Chapter 1001 (Engineers), Occupations Code.

(c) Requires the authority to enter into a contract with the selected engineer or team to provide planning and design development services and an estimate of final design costs. Authorizes the contract to also include construction management.

Sec. 451.805. REQUEST FOR PROPOSALS. Requires the authority to issue requests for proposals from facility providers after the completion of design development documents by the engineer or team. Requires the request for proposals to include general information on the project site, project scope, budget, schedule, system criteria, selection criteria, and any other information that may assist potential facility providers in submitting proposals for the project.

Sec. 451.806. EVALUATION OF PROPOSALS. (a) Requires the authority to evaluate certain information relating to the provider and the project for each proposal submitted by a facility provider in response to a request for proposals.

(b) Requires the authority to rank two to four facility providers that best meet the selection criteria.

Sec. 451.807. SELECTION OF FACILITY PROVIDER. (a) Requires the authority to select the facility provider that submits the proposal that offers the best value for the authority on the basis of the published selection criteria and price.

(b) Requires the authority to first attempt to negotiate a contract with the first-ranked provider in the order of the ranking established under Section 451.806(b). Authorizes the authority and the engineer or team selected under Section 451.804 to discuss with the selected provider options for a scope or time modification and any price change associated with the modification before finalizing a contract with the selected provider. Requires the authority, if the authority is unable to negotiate a contract with the selected provider, to end negotiations with the selected provider in writing and proceed to negotiate a contract with the next provider in the order of the ranking established under Section 451.806(b) until a contract is entered into or all proposals are rejected.

Sec. 451.808. FINAL DESIGN CONTRACTS. (a) Requires the authority, in consultation with the selected facility provider, to negotiate with the engineer or team selected under Section 451.804 on the scope of work and fees associated with final design of the civil works components and integration of system components and civil works components of the facility.

(b) Requires a contract for final design to be incorporated into the authority's contract with the selected facility provider. Requires any subsequent changes to a contract with the engineer or team to be approved by the facility provider and the authority.

(c) Requires the authority, in a contract with a selected facility provider, to provide a mechanism under which issues of design quality, quality assurance, code compliance, value engineering, or life cycle costing may be communicated directly by the engineer or team to the facility provider and the authority with the intent of seeking the authority's approval of proposed action.

(d) Provides that the selected facility provider's oversight of the engineer or team is limited to serving certain functions.

(e) Prohibits fees associated with the items listed in Subsection (d) from exceeding eight percent of final design fees unless otherwise amended by the engineer or team through allocation of a portion of the engineer or team fee to the selected facility provider for specialty design assistance.

Sec. 451.809. USE OF OTHER PROFESSIONAL SERVICES. (a) Requires the authority, if the authority performs periodic audits of its construction materials, independent of the selected facility provider, to contract for the inspection and testing of construction materials and other verification testing services necessary for the acceptance of the facility by the authority.

(b) Provides that a contract under Subsection (a) does not alleviate the selected facility provider's responsibility to provide the services described by Subsection (a) under a contract entered into under this subchapter.

(c) Provides that a contract described by Subsection (a) and any additional contract for engineering or architecture services entered into by the selected facility provider for the design and construction of the facility must be entered into in accordance with Section 2254.004, Government Code.

Sec. 451.810. CONSTRUCTION WORK SUBCONTRACTED. (a) Authorizes the authority to require that the selected facility provider publicly advertise for and receive bids or proposals from trade contractors or subcontractors for the construction of civil works components of the facility.

(b) Authorizes the selected facility provider to submit a bid or proposal for the work described in Subsection (a) in the same manner as other trade contractors or subcontractors.

Sec. 451.811. LOCAL PREFERENCE. Requires the authority, to the maximum extent permitted by law, to use vendors and providers of services with an established office in the principal municipality.

Sec. 451.812. EXPIRATION. Provides that this subchapter expires on August 31, 2015.

SECTION 2. Amends Section 451.110(a), Transportation Code, to create an exception to this subsection as provided by Subchapter Q.

SECTION 3. Amends Section 451.111(a), Transportation Code, to create an exception to this subsection as provided by Subchapter Q.

SECTION 4. Effective date: September 1, 2005.