

BILL ANALYSIS

C.S.H.B. 1886
By: Callegari
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, many governmental entities may use alternatives to competitive bidding for construction projects. However, this authority is limited to building projects and excludes the use of alternative project delivery techniques on infrastructure projects (roads, water plants, etc.). This bill expands this authority so that most governmental entities will be able to use design-build, competitive sealed proposals, and construction manager-at-risk for infrastructure construction.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill amends the Local Government Code by creating a design-build process for civil works projects for a specific number of projects per entity and lists the certain entities which are allowed to use this process on a phased in basis by population and date. Likewise, the bill expands the definition of "Governmental Entity" in 271.111 of the Local Government Code, to allow those entities to use existing alternative project delivery methods and makes conforming changes to the Local Government Code.

The bill expands the use of competitive sealed proposals and construction manager-at-risk to civil works projects by expanding the definition of facilities in 271.116 and 271.118 of the Local Government Code. The bill clarifies that governmental entities will designate or select architects or engineers for job order contracting projects by amending Sections 44.041(i) and 51.784(i) of the Education Code; Sections 60.464(i) of the Water Code; and Sections 271.120(i) of the Local Government Code. The bill prohibits the procurement of design services through interlocal agreements except in certain circumstances by amending Section 791.011 of the Government Code.

Lastly, the bill stipulates that changes in law made by the passage of this Act only apply to a contract for which a request for proposals or a request for qualifications is first published or distributed on or after the effective date of this Act.

EFFECTIVE DATE

The act takes effect September 1, 2007, only if HB 447, Acts of the 80th Legislature, Regular Session, 2007, takes effect. If HB 447, Acts of the 80th Legislature, Regular Session, does not take effect, this Act has no effect.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the definition of "Facility" and "Governmental Entity" in 271.111, Local Government Code where the original bill contains no such provision. The substitute amends Section 271.118, Local Government Code by adding Subsection (a-1) to define "facility" as an improvement to real property in that section. The original bill contains no such provision.

The substitute amends Section 271.120(i) of the Local Government Code by requiring a governmental entity to select or designate an architect or engineer to prepare construction documents for the facility and stipulating that if the architect or engineer is not a full-time
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employee of the governmental entity, the entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The original bill contains no such provision.

The substitute adds a definition of “architect” to Subchapter J. The original bill contains no such provision.

The substitute defines a “civil works project” as certain projects and facilities related to and incidental to those projects whereas the original only defines them as a “roadway project, transit project, water supply treatment or transmission project, wastewater treatment or transmission project, desalination project, or electric project.” The substitute adds a definition of “engineer” whereas the original contains no such definition.

The substitute makes conforming amendments throughout the bill by using the term “local governmental entity,” whereas the original uses the term “municipality of county”. The original stipulates that any provisions in the charter of a home-rule municipality or regulation of a county or special district or authority that requires the use of competitive sealed proposals or prescribes procurement procedures that are in conflict with Subchapter J controls over Subchapter J unless the governing body elects to have Subchapter J supersede. The substitute contains no such provision.

The original version requires certain notices to be published in certain newspapers or, in the case of a county, posted at the courthouse door. The substitute authorizes certain notices in any manner prescribed by law.

The substitute stipulates the selected or designated engineer has full responsibility for complying with Chapter 1001, Occupations Code. The original has no such provision.

The substitute stipulates that if the engineer is not a full-time employee of the local governmental entity, the entity shall select the engineer on the basis of demonstrated competence and qualification as provide by Section 2254.004, Government Code. The filed bill does not make the stipulation based on whether or not the engineer is not a full-time employee of the local governmental entity.

The substitute requires the local governmental entity to provide or contract for, independently of the design-build firm, certain services as necessary for the acceptance of the civil works project. The original bill only requires the local governmental entity to contract for, independently of the design-build firm, certain services as necessary for the acceptance of the civil works project. The substitute also requires each offeror to select or designate each engineer that is a member of its team based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code whereas the original requires the offeror to certify these requirements.

The substitute allows the local governmental entity that uses the qualification-based option to request the firms identified under Section 271.191 (c) provide additional information, but prohibits them from requiring or accepting conceptual or detailed engineering designs. The original bill prohibits them from requiring or accepting conceptual or detailed engineering or architectural designs.

The substitute requires, under certain circumstances, a firm to submit a proposal not later than the 180th day after the date the local governmental entity makes a public request for the proposal. The original requires it to be submitted no later than the 90th day.

The substitute uses the term “cost” in certain provisions, whereas the original uses the term “price”. The substitute stipulates that not later than the 30th day after the date a contract is executed under Subchapter J, the local governmental entity shall offer unsuccessful design-build firms that submit a response to the entity’s request for additional information under Section 271.194 a stipend for preliminary engineering costs equal to a minimum of one-half of one percent of the preliminary estimate or budgeted cost for the construction of the project. The original stipulates that not later than the 30th day after the date a contract is executed under Subchapter J, the local governmental entity shall offer unsuccessful design-build firms that

submit a response to the entity's request for additional information under Section 271.191(c) a stipend for preliminary engineering costs equal to a minimum of one-half of one percent of the final contract price for preliminary engineering costs.

The substitute requires the firm to supply the local governmental entity, at the conclusion of construction, a record set of construction documents as provided by Section 1001.407, Occupations Code. The original requires the firm to supply the local governmental entity, at the conclusion of construction, a signed and sealed and makes no reference to Section 1001.407, Occupations Code.

The substitute stipulates that if a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the local governmental entity must each be in an amount equal to the construction budget. The original stipulates the penal sums of the performance and payment bonds delivered to the local governmental entity must each be in an amount equal to the project budget.

The substitute requires the firm to deliver the bonds not later than the 10th day after the date the firm executes the contract unless the design build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the firm will furnish the required performance and payment bond before the commencement of the project. The original requires the firm to deliver the bonds not later than the 10th day after the date the firm executes the contract unless the design build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the firm will furnish the required performance and payment bond when a guaranteed maximum price is established.

The substitute amends Section 44.041, Education Code by requiring the district to select or designate an architect or engineer to prepare construction documents for the facility under certain circumstances and requires the district to, if the architect or engineer is not a full time employee of the district, select the architect based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. The original contains no such provision.

The substitute amends Section 51.784, Education Code by requiring the board to select or designate an architect or engineer to prepare construction documents for the facility under certain circumstances; and requires the board to, if the architect or engineer is not a full time employee of the district, select the architect based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. The original contains no such provision.

The substitute amends Section 791.011, Government Code by adding subsection (h), which prohibits an interlocal agreement from being used to purchase engineering or architectural services unless the services are directly related to the design or construction of a specific facility to be jointly owned, used, or financed by the parties to the agreement and procured as provided by Section 2254.004. The original contains no such provision.

The substitute amends Section 60.464, Water Code by requiring the district to select or designate an architect or engineer to prepare construction. The original contains no such provision. The original amends Section 2252.902(a) and (b), Government Code, whereas the substitute contains no such provision. The original amends Section 431.101(e), Transportation Code, whereas the substitute contains no such provision.

The substitute stipulates that this act takes effect September 1, 2007, only if HB 447, Acts of the 80th Legislature, Regular Session, 2007, takes effect. If HB 447, Acts of the 80th Legislature, Regular Session, does not take effect, this Act has no effect. The original contains no such reference to HB 447.