

By: Callegari

H.B. No. 2525

A BILL TO BE ENTITLED

AN ACT

relating to contracts by governmental entities for construction projects and related professional services.

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

SECTION 1. Section 2166.2525, Government Code, is amended to read as follows:

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The ~~[commission shall adopt rules that determine the circumstances for use of each]~~ method of contracting allowed under this subchapter for design and construction services is any method provided by Chapter 2264. ~~[In developing the rules, the commission shall solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.]~~

SECTION 2. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.

(2) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.

1           (3) "Facility" means an improvement to real property.

2           (4) "General conditions" in the context of a contract  
3 for the construction, rehabilitation, alteration, or repair of a  
4 facility means on-site management, administrative personnel,  
5 insurance, bonds, equipment, utilities, and incidental work,  
6 including minor field labor and materials.

7           Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
8 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.

9 This chapter applies to a governmental entity or quasi-governmental  
10 entity authorized by state law to make a public work contract,  
11 including:

12           (1) a state agency as defined by Section 2151.002,  
13 including the Texas Building and Procurement Commission;

14           (2) a local government, including:

15                   (A) a county;

16                   (B) a municipality;

17                   (C) a special district or authority, including a  
18 school district, a hospital district, a river authority or any  
19 other type of water district, and a defense base development  
20 authority established under Chapter 379B, Local Government Code;  
21 and

22                   (D) any other political subdivision of this  
23 state; and

24           (3) a public junior college as defined by Section  
25 61.003, Education Code.

26           Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW  
27 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this

1 section, this chapter prevails over any other law relating to  
2 public works contracts.

3 (b) This chapter does not prevail over a conflicting  
4 provision in a law relating to contracting with a historically  
5 underutilized business.

6 (c) This chapter does not prevail over a conflicting  
7 provision in:

8 (1) a charter of a home-rule municipality; or

9 (2) a rule of a county, river authority, or defense  
10 base development authority that requires the use of competitive  
11 bidding.

12 (d) The governing body of a municipality, county, river  
13 authority, or defense base development authority to which  
14 Subsection (c) applies may elect to have this chapter overrule the  
15 conflicting provision in the charter or rule.

16 [Sections 2264.004-2264.050 reserved for expansion]

17 SUBCHAPTER B. GENERAL POWERS AND DUTIES

18 Sec. 2264.051. RULES. A governmental entity may adopt  
19 rules as necessary to implement this chapter.

20 Sec. 2264.052. DELEGATION OF AUTHORITY. (a) The governing  
21 body of a governmental entity may delegate its authority under this  
22 chapter regarding an action authorized or required by this chapter  
23 to a designated representative, committee, or other person.

24 (b) The entity shall provide notice of the delegation and  
25 the limits of the delegation in the request for bids, proposals, or  
26 qualifications or in an addendum to the request.

27 (c) If the entity fails to provide notice under Subsection

1 (b), a ranking, selection, or evaluation of bids, proposals, or  
2 qualifications for construction services other than by the entity's  
3 governing body in an open public meeting is advisory only.

4 Sec. 2264.053. GOVERNMENTAL ENTITY PREFERENCE FOR RECYCLED  
5 PRODUCTS. The purchasing requirements of Section 361.426, Health  
6 and Safety Code, apply to a purchase made by a governmental entity  
7 under this chapter.

8 Sec. 2264.054. RIGHT TO WORK. (a) This section applies to  
9 a governmental entity when the governmental entity is engaged in:

- 10 (1) procuring goods or services under this chapter;  
11 (2) awarding a contract under this chapter; or  
12 (3) overseeing procurement or construction for a  
13 public work or public improvement under this chapter.

14 (b) In engaging in an activity to which this section  
15 applies, a governmental entity:

16 (1) may not consider whether a person is a member of or  
17 has another relationship with any organization; and

18 (2) shall ensure that its bid specifications and any  
19 subsequent contract or other agreement do not deny or diminish the  
20 right of a person to work because of the person's membership or  
21 other relationship status with respect to an organization.

22 [Sections 2264.055-2264.100 reserved for expansion]

23 SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES

24 Sec. 2264.101. CRITERIA TO CONSIDER. In determining the  
25 award of a contract under this chapter, the governmental entity  
26 shall consider:

- 27 (1) the purchase price;

1           (2) the reputation of the offeror and the offeror's  
2 goods or services;

3           (3) the quality of the offeror's goods or services;

4           (4) the extent to which the goods or services meet the  
5 governmental entity's needs;

6           (5) the offeror's past relationship with the  
7 governmental entity;

8           (6) the impact on the ability of the governmental  
9 entity to comply with rules relating to historically underutilized  
10 businesses;

11           (7) the total long-term cost to the governmental  
12 entity to acquire the offeror's goods or services; and

13           (8) any other relevant factor specifically listed in  
14 the request for bids, proposals, or qualifications.

15           Sec. 2264.102. USING METHOD OTHER THAN COMPETITIVE BIDDING  
16 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS. (a) The  
17 governing body of a governmental entity that considers a  
18 construction contract using a method authorized by this chapter  
19 other than competitive bidding must, before advertising, determine  
20 which method provides the best value for the governmental entity.

21           (b) The governmental entity shall base its selection among  
22 offerors on applicable criteria listed in Section 2264.101. The  
23 governmental entity shall publish in the request for proposals or  
24 qualifications the criteria that will be used to evaluate the  
25 offerors and the relative weights given to the criteria.

26           (c) The governmental entity shall document the basis of its  
27 selection and shall make the evaluations public not later than the

1 seventh day after the date the contract is awarded.

2 Sec. 2264.103. ARCHITECT OR ENGINEER SERVICES. (a) An  
3 architect or engineer required to be selected or designated under  
4 this chapter has full responsibility for complying with Chapter  
5 1001 or 1051, Occupations Code, as applicable.

6 (b) If the selected or designated architect or engineer is  
7 not a full-time employee of the governmental entity, the  
8 governmental entity shall select the architect or engineer on the  
9 basis of demonstrated competence and qualifications as provided by  
10 Section 2254.004.

11 Sec. 2264.104. RESPONSIBILITIES OF CONTRACTORS. In the  
12 context of a contract for the construction, rehabilitation,  
13 alteration, or repair of a facility under this chapter, a  
14 contractor is a sole proprietorship, partnership, corporation, or  
15 other legal entity that assumes the risk for constructing,  
16 rehabilitating, altering, or repairing all or part of the facility  
17 at the contracted price.

18 Sec. 2264.105. COMPETITIVE BIDDING: PRESUMED METHOD FOR  
19 CONSTRUCTION SERVICES; BEST VALUE. (a) Except as otherwise  
20 provided by this chapter or other law, a governmental entity may  
21 contract for the construction, alteration, rehabilitation, or  
22 repair of a facility only after the entity advertises for bids for  
23 the contract in a manner prescribed by law, receives sealed  
24 competitive bids, and awards the contract to:

25 (1) the lowest responsible bidder; or

26 (2) the bidder offering the best value to the  
27 governmental entity according to the selection criteria

1 established by the governmental entity in the request for bids.

2 (b) The governmental entity shall document the basis of its  
3 selection and shall make the evaluations public not later than the  
4 seventh day after the date the contract is awarded.

5 Sec. 2264.106. COMPETITIVE SEALED BIDDING: RIGHTS OF OTHER  
6 BIDDERS. If a contract awarded under sealed competitive bidding is  
7 to be recommended for award to a bidder other than the lowest  
8 bidder, any bidder making a lower bid than the recommended bid shall  
9 be notified of the recommendation for award and shall be allowed an  
10 opportunity before the award to present evidence to the governing  
11 body of the governmental entity or its designated representative as  
12 to the responsibility of that bidder.

13 Sec. 2264.107. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
14 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
15 specifically provided by this section, Subchapter B, Chapter 271,  
16 Local Government Code, does not apply to a competitive bidding  
17 process made under this chapter. Sections 271.026, 271.027(a), and  
18 271.0275, Local Government Code, apply to a competitive bidding  
19 process made under this chapter by a governmental entity as defined  
20 by Section 271.021, Local Government Code.

21 [Sections 2264.108-2264.150 reserved for expansion]

22 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

23 Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION  
24 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. A governmental  
25 entity may use the competitive sealed proposal method to select a  
26 contractor for the construction, rehabilitation, alteration, or  
27 repair of a facility. In selecting a contractor through

1 competitive sealed proposals, a governmental entity shall follow  
2 the procedures provided by this subchapter.

3 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The  
4 governmental entity shall select or designate an architect or  
5 engineer to prepare construction documents for the project.

6 Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
7 governmental entity shall provide or contract for, independently of  
8 the contractor, the inspection services, the testing of  
9 construction materials engineering, and the verification testing  
10 services necessary for acceptance of the facility by the  
11 governmental entity.

12 (b) The governmental entity shall select the services for  
13 which it contracts under this section in accordance with Section  
14 2254.004.

15 Sec. 2264.154. PREPARATION OF REQUEST. (a) The  
16 governmental entity shall prepare a request for competitive sealed  
17 proposals that includes construction documents, selection  
18 criteria, estimated budget, project scope, schedule, and other  
19 information that a contractor may require to respond to the  
20 request.

21 (b) The governmental entity shall state in the request for  
22 proposals the selection criteria that will be used in selecting the  
23 successful offeror.

24 Sec. 2264.155. EVALUATION OF OFFERORS. (a) The  
25 governmental entity shall receive, publicly open, and read aloud  
26 the names of the offerors and, if any are required to be stated, all  
27 prices stated in each proposal.



1       (b) Not later than the 45th day after the date of opening the  
2 proposals, the governmental entity shall evaluate and rank each  
3 proposal submitted in relation to the published selection criteria.

4       Sec. 2264.156. SELECTION OF OFFEROR. (a) The governmental  
5 entity shall select the offeror that offers the best value for the  
6 governmental entity based on the published selection criteria and  
7 on its ranking evaluation. In determining best value for the  
8 governmental entity, the governmental entity is not restricted to  
9 considering price alone but may consider any other factor stated in  
10 the selection criteria.

11       (b) The governmental entity shall first attempt to  
12 negotiate a contract with the selected offeror. The governmental  
13 entity and its engineer or architect may discuss with the selected  
14 offeror options for a scope or time modification and any price  
15 change associated with the modification.

16       (c) If the governmental entity is unable to negotiate a  
17 contract with the selected offeror, the governmental entity shall,  
18 formally and in writing, end negotiations with that offeror and  
19 proceed to the next offeror in the order of the selection ranking  
20 until a contract is reached or all proposals are rejected.

21       [Sections 2264.157-2264.200 reserved for expansion]

22       SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

23       Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
24 MANAGER-AGENT SERVICES. (a) A construction manager-agent is a  
25 sole proprietorship, partnership, corporation, or other legal  
26 entity that provides consultation services to the governmental  
27 entity regarding construction, rehabilitation, alteration, or

1 repair of a facility. Services provided by a construction  
2 manager-agent include administrative services such as budgeting  
3 and expenditure tracking, management of construction procurement,  
4 schedule management, management of dispute resolution, and change  
5 order management.

6 (b) A governmental entity may retain a construction  
7 manager-agent for assistance in the construction, rehabilitation,  
8 alteration, or repair of a facility only as provided by this  
9 subchapter.

10 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION  
11 MANAGER-AGENT. (a) The contract between the governmental entity  
12 and the construction manager-agent may require the construction  
13 manager-agent to provide:

14 (1) administrative personnel;

15 (2) equipment necessary to perform duties under this  
16 subchapter;

17 (3) on-site management; and

18 (4) other services specified in the contract.

19 (b) A construction manager-agent may not be a contractor who  
20 performs the construction, rehabilitation, alteration, or repair  
21 of the facility.

22 Sec. 2264.203. FIDUCIARY CAPACITY OF CONSTRUCTION  
23 MANAGER-AGENT. A construction manager-agent represents the  
24 governmental entity in a fiduciary capacity.

25 Sec. 2264.204. USE OF ARCHITECT OR ENGINEER. (a) The  
26 governmental entity shall select or designate an architect or  
27 engineer to prepare the construction documents for the project.

1       (b) The governmental entity's architect or engineer may not  
2 serve, alone or in combination with another person, as the  
3 construction manager-agent unless the architect or engineer is  
4 hired to serve as the construction manager-agent under a separate  
5 or concurrent selection process conducted in accordance with this  
6 subchapter. This subsection does not prohibit the governmental  
7 entity's architect or engineer from providing customary  
8 construction phase services under the architect's or engineer's  
9 original professional service agreement in accordance with  
10 applicable licensing laws.

11       (c) To the extent that the construction manager-agent's  
12 services are defined as part of the practice of engineering or  
13 architecture under Chapter 1001 or 1051, Occupations Code, those  
14 services must be conducted by a person licensed under the  
15 applicable chapter.

16       Sec. 2264.205. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
17 governmental entity or the construction manager-agent shall  
18 procure, independently of the contractor, the inspection services,  
19 the testing of construction materials engineering, and the  
20 verification testing services necessary for acceptance of the  
21 facility by the governmental entity.

22       (b) The governmental entity or the construction  
23 manager-agent shall select the services for which it contracts  
24 under this section in accordance with Section 2254.004.

25       Sec. 2264.206. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
26 governmental entity shall select a construction manager-agent on  
27 the basis of demonstrated competence and qualifications in the same

1 manner as provided for the selection of engineers or architects  
2 under Section 2254.004.

3 Sec. 2264.207. SELECTION OF CONTRACTORS. A governmental  
4 entity using the construction manager-agent method shall procure,  
5 in accordance with applicable law and in any manner authorized by  
6 this chapter, a general contractor, trade contractors, or  
7 subcontractors who will serve as the prime contractor for their  
8 specific portion of the work.

9 [Sections 2264.208-2264.250 reserved for expansion]

10 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

11 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
12 MANAGER-AT-RISK. (a) A construction manager-at-risk is a sole  
13 proprietorship, partnership, corporation, or other legal entity  
14 that assumes the risk for construction, rehabilitation,  
15 alteration, or repair of a facility at the contracted price as a  
16 general contractor and provides consultation to the governmental  
17 entity regarding construction during and after the design of the  
18 facility.

19 (b) A governmental entity may use the construction  
20 manager-at-risk method in selecting a general contractor for the  
21 construction, rehabilitation, alteration, or repair of a facility  
22 only as provided by this subchapter.

23 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) The  
24 governmental entity shall select or designate an architect or  
25 engineer to prepare the construction documents for the project.

26 (b) The governmental entity's engineer or architect for a  
27 project may not serve, alone or in combination with another person,

1 as the construction manager-at-risk unless the architect or  
2 engineer is hired to serve as the construction manager-at-risk  
3 under a separate or concurrent selection process conducted in  
4 accordance with this subchapter. This subsection does not prohibit  
5 the governmental entity's architect or engineer from providing  
6 customary construction phase services under the architect's or  
7 engineer's original professional service agreement in accordance  
8 with applicable licensing laws.

9 Sec. 2264.253. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
10 governmental entity shall provide or contract for, independently of  
11 the construction manager-at-risk, the inspection services, the  
12 testing of construction materials engineering, and the  
13 verification testing services necessary for acceptance of the  
14 facility by the governmental entity.

15 (b) The governmental entity shall select the services for  
16 which it contracts under this section in accordance with Section  
17 2254.004.

18 Sec. 2264.254. SELECTION PROCESS. (a) The governmental  
19 entity shall select the construction manager-at-risk in a one-step  
20 or two-step process.

21 (b) The governmental entity shall prepare a single request  
22 for proposals, in the case of a one-step process, and an initial  
23 request for qualifications, in the case of a two-step process, that  
24 includes:

25 (1) general information on the project site, project  
26 scope, schedule, selection criteria, estimated budget, and the time  
27 and place for receipt of the proposals or qualifications;

1           (2) a statement as to whether the selection process is  
2 a one-step or two-step process; and

3           (3) other information that may assist the governmental  
4 entity in its selection of a construction manager-at-risk.

5           (c) The governmental entity shall state the selection  
6 criteria in the request for proposals or qualifications. The  
7 selection criteria may include the offeror's experience, past  
8 performance, safety record, proposed personnel and methodology,  
9 and other appropriate factors that demonstrate the capability of  
10 the construction manager-at-risk.

11           (d) If a one-step process is used, the governmental entity  
12 may request, as part of the offeror's proposal, proposed fees and  
13 prices for fulfilling the general conditions.

14           (e) If a two-step process is used, the governmental entity  
15 may not request fees or prices in step one. In step two, the  
16 governmental entity may request that five or fewer offerors,  
17 selected solely on the basis of qualifications, provide additional  
18 information, including the construction manager-at-risk's proposed  
19 fee and price for fulfilling the general conditions.

20           (f) At each step, the governmental entity shall receive,  
21 publicly open, and read aloud the names of the offerors. At the  
22 appropriate step, the governmental entity shall also read aloud the  
23 fees and prices, if any, stated in each proposal as the proposal is  
24 opened.

25           (g) Not later than the 45th day after the date of opening the  
26 proposals, the governmental entity shall evaluate and rank each  
27 proposal submitted in relation to the criteria set forth in the

1 request for proposals.

2 Sec. 2264.255. SELECTION OF OFFEROR. (a) The governmental  
3 entity shall select the offeror that submits the proposal that  
4 offers the best value for the governmental entity based on the  
5 published selection criteria and on its ranking evaluation.

6 (b) The governmental entity shall first attempt to  
7 negotiate a contract with the selected offeror.

8 (c) If the governmental entity is unable to negotiate a  
9 satisfactory contract with the selected offeror, the governmental  
10 entity shall, formally and in writing, end negotiations with that  
11 offeror and proceed to negotiate with the next offeror in the order  
12 of the selection ranking until a contract is reached or  
13 negotiations with all ranked offerors end.

14 Sec. 2264.256. PERFORMANCE OF WORK. (a) A construction  
15 manager-at-risk shall publicly advertise for bids or proposals and  
16 receive bids or proposals from trade contractors or subcontractors  
17 for the performance of all major elements of the work other than the  
18 minor work that may be included in the general conditions.

19 (b) A construction manager-at-risk may seek to perform  
20 portions of the work itself if:

21 (1) the construction manager-at-risk submits its bid  
22 or proposal for those portions of the work in the same manner as all  
23 other trade contractors or subcontractors; and

24 (2) the governmental entity determines that the  
25 construction manager-at-risk's bid or proposal provides the best  
26 value for the governmental entity.

27 Sec. 2264.257. REVIEW OF BIDS OR PROPOSALS. (a) The

1 construction manager-at-risk and the governmental entity shall  
2 review all trade contractor or subcontractor bids or proposals in a  
3 manner that does not disclose the contents of the bid or proposal  
4 during the selection process to a person not employed by the  
5 construction manager-at-risk, engineer, architect, or governmental  
6 entity. All bids or proposals shall be made public after the later  
7 of the award of the contract or the seventh day after the date of  
8 final selection of bids or proposals.

9 (b) If the construction manager-at-risk reviews, evaluates,  
10 and recommends to the governmental entity a bid or proposal from a  
11 trade contractor or subcontractor but the governmental entity  
12 requires another bid or proposal to be accepted, the governmental  
13 entity shall compensate the construction manager-at-risk by a  
14 change in price, time, or guaranteed maximum cost for any  
15 additional cost and risk that the construction manager-at-risk  
16 incurs because of the governmental entity's requirement that  
17 another bid or proposal be accepted.

18 Sec. 2264.258. DEFAULT; PERFORMANCE OF WORK. If a selected  
19 trade contractor or subcontractor defaults in the performance of  
20 its work or fails to execute a subcontract after being selected in  
21 accordance with this subchapter, the construction manager-at-risk  
22 may, without advertising, itself fulfill the contract requirements  
23 or select a replacement trade contractor or subcontractor to  
24 fulfill the contract requirements.

25 Sec. 2264.259. PERFORMANCE OR PAYMENT BOND. (a) If a fixed  
26 contract amount or guaranteed maximum price has not been determined  
27 at the time the contract is awarded, the penal sums of the



1 performance and payment bonds delivered to the governmental entity  
2 must each be in an amount equal to the project budget, as specified  
3 in the request for proposals or qualifications.

4 (b) The construction manager-at-risk shall deliver the  
5 bonds not later than the 10th day after the date the construction  
6 manager-at-risk executes the contract unless the construction  
7 manager-at-risk furnishes a bid bond or other financial security  
8 acceptable to the governmental entity to ensure that the  
9 construction manager will furnish the required performance and  
10 payment bonds when a guaranteed maximum price is established.

11 [Sections 2264.260-2264.300 reserved for expansion]

12 SUBCHAPTER G. DESIGN-BUILD METHOD

13 Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
14 EXCEPTIONS. This subchapter applies only to a facility that is a  
15 building or an associated structure. This subchapter does not  
16 apply to:

17 (1) a highway, road, street, bridge, utility, water  
18 supply project, water plant, wastewater plant, water and wastewater  
19 distribution or conveyance facility, wharf, dock, airport runway or  
20 taxiway, drainage project, or related type of project associated  
21 with civil engineering construction; or

22 (2) a building or structure that is incidental to a  
23 project that is primarily a civil engineering construction project.

24 Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
25 governmental entity may use the design-build method for the  
26 construction, rehabilitation, alteration, or repair of a building  
27 or associated structure only as provided by this subchapter. In

1 using that method, the governmental entity shall enter into a  
2 single contract with a design-build firm for the design and  
3 construction of the building or associated structure.

4 Sec. 2264.303. DESIGN-BUILD FIRMS. A design-build firm  
5 under this subchapter must be a partnership, corporation, or other  
6 legal entity or team that includes an engineer or architect and a  
7 builder qualified to engage in building construction in Texas.

8 Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. The  
9 governmental entity shall select or designate an architect or  
10 engineer independent of the design-build firm to act as the  
11 governmental entity's representative for the duration of the work  
12 on the facility.

13 Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
14 governmental entity shall provide or contract for, independently of  
15 the design-build firm, the inspection services, the testing of  
16 construction materials engineering, and the verification testing  
17 services necessary for acceptance of the facility by the  
18 governmental entity.

19 (b) The governmental entity shall select the services for  
20 which it contracts under this section in accordance with Section  
21 2254.004.

22 Sec. 2264.306. PREPARATION OF REQUEST. (a) The  
23 governmental entity shall prepare a request for qualifications that  
24 includes general information on the project site, project scope,  
25 budget, special systems, selection criteria, and other information  
26 that may assist potential design-build firms in submitting  
27 proposals for the project.

1       (b) The governmental entity shall also prepare the design  
2 criteria package that includes more detailed information on the  
3 project. If the preparation of the design criteria package  
4 requires engineering or architectural services that constitute the  
5 practice of engineering within the meaning of Chapter 1001,  
6 Occupations Code, or the practice of architecture within the  
7 meaning of Chapter 1051, Occupations Code, those services shall be  
8 provided in accordance with the applicable law.

9       (c) The design criteria package must include a set of  
10 documents that provides sufficient information, including criteria  
11 for selection, to permit a design-build firm to prepare a response  
12 to the governmental entity's request for qualifications and to  
13 provide any additional information requested. The design criteria  
14 package must specify criteria the governmental entity considers  
15 necessary to describe the project and may include, as appropriate,  
16 the legal description of the site, survey information concerning  
17 the site, interior space requirements, special material  
18 requirements, material quality standards, conceptual criteria for  
19 the project, special equipment requirements, cost or budget  
20 estimates, time schedules, quality assurance and quality control  
21 requirements, site development requirements, applicable codes and  
22 ordinances, provisions for utilities, parking requirements, and  
23 any other requirement.

24       (d) The governmental entity may not require offerors to  
25 submit detailed engineering or architectural designs as part of a  
26 proposal or a response to a request for qualifications.

27       Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For

1 each design-build firm that responded to the request for  
2 qualifications, the governmental entity shall evaluate the firm's  
3 experience, technical competence, and capability to perform, the  
4 past performance of the firm and members of the firm, and other  
5 appropriate factors submitted by the firm in response to the  
6 request for qualifications, except that cost-related or  
7 price-related evaluation factors are not permitted.

8 (b) Each firm must certify to the governmental entity that  
9 each engineer or architect that is a member of the firm was selected  
10 based on demonstrated competence and qualifications, in the manner  
11 provided by Section 2254.004.

12 (c) The governmental entity shall qualify a maximum of five  
13 responders to submit proposals that contain additional information  
14 and, if the governmental entity chooses, to interview for final  
15 selection.

16 (d) The governmental entity shall evaluate the additional  
17 information submitted by the offerors on the basis of the selection  
18 criteria stated in the request for qualifications and the results  
19 of any interview.

20 (e) The governmental entity may request additional  
21 information regarding demonstrated competence and qualifications,  
22 considerations of the safety and long-term durability of the  
23 project, the feasibility of implementing the project as proposed,  
24 the ability of the offeror to meet schedules, or costing  
25 methodology. As used in this subsection, "costing methodology"  
26 means an offeror's policies on subcontractor markup, definition of  
27 general conditions, range of cost for general conditions, policies

1 on retainage, policies on contingencies, discount for prompt  
2 payment, and expected staffing for administrative duties. The term  
3 does not include a guaranteed maximum price or bid for overall  
4 design or construction.

5 (f) The governmental entity shall rank each proposal  
6 submitted on the basis of the criteria set forth in the request for  
7 qualifications.

8 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The  
9 governmental entity shall select the design-build firm that submits  
10 the proposal offering the best value for the governmental entity on  
11 the basis of the published selection criteria and on its ranking  
12 evaluations.

13 (b) The governmental entity shall first attempt to  
14 negotiate a contract with the selected firm.

15 (c) If the governmental entity is unable to negotiate a  
16 satisfactory contract with the selected firm, the governmental  
17 entity shall, formally and in writing, end all negotiations with  
18 that firm and proceed to negotiate with the next firm in the order  
19 of the selection ranking until a contract is reached or  
20 negotiations with all ranked firms end.

21 Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After  
22 selection of the design-build firm, that firm's architects or  
23 engineers shall complete the design and submit all design elements  
24 for review and determination of scope compliance to the  
25 governmental entity or governmental entity's architect or engineer  
26 before or concurrently with construction.

27 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The

1 design-build firm shall supply a signed and sealed set of  
2 construction documents for the project to the governmental entity  
3 at the conclusion of construction.

4 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
5 or performance bond is not required and may not provide coverage for  
6 the portion of the design-build contract with the design-build firm  
7 under this subchapter that includes design services only.

8 (b) If a fixed contract amount or guaranteed maximum price  
9 has not been determined at the time the design-build contract is  
10 awarded, the penal sums of the performance and payment bonds  
11 delivered to the governmental entity must each be in an amount equal  
12 to the project budget, as specified in the design criteria package.

13 (c) The design-build firm shall deliver the bonds not later  
14 than the 10th day after the date the design-build firm executes the  
15 contract unless the design-build firm furnishes a bid bond or other  
16 financial security acceptable to the governmental entity to ensure  
17 that the design-build firm will furnish the required performance  
18 and payment bonds when a guaranteed maximum price is established.

19 [Sections 2264.312-2264.350 reserved for expansion]

20 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

21 Sec. 2264.351. JOB ORDER CONTRACTS FOR FACILITIES  
22 CONSTRUCTION OR REPAIR. A governmental entity may award job order  
23 contracts for the minor construction, repair, rehabilitation, or  
24 alteration of a facility if:

25 (1) the work is of a recurring nature but the delivery  
26 times are indefinite; and

27 (2) indefinite quantities and orders are awarded

1 substantially on the basis of predescribed and prepriced tasks.

2 Sec. 2264.352. CONTRACTUAL UNIT PRICES. The governmental  
3 entity may establish contractual unit prices for a job order  
4 contract by:

5 (1) specifying one or more published construction unit  
6 price books and the applicable divisions or line items; or

7 (2) providing a list of work items and requiring the  
8 offerors to propose one or more coefficients or multipliers to be  
9 applied to the price book or work items as the price proposal.

10 Sec. 2264.353. SEALED PROPOSALS METHOD. (a) The  
11 governmental entity shall advertise for, receive, and publicly open  
12 sealed proposals for job order contracts.

13 (b) The governmental entity may require offerors to submit  
14 information in addition to rates, including experience, past  
15 performance, and proposed personnel and methodology.

16 Sec. 2264.354. AWARDING OF JOB CONTRACTS. The governmental  
17 entity may award job order contracts to one or more job order  
18 contractors in connection with each solicitation of proposals.

19 Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order  
20 contract or an order issued under the contract requires  
21 architectural or engineering services that constitute the practice  
22 of engineering within the meaning of Chapter 1001, Occupations  
23 Code, or the practice of architecture within the meaning of Chapter  
24 1051, Occupations Code, those services shall be provided in  
25 accordance with applicable law.

26 Sec. 2264.356. JOB ORDER CONTRACT TERM. (a) A job order  
27 contract is for the base term and with any renewal options that the

1 governmental entity sets forth in the request for proposals.

2 (b) If the governmental entity fails to advertise the base  
3 term, the base term may not exceed two years and is not renewable  
4 without further advertisement and solicitation of proposals.

5 Sec. 2264.357. JOB ORDERS. (a) An order for a job or  
6 project under a job order contract must be signed by the  
7 governmental entity's representative and the contractor.

8 (b) The order may be:

9 (1) a fixed price, lump-sum contract based  
10 substantially on contractual unit pricing applied to estimated  
11 quantities; or

12 (2) a unit price order based on the quantities and line  
13 items delivered.

14 Sec. 2264.358. PAYMENT AND PERFORMANCE BONDS. The  
15 contractor shall provide payment and performance bonds, if required  
16 by law, based on the amount or estimated amount of any order.

17 [Sections 2264.359-2264.400 reserved for expansion]

18 SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

19 Sec. 2264.401. NOTICE REQUIREMENTS FOR CERTAIN LOCAL  
20 GOVERNMENTS. (a) For a contract entered into by a defense base  
21 development authority, municipality, or river authority under a  
22 method provided by this chapter, the municipality or authority  
23 shall publish notice of the time and place the bids or proposals or  
24 the responses to a request for qualifications will be received and  
25 opened.

26 (b) The notice must be published in a newspaper of general  
27 circulation in the county in which the defense base development



1 authority's or municipality's central administrative office is  
2 located or in the county in which the greatest amount of the river  
3 authority's territory is located. If there is not a newspaper of  
4 general circulation in that county, the notice shall be published  
5 in a newspaper of general circulation in the county nearest the  
6 county seat of the county in which the defense base development  
7 authority's or municipality's central administrative office is  
8 located or the county seat of the county in which the greatest  
9 amount of the river authority's territory is located.

10 (c) The notice must be published once each week for at least  
11 two weeks before the deadline for receiving bids, proposals, or  
12 responses.

13 (d) In a two-step procurement process, the time and place  
14 the second step bids, proposals, or responses will be received are  
15 not required to be published separately.

16 Sec. 2264.402. NOTICE REQUIREMENTS FOR COUNTIES. (a) For a  
17 contract entered into by a county under a method provided by this  
18 chapter, the county shall publish notice of the time and place the  
19 bids or proposals or request for qualifications will be received  
20 and opened.

21 (b) The notice must be published in a newspaper of general  
22 circulation in the county once each week for at least two weeks  
23 before the deadline for receiving bids, proposals, or responses.  
24 If there is not a newspaper of general circulation in the county,  
25 the notice shall be:

26 (1) posted at the courthouse door of the county; and

27 (2) published in a newspaper of general circulation in

1 the county nearest the county seat of the county publishing the  
2 notice.

3 [Sections 2264.403-2264.425 reserved for expansion]

4 SUBCHAPTER J. ENFORCEMENT

5 Sec. 2264.426. VOID CONTRACT. A contract entered into in  
6 violation of this chapter is void as against public policy.

7 Sec. 2264.427. INJUNCTIVE RELIEF. (a) As used in this  
8 section, "interested party" includes a county or district attorney,  
9 a criminal district attorney, a resident of a county that enters  
10 into a contract under this chapter, or a resident of a county in  
11 which a municipality or a river or defense base development  
12 authority that enters into a contract under this chapter is  
13 located.

14 (b) An interested party may file an action to enjoin  
15 performance of a contract made in violation of this chapter.

16 (c) A party who prevails in an action brought under this  
17 section is entitled to reasonable attorney's fees as approved by  
18 the court.

19 SECTION 3. Sections 44.031(a) and (f), Education Code, are  
20 amended to read as follows:

21 (a) Except as provided by this subchapter, all school  
22 district contracts, except contracts for the purchase of produce or  
23 vehicle fuel or a contract made under Chapter 2264, Government  
24 Code, valued at \$25,000 or more in the aggregate for each 12-month  
25 period shall be made by the method, of the following methods, that  
26 provides the best value for the district:

27 (1) competitive bidding;

- 1           (2) competitive sealed proposals;
- 2           (3) a request for proposals, for services other than  
3 construction services;
- 4           (4) a catalogue purchase as provided by Subchapter B,  
5 Chapter 2157, Government Code;
- 6           (5) an interlocal contract;
- 7           (6) ~~[a design/build contract,~~
- 8           ~~[(7) a contract to construct, rehabilitate, alter, or~~  
9 ~~repair facilities that involves using a construction manager,~~
- 10           ~~[(8) a job order contract for the minor construction,~~  
11 ~~repair, rehabilitation, or alteration of a facility,~~
- 12           ~~[(9)]~~ the reverse auction procedure as defined by  
13 Section 2155.062(d), Government Code; or
- 14           (7) ~~[(10)]~~ the formation of a political subdivision  
15 corporation under Section 304.001, Local Government Code.

16           (f) This section does not apply to a contract for  
17 professional services rendered, including services of an  
18 architect, attorney, engineer, or fiscal agent. A school district  
19 may, at its option, contract for professional services rendered by  
20 a financial consultant or a technology consultant in the manner  
21 provided by Section 2254.003, Government Code, in lieu of the  
22 methods provided by this section.

23           SECTION 4. Subchapter A, Chapter 2254, Government Code, is  
24 amended by adding Section 2254.007 to read as follows:

25           Sec. 2254.007. INJUNCTIVE RELIEF. (a) As used in this  
26 section, "interested party" includes a county or district attorney,  
27 a criminal district attorney, a resident of a county that enters

1 into a contract under this chapter, or a resident of a county in  
2 which a municipality or a river authority that enters into a  
3 contract under this chapter is located.

4 (b) An interested party may file an action to enjoin  
5 performance of a contract made in violation of this chapter.

6 (c) A party who prevails in an action brought under this  
7 section is entitled to reasonable attorney's fees as approved by  
8 the court.

9 SECTION 5. The following are repealed:

10 (1) Section 44.0315 and Sections 44.035-44.041,  
11 Education Code;

12 (2) Subchapter T, Chapter 51, Education Code;

13 (3) Sections 2166.2511, 2166.2526, 2166.2531,  
14 2166.2532, 2166.2533, and 2166.2535, Government Code; and

15 (4) Subchapter H, Chapter 271, Local Government Code.

16 SECTION 6. (a) The changes in law made by this Act apply  
17 only to a contract or construction project for which a governmental  
18 entity first advertises or otherwise requests bids, proposals,  
19 offers, or qualifications, or makes a similar solicitation, on or  
20 after the effective date of this Act.

21 (b) A contract or construction project for which a  
22 governmental entity first advertises or otherwise requests bids,  
23 proposals, offers, or qualifications, or makes a similar  
24 solicitation, before the effective date of this Act is governed by  
25 the law as it existed immediately before the effective date of this  
26 Act, and that law is continued in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2005.