

1-1 By: Turner (Senate Sponsor - Whitmire) H.B. No. 2300  
1-2 (In the Senate - Received from the House May 16, 2005;  
1-3 May 17, 2005, read first time and referred to Committee on  
1-4 Transportation and Homeland Security; May 20, 2005, reported  
1-5 favorably by the following vote: Yeas 6, Nays 0; May 20, 2005,  
1-6 sent to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to the authority of metropolitan rapid transit authorities  
1-10 to enter into comprehensive development agreements.

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

1-12 SECTION 1. Chapter 451, Transportation Code, is amended by  
1-13 adding Subchapter Q to read as follows:

1-14 SUBCHAPTER Q. HYBRID DELIVERY SYSTEM FOR CERTAIN CONSTRUCTION  
1-15 PROJECTS

1-16 Sec. 451.801. DEFINITIONS. In this subchapter:

1-17 (1) "Civil works components" means:

1-18 (A) underground utilities;

1-19 (B) paving;

1-20 (C) drainage;

1-21 (D) structures, including elevated platforms and  
1-22 bridges;

1-23 (E) components related to vehicular traffic;

1-24 (F) primary power distribution systems;

1-25 (G) transfer stations, depots, and other  
1-26 architectural features, including related mechanical, electrical,  
1-27 and plumbing systems; and

1-28 (H) all other aspects of a project not defined as  
1-29 system components.

1-30 (2) "System components" means the components of a  
1-31 transit system that are related directly to system operations,  
1-32 including rolling stock, tracks, guideway systems, and special  
1-33 signal and communications systems.

1-34 (3) "Design development" means drawings and other  
1-35 documents that are:

1-36 (A) approximately 30 percent complete; and

1-37 (B) sufficient to fix and describe the size and  
1-38 character of the project as to civil work, architectural systems,  
1-39 structural systems, mechanical and electrical systems, materials,  
1-40 equipment, and technology, including schematic layouts and  
1-41 conceptual design criteria.

1-42 (4) "Facility" means a single transit project:

1-43 (A) with a proposed cost of more than \$100  
1-44 million; or

1-45 (B) as identified in a referendum approved by the  
1-46 voters.

1-47 (5) "Facility provider" means a partnership,  
1-48 corporation, joint venture, consortium, special purchase company,  
1-49 or other legal entity or team responsible for:

1-50 (A) providing and installing the system  
1-51 components for a facility; and

1-52 (B) constructing the associated civil works  
1-53 components.

1-54 (6) "Hybrid delivery system" means the alternative  
1-55 procurement procedure provided by this subchapter.

1-56 Sec. 451.802. APPLICABILITY. This subchapter applies only  
1-57 to an authority in which the principal municipality has a  
1-58 population of more than 1.2 million.

1-59 Sec. 451.803. USE PERMITTED. Notwithstanding any other  
1-60 law, an authority may use a hybrid delivery system for construction  
1-61 of a facility as provided by this subchapter.

1-62 Sec. 451.804. SELECTION OF ENGINEER OR TEAM. (a) An  
1-63 authority shall select an engineer or an engineering and  
1-64 architecture team for the design of the civil works components of

2-1 the facility. The authority shall select an engineer or team in  
 2-2 accordance with Section 2254.004, Government Code.

2-3 (b) A selected engineer or team shall comply with Chapter  
 2-4 1001, Occupations Code.

2-5 (c) The authority shall enter into a contract with the  
 2-6 selected engineer or team to provide planning and design  
 2-7 development services and an estimate of final design costs. The  
 2-8 contract may also include construction management.

2-9 Sec. 451.805. REQUEST FOR PROPOSALS. After the completion  
 2-10 of design development documents by the engineer or team, the  
 2-11 authority shall issue requests for proposals from facility  
 2-12 providers. The request for proposals shall include general  
 2-13 information on the project site, project scope, budget, schedule,  
 2-14 system criteria, selection criteria, and any other information that  
 2-15 may assist potential facility providers in submitting proposals for  
 2-16 the project.

2-17 Sec. 451.806. EVALUATION OF PROPOSALS. (a) For each  
 2-18 proposal submitted by a facility provider in response to a request  
 2-19 for proposals, the authority shall evaluate:

- 2-20 (1) the provider's experience and qualifications;  
 2-21 (2) the provider's technical competence and capability  
 2-22 to perform;  
 2-23 (3) the provider's past performance, including past  
 2-24 performance of members of the provider's team;  
 2-25 (4) proposed technology;  
 2-26 (5) feasibility of implementing the project as  
 2-27 proposed;  
 2-28 (6) costing methodology; and  
 2-29 (7) other information submitted on the basis of the  
 2-30 selection criteria stated in the request for proposals.

2-31 (b) The authority shall rank two to four facility providers  
 2-32 that best meet the selection criteria.

2-33 Sec. 451.807. SELECTION OF FACILITY PROVIDER. (a) The  
 2-34 authority shall select the facility provider that submits the  
 2-35 proposal that offers the best value for the authority on the basis  
 2-36 of the published selection criteria and price.

2-37 (b) The authority shall first attempt to negotiate a  
 2-38 contract with the first-ranked provider in the order of the ranking  
 2-39 established under Section 451.806(b). The authority and the  
 2-40 engineer or team selected under Section 451.804 may discuss with  
 2-41 the selected provider options for a scope or time modification and  
 2-42 any price change associated with the modification before finalizing  
 2-43 a contract with the selected provider. If the authority is unable  
 2-44 to negotiate a contract with the selected provider, the authority  
 2-45 shall end negotiations with the selected provider in writing and  
 2-46 proceed to negotiate a contract with the next provider in the order  
 2-47 of the ranking established under Section 451.806(b) until a  
 2-48 contract is entered into or all proposals are rejected.

2-49 Sec. 451.808. FINAL DESIGN CONTRACTS. (a) In consultation  
 2-50 with the selected facility provider, the authority shall negotiate  
 2-51 with the engineer or team selected under Section 451.804 on the:

- 2-52 (1) scope of work and fees associated with final  
 2-53 design of the civil works components; and  
 2-54 (2) integration of system components and civil works  
 2-55 components of the facility.

2-56 (b) A contract for final design shall be incorporated into  
 2-57 the authority's contract with the selected facility provider. Any  
 2-58 subsequent changes to a contract with the engineer or team must be  
 2-59 approved by the facility provider and the authority.

2-60 (c) In a contract with a selected facility provider, the  
 2-61 authority shall provide a mechanism under which issues of design  
 2-62 quality, quality assurance, code compliance, value engineering, or  
 2-63 life cycle costing may be communicated directly by the engineer or  
 2-64 team to the facility provider and the authority with the intent of  
 2-65 seeking the authority's approval of proposed action.

2-66 (d) The selected facility provider's oversight of the  
 2-67 engineer or team is limited to:

- 2-68 (1) design management;  
 2-69 (2) coordination of the civil works components;

3-1 (3) integration of the design of system components  
3-2 into the civil works; and

3-3 (4) the acceptance of items listed under Subdivisions  
3-4 (1)-(3) with regard to the facility provider's assumption of  
3-5 responsibility for contract compliance, performance warranties and  
3-6 guarantees, and other risk-related items as stipulated in the  
3-7 contract between the selected facility provider and the authority.

3-8 (e) Fees associated with the items listed in Subsection (d)  
3-9 may not exceed eight percent of final design fees unless otherwise  
3-10 amended by the engineer or team through allocation of a portion of  
3-11 the engineer or team fee to the selected facility provider for  
3-12 specialty design assistance.

3-13 Sec. 451.809. USE OF OTHER PROFESSIONAL SERVICES. (a) If  
3-14 the authority performs periodic audits of its construction  
3-15 materials, the authority, independent of the selected facility  
3-16 provider, shall contract for the inspection and testing of  
3-17 construction materials and other verification testing services  
3-18 necessary for the acceptance of the facility by the authority.

3-19 (b) A contract under Subsection (a) does not alleviate the  
3-20 selected facility provider's responsibility to provide the  
3-21 services described by Subsection (a) under a contract entered into  
3-22 under this subchapter.

3-23 (c) A contract described by Subsection (a) and any  
3-24 additional contract for engineering or architecture services  
3-25 entered into by the selected facility provider for the design and  
3-26 construction of the facility must be entered into in accordance  
3-27 with Section 2254.004, Government Code.

3-28 Sec. 451.810. CONSTRUCTION WORK SUBCONTRACTED. (a) The  
3-29 authority may require that the selected facility provider publicly  
3-30 advertise for and receive bids or proposals from trade contractors  
3-31 or subcontractors for the construction of civil works components of  
3-32 the facility.

3-33 (b) The selected facility provider may submit a bid or  
3-34 proposal for the work described in Subsection (a) in the same manner  
3-35 as other trade contractors or subcontractors.

3-36 Sec. 451.811. LOCAL PREFERENCE. To the maximum extent  
3-37 permitted by law, the authority shall use vendors and providers of  
3-38 services with an established office in the principal municipality.

3-39 Sec. 451.812. EXPIRATION. This subchapter expires on  
3-40 August 31, 2015.

3-41 SECTION 2. Section 451.110(a), Transportation Code, is  
3-42 amended to read as follows:

3-43 (a) Except as provided by Subsection (c) and by Subchapter  
3-44 Q, a board may not contract for the construction of an improvement  
3-45 or the purchase of any property, except through competitive bidding  
3-46 after notice of the contract proposal. The notice must be published  
3-47 in a newspaper of general circulation in the area in which the  
3-48 authority is located at least once each week for two consecutive  
3-49 weeks before the date set for receiving the bids. The first notice  
3-50 must be published at least 15 days before the date set for receiving  
3-51 bids.

3-52 SECTION 3. Section 451.111(a), Transportation Code, is  
3-53 amended to read as follows:

3-54 (a) Except as provided by Subchapter Q, unless [Unless] the  
3-55 posting requirement in Subsection (b) is satisfied, a board may not  
3-56 let a contract that is:

- 3-57 (1) for more than \$25,000; and
- 3-58 (2) for:
  - 3-59 (A) the purchase of real property; or
  - 3-60 (B) consulting or professional services.

3-61 SECTION 4. This Act takes effect September 1, 2005.

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