

BILL ANALYSIS

C.S.H.B. 447
By: Callegari
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, cities, counties, school districts, and other agencies have several alternatives to traditional low-bid delivery of certain construction projects. These alternatives include construction manager-agent, competitive sealed proposals for construction services, construction manager-at risk, design-build, and job order contracting. Similar procedures apply to different entities, but the language is scattered across multiple state codes, such as: Education Code for public schools; Local Government Code for cities, counties and river authorities; and the Government Code for the Texas Building and Procurement Commission. In addition, under current law, the authorization to use alternative project delivery is limited to vertical, or architectural construction – e.g., buildings.

This legislation will:

- Consolidate alternate project delivery processes for most governmental entities into a single chapter of the Government Code.
- Expand the types of entities that may use these procedures to include hospital districts, transit authorities, and others.
- Allow construction manager-at-risk and competitive sealed proposals for construction services to be used for all types of projects including water, wastewater, transportation, utilities and other improvements to real property.
- Prohibit reverse auctions for certain contracts where bonds are required.
- Clarify that job order contracting can be used for the maintenance, repair, alteration, renovation, or minor construction of an existing facility and require better advertising.
- Make other cleanup and conforming changes.

The result is to significantly expand the tools that governmental entities have at their disposal to expedite projects.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to a state agency as defined by Section 2151.002 of the Government Code in SECTION 2.05 of this bill.

ANALYSIS

The bill creates a new chapter of the Government Code by adding Chapter 2264, which provides a comprehensive procurement statute for construction projects for governmental entities as defined by the bill. Additionally Chapter 2264 provides for and defines processes for delivery methods, such as: competitive bidding, competitive sealed proposals, construction manager-agent, construction manager-at-risk, design-build and job order contracting. The bill provides for and lists the exemptions from Chapter 2264 of the Government Code. The bill also provides for enforcement of Chapter 2264 by stating that a contract entered into in violation of the Chapter is void and providing for declaratory or injunctive relief. The bill also provides for declaratory or injunctive relief for violations under Chapter 2254 of the Government Code.

Similarly, the bill defines and establishes general powers and duties for procuring construction services. The bill allows construction manager-at-risk and competitive sealed proposals for construction services to be used for all types of projects including water, wastewater, transportation, utilities and other improvements to real property. The bill clarifies which section of the Government Code will govern procurement of construction contracts for school districts,
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and clarifies that engineering services are professional services. The bill amends Section 252.048 of the Local Government Code by raising the threshold for change order approval for municipalities with a population over 500,000.

The bill amends Section 431.101(g) of the Transportation Code to require local government corporations to comply with all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government that created the corporation. The bill also provides that the Texas Building and Procurement Commission may use any method of contracting, as provided by relevant sections of the Government Code, for design and construction services.

The bill amends the Government Code to prohibit reverse auction procedures, as defined by the bill, for certain public works contracts. The bill amends Section 791.011 of the Government Code to prohibit the procurement of design or construction services through interlocal agreements except in certain circumstances.

The bill also clarifies the applicability of Chapter 2264 in the Government Code to other sections of code, and makes conforming changes to other codes as necessary. The bill strikes antiquated language regarding the fees published by professional associations and states that fees may not exceed any maximum provided by law. Likewise, the bill contains repealers for existing code provisions. Lastly, the bill clarifies that changes made apply only to contracts or projects advertised after the effective date, and that contracts or projects advertised prior to effective date will continue under the current law.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original by making statutory consistency changes and the following:

1. Raises the threshold for change order approval for municipalities with a population over 500,000;
2. Prohibits the use of interlocal agreements for construction, engineering, or architectural services except in certain circumstances including job order contracting;
3. Amends injunctive relief language to state that an action must be filed within 10 days of contract award instead of 30 days and states that it does not apply to state agencies;
4. Adds “conservation and reclamation district” to definition of governmental entity;
5. Exempts higher education from the new statute and allows them to continue alternative project delivery under Subchapter T, Chapter 51, Education Code;
6. Modifies the notice requirements to provide for more uniformity;
7. Modifies delegation requirements to allow for more flexibility;
8. Changes “responsive bidder” to “responsible bidder” as in current law;
9. Changes construction manager-agent selection process to qualifications based;
10. Requires errors and omissions insurance of \$1 million for construction manager-agents;
11. Ensures that construction manager-at-risk reviews contractors and that bids and proposals will become public;
12. Changes “complete the design” to “submit design elements” for design-build contracts;
13. Requires bonds for design-build to be delivered prior to the commencement of construction;
14. Allows job order contracts for maintenance, repair, alteration, renovation, remediation and minor construction for vertical construction;
15. Requires a governmental entity to establish the maximum aggregate contract price of job order contracts at the time of advertisement, requires approval of job orders over \$500,000, and allows the entity to set a limit below \$500,000 per job order that must be voted on to exceed and;
16. changes enforcement language from void to voidable and provides that an action to void a contract does not excuse the government entity from paying for work already performed.