

1-1 By: Madla S.B. No. 1335
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; April 12, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 1;
1-6 April 12, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1335 By: Madla

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

1-10 relating to authorizing certain municipally owned water utilities
1-11 to use the design-build method of construction to construct a water
1-12 desalination plant.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter H, Chapter 271, Local Government
1-15 Code, is amended by adding Section 271.1195 to read as follows:

1-16 Sec. 271.1195. USE OF DESIGN-BUILD CONTRACT TO DESIGN AND
1-17 CONSTRUCT WATER DESALINATION PLANT. (a) In this section:

1-18 (1) "Board" means the governing body of a water
1-19 system.

1-20 (2) "Water system" means a municipally owned water
1-21 utility with a board appointed by the governing body of the
1-22 municipality.

1-23 (b) A water system may use the design-build method as
1-24 provided by this section for the design, construction,
1-25 rehabilitation, alteration, or repair of a water desalination plant
1-26 if the board determines that the method will provide the best value
1-27 to the water system. In using the design-build method and entering
1-28 into a design-build contract, the water system shall follow the
1-29 procedures and award the design-build contract as provided by this
1-30 section, and Sections 271.112, 271.113, and 271.114 do not apply
1-31 except as provided by this section. If the water system uses the
1-32 design-build method under this section, this section prevails over
1-33 any other law relating to a contract for the design and construction
1-34 of a water desalination plant by a water system to the extent of any
1-35 conflict.

1-36 (c) In procuring professional or construction services for
1-37 the design and construction of a water desalination plant using the
1-38 design-build method, the water system shall use a two-step
1-39 evaluation and selection process. The board may delegate as it
1-40 considers appropriate its authority regarding an action authorized
1-41 or required by this section to a person, representative, or
1-42 committee designated by the board.

1-43 (d) In the first step of the evaluation and selection
1-44 process, the water system shall issue a request for qualifications
1-45 from design-build firms for the design-build contract for the water
1-46 desalination plant and publish notice of the request in the same
1-47 manner as provided for a municipality under Section 271.112(d).
1-48 The request for qualifications may include general information on
1-49 the project site, project scope, proposed budget, any known special
1-50 systems, and any other information that may assist design-build
1-51 firms in responding to the request. The request for qualifications
1-52 must also include the maximum number of design-build firms that may
1-53 be invited to participate in the second step of the evaluation and
1-54 selection process.

1-55 (e) During the first step of the evaluation and selection
1-56 process, the water system shall evaluate the experience, technical
1-57 competence, capability to perform, past performance, and other
1-58 appropriate factors submitted by each design-build firm that
1-59 responds to the request for qualifications but may not evaluate
1-60 cost-related or price-related evaluation factors. The water system
1-61 may interview representatives of any design-build firm that
1-62 responds to the request for qualifications. The water system may
1-63 select not more than six design-build firms that the system

determines to be the most qualified based on demonstrated competence and qualifications. A design-build firm chosen under this subsection shall be invited to participate in the second step of the evaluation and selection process.

(f) In the second step of the evaluation and selection process, the water system shall issue a request for proposals to the design-build firms selected under Subsection (e). The request for proposals must include the selection criteria that the water system will use in analyzing the request for proposals and may request additional information regarding:

(1) demonstrated competence and qualifications;
(2) considerations of safety and long-term durability of the water desalination plant;

(3) the feasibility of implementing the project as proposed;

(4) the ability of a design-build firm to meet schedules;

(5) the overall capital cost of the water desalination plant and the anticipated operations and maintenance budget at various production levels; and

(6) any other information that may assist the water system in selecting the design-build firm that will provide the best value to the water system.

(g) The proposals of a design-build firm that responds to a request under Subsection (f) must also include preliminary design drawings, a project schedule, and a lump-sum contract price for the design-build contract. All information included in a proposal submitted under this section becomes the property of the water system.

(h) To assure full understanding of and responsiveness to the requirements in the request for proposals, including provisions that will be included in the design-build contract, and budgetary and schedule constraints, the water system may further interview and negotiate with any of the design-build firms intending to respond to the request for proposals both before and after the submission of the response to the request. The water system shall provide to a design-build firm intending to submit a response fair treatment with respect to any opportunity for discussion and for clarification made available by the water system. In conducting any discussions regarding price, the water system may not disclose to a design-build firm information regarding price submitted by a competing firm.

(i) A design-build firm may revise a proposal after submission of its initial response to the request for proposals and before award of the contract to allow the firm to submit a best and final proposal. The water system shall select the design-build firm that submits the best and final proposal offering the best value to the water system on the basis of the selection criteria published in the request for proposals.

(j) Until an award and execution of a design-build contract by the water system:

(1) only the name of each design-build firm selected under Subsection (e) may be made available to the public; and

(2) all other information received by the water system in response to a request for qualifications or the request for proposals and all information contained in the proposals is confidential to avoid disclosure of the contents that may be prejudicial to competing firms during the selection process.

(k) All proposals shall be open to public inspection not later than the seventh day after the date the water system has executed a contract awarded under this section. To the extent that a design-build firm making a proposal under this section designates, trade secrets and other proprietary data contained in the proposal shall remain confidential to the extent allowed by law.

(l) The water system may:

(1) cancel a request for qualifications or a request for proposals; and

(2) reject any and all proposals wholly or partly.

(m) Following selection of a design-build firm under Subsection (i), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the water system's engineer or architect before or concurrently with construction.

(n) The water system shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the water desalination plant by the water system. The water system shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(o) The design-build firm shall supply a signed and sealed set of as-built construction documents for the project to the water system at the conclusion of construction.

(p) The water system may use a design-build firm to obtain or assist the water system in obtaining any permit necessary for the water desalination plant.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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