

By: Callegari

H.B. No. 447

Substitute the following for H.B. No. 447:

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C.S.H.B. No. 447

A BILL TO BE ENTITLED

AN ACT

1
2 relating to contracts by governmental entities for construction
3 projects and related professional services and to public works
4 performance and payment bonds.

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

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended
8 by adding Subsection (h) to read as follows:

9 (h) A reverse auction procedure may not be used to obtain
10 services related to a public work contract for which a bond is
11 required under this section. In this subsection, "reverse auction
12 procedure" has the meaning assigned by Section 2155.062 or a
13 procedure similar to that described by Section 2155.062.

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES FOR
15 CONSTRUCTION PROJECTS

16 SECTION 2.01. Section 791.011, Government Code, is amended
17 by adding Subsections (h) and (i) to read as follows:

18 (h) An interlocal contract may not be used to purchase
19 engineering or architectural services unless the services are in
20 connection with the design or construction of a specific facility
21 to be jointly owned, used, or financed by the parties to the
22 contract.

23 (i) An interlocal contract may not be used to purchase
24 construction services unless the services are in connection with

1 the design or construction of a specific facility to be jointly
2 owned, used, or financed by the parties to the contract or:

3 (1) the services are in connection with a job order
4 contract;

5 (2) the governing body of the governmental entity for
6 whom the work will ultimately be performed approves the purchase in
7 open session;

8 (3) public notice is provided in a manner consistent
9 with a direct contract for job order contracting services; and

10 (4) work orders under the contract comply with Section
11 2264.353.

12 SECTION 2.02. Section 2166.2525, Government Code, is
13 amended to read as follows:

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

22 SECTION 2.03. Section 2254.003(b), Government Code, is
23 amended to read as follows:

24 (b) The professional fees under the contract ~~[+~~

25 ~~[(1) must be consistent with and not higher than the~~
26 ~~recommended practices and fees published by the applicable~~
27 ~~professional associations; and~~

1 ~~[(2)]~~ may not exceed any maximum provided by law.

2 SECTION 2.04. Subchapter A, Chapter 2254, Government Code,
3 is amended by adding Section 2254.007 to read as follows:

4 Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
5 subchapter may be enforced through an action for declaratory or
6 injunctive relief filed not later than the 10th day after the date
7 on which the contract is awarded.

8 (b) This section does not apply to enforcement of a contract
9 entered into by a state agency. In this subsection, "state agency"
10 has the meaning assigned by Section 2151.002. The term includes the
11 Texas Building and Procurement Commission.

12 SECTION 2.05. Subtitle F, Title 10, Government Code, is
13 amended by adding Chapter 2264 to read as follows:

14 CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR
15 CONSTRUCTION PROJECTS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 2264.001. DEFINITIONS. In this chapter:

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

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

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

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

1 (5) "General contractor" means a sole proprietorship,
2 partnership, corporation, or other legal entity that assumes the
3 risk for constructing, rehabilitating, altering, or repairing all
4 or part of a facility at the contracted price.

5 Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
6 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.
7 This chapter applies to a governmental entity or quasi-governmental
8 entity authorized by state law to make a public work contract,
9 including:

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

12 (2) a local government, including:

13 (A) a county;

14 (B) a municipality;

15 (C) a school district;

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

21 (E) any other political subdivision of this
22 state; and

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

25 Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW
26 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this
27 section, this chapter prevails over any other law relating to a

1 public work contract.

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

5 (c) This chapter does not prevail over a conflicting
6 provision that requires the use of competitive bidding in:

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

8 (2) a rule of a county, a defense base development
9 authority, or a conservation and reclamation district, including a
10 river authority or any other type of water district.

11 (d) The governing body of a governmental entity to which
12 Subsection (c) applies may elect to have this chapter overrule the
13 conflicting provision in the charter or rule.

14 Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF
15 TRANSPORTATION. This chapter does not apply to a contract entered
16 into by the Texas Department of Transportation.

17 Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER
18 EDUCATION. (a) In this section, "institution of higher
19 education," "public junior college," and "university system" have
20 the meanings assigned by Section 61.003, Education Code.

21 (b) This chapter applies to a public junior college but does
22 not apply to:

23 (1) any other institution of higher education; or

24 (2) a university system.

25 [Sections 2264.006-2264.050 reserved for expansion]

26 SUBCHAPTER B. GENERAL POWERS AND DUTIES

27 Sec. 2264.051. RULES. A governmental entity may adopt

1 rules as necessary to implement this chapter.

2 Sec. 2264.052. NOTICE REQUIREMENTS. (a) A governmental
3 entity shall advertise or publish notice of requests for bids,
4 proposals, or qualifications in a manner prescribed by law.

5 (b) For a contract entered into by a governmental entity
6 under a method provided by this chapter, the governmental entity
7 shall publish notice of the time and place the bid or proposal or
8 request for qualifications will be received and opened in a manner
9 prescribed by law.

10 Sec. 2264.053. DELEGATION OF AUTHORITY. (a) The governing
11 body of a governmental entity may delegate its authority under this
12 chapter regarding an action authorized or required by this chapter
13 to a designated representative, committee, or other person.

14 (b) The governmental entity shall provide notice of the
15 delegation, the limits of the delegation, and the name of each
16 person designated under Subsection (a) by rule or in the request for
17 bids, proposals, or qualifications or in an addendum to the
18 request.

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

- 21 (1) procuring goods or services under this chapter;
22 (2) awarding a contract under this chapter; or
23 (3) overseeing procurement or construction for a
24 public work or public improvement under this chapter.

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

- 27 (1) may not consider whether a person is a member of or

1 has another relationship with any organization; and

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

6 Sec. 2264.055. CRITERIA TO CONSIDER. In determining the
7 award of a contract under this chapter, the governmental entity may
8 consider:

9 (1) the price;
10 (2) the offeror's experience and reputation;
11 (3) the quality of the offeror's goods or services;
12 (4) the impact on the ability of the governmental
13 entity to comply with rules relating to historically underutilized
14 businesses;

15 (5) the offeror's safety record;
16 (6) the offeror's proposed personnel;
17 (7) whether the offeror's financial capability is
18 appropriate to the size and scope of the project; and

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

21 Sec. 2264.056. USING METHOD OTHER THAN COMPETITIVE BIDDING
22 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a)
23 The governing body of a governmental entity that considers a
24 construction contract using a method authorized by this chapter
25 other than competitive bidding must, before advertising, determine
26 which method provides the best value for the governmental entity.

27 (b) The governmental entity shall base its selection among

1 offerors on applicable criteria listed for the particular method
2 used. The governmental entity shall publish in the request for
3 proposals or qualifications the criteria that will be used to
4 evaluate the offerors, and the applicable weighted value for each
5 criterion.

6 (c) The governmental entity shall document the basis of its
7 selection and shall make the evaluations public not later than the
8 seventh day after the date the contract is awarded.

9 Sec. 2264.057. ARCHITECT OR ENGINEER SERVICES. (a) An
10 architect or engineer required to be selected or designated under
11 this chapter has full responsibility for complying with Chapter
12 1051 or 1001, Occupations Code, as applicable.

13 (b) If the selected or designated architect or engineer is
14 not a full-time employee of the governmental entity, the
15 governmental entity shall select the architect or engineer on the
16 basis of demonstrated competence and qualifications as provided by
17 Section 2254.004.

18 Sec. 2264.058. USE OF OTHER PROFESSIONAL SERVICES. (a)
19 Independently of the contractor, construction manager-at-risk, or
20 design-build firm, the governmental entity shall provide or
21 contract for the construction materials engineering, testing, and
22 inspection services and the verification testing services
23 necessary for acceptance of the facility by the governmental
24 entity.

25 (b) The governmental entity shall select the services for
26 which it contracts under this section in accordance with Section
27 2254.004.

1 Sec. 2264.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS
2 REQUIRED. A person who submits a bid, proposal, or qualification to
3 a governmental entity shall seal it before delivery.

4 [Sections 2264.060-2264.100 reserved for expansion]

5 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

6 Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE
7 BIDDING. (a) In this chapter, "competitive bidding" is a
8 procurement method by which a governmental entity contracts with a
9 contractor for the construction, alteration, rehabilitation, or
10 repair of a facility by awarding the contract to the lowest
11 responsible bidder.

12 (b) Except as otherwise provided by this chapter or other
13 law, a governmental entity may contract for the construction,
14 alteration, rehabilitation, or repair of a facility only after the
15 entity advertises for bids for the contract in a manner prescribed
16 by law, receives competitive bids, and awards the contract to the
17 lowest responsible bidder.

18 Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The
19 governmental entity shall select or designate an architect or
20 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
21 as applicable, to prepare the construction documents required for a
22 project to be awarded by competitive bidding.

23 Sec. 2264.103. PREPARATION OF REQUEST. The governmental
24 entity shall prepare a request for competitive bids that includes
25 construction documents, estimated budget, project scope, estimated
26 project completion date, and other information that a contractor
27 may require to submit a bid.

1 Sec. 2264.104. EVALUATION OF OFFERORS. The governmental
2 entity shall receive, publicly open, and read aloud the names of the
3 offerors and their bids.

4 Sec. 2264.105. SELECTION OF OFFEROR. Not later than the
5 seventh day after the date the contract is awarded, the
6 governmental entity shall document the basis of its selection and
7 shall make the evaluations public.

8 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
9 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
10 specifically provided by this section, Subchapter B, Chapter 271,
11 Local Government Code, does not apply to a competitive bidding
12 process conducted under this chapter. Sections 271.026,
13 271.027(a), and 271.0275, Local Government Code, apply to a
14 competitive bidding process conducted under this chapter by a
15 governmental entity as defined by Section 271.021, Local Government
16 Code.

17 [Sections 2264.107-2264.150 reserved for expansion]

18 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

19 Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE
20 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
21 proposals" is a procurement method by which a governmental entity
22 requests proposals, ranks the offerors, negotiates as prescribed,
23 and then contracts with a general contractor for the construction,
24 rehabilitation, alteration, or repair of a facility.

25 (b) In selecting a contractor through competitive sealed
26 proposals, a governmental entity shall follow the procedures
27 provided by this subchapter.

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

4 Sec. 2264.153. PREPARATION OF REQUEST. The governmental
5 entity shall prepare a request for competitive sealed proposals
6 that includes construction documents, selection criteria and the
7 weighted value for each criterion, estimated budget, project scope,
8 estimated project completion date, and other information that a
9 contractor may require to respond to the request.

10 Sec. 2264.154. EVALUATION OF OFFERORS. (a) The
11 governmental entity shall receive, publicly open, and read aloud
12 the names of the offerors and any monetary proposals made by the
13 offerors.

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

17 Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental
18 entity shall select the offeror that submits the proposal that
19 offers the best value for the governmental entity based on:

20 (1) the selection criteria in the request for proposal
21 and the weighted value for those criteria in the request for
22 proposal; and

23 (2) its ranking evaluation.

24 (b) The governmental entity shall first attempt to
25 negotiate a contract with the selected offeror. The governmental
26 entity and its architect or engineer may discuss with the selected
27 offeror options for a scope or time modification and any price

1 change associated with the modification.

2 (c) If the governmental entity is unable to negotiate a
3 contract with the selected offeror, the governmental entity shall,
4 formally and in writing, end negotiations with that offeror and
5 proceed to the next offeror in the order of the selection ranking
6 until a contract is reached or all proposals are rejected.

7 [Sections 2264.156-2264.200 reserved for expansion]

8 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

9 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
10 MANAGER-AGENT. (a) In this chapter, the "construction
11 manager-agent method" is a delivery method by which a governmental
12 entity contracts with a construction manager-agent, instead of a
13 general contractor, to provide administrative services and to
14 manage multiple contracts with various construction prime
15 contractors.

16 (b) A construction manager-agent is a sole proprietorship,
17 partnership, corporation, or other legal entity that serves as the
18 agent for the governmental entity by providing construction
19 administration and management services described by Subsection (a)
20 for the construction, rehabilitation, alteration, or repair of a
21 facility.

22 (c) A governmental entity may retain a construction
23 manager-agent for assistance in the construction, rehabilitation,
24 alteration, or repair of a facility only as provided by this
25 subchapter.

26 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION
27 MANAGER-AGENT. The contract between the governmental entity and

1 the construction manager-agent may require the construction
2 manager-agent to provide:

- 3 (1) administrative personnel;
4 (2) equipment necessary to perform duties under this
5 subchapter;
6 (3) on-site management; and
7 (4) other services specified in the contract.

8 Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A
9 construction manager-agent may not:

- 10 (1) self-perform any aspect of the construction,
11 rehabilitation, alteration, or repair of the facility;
12 (2) be a party to a construction subcontract for the
13 construction, rehabilitation, alteration, or repair of the
14 facility; or
15 (3) provide project bonding for the construction,
16 rehabilitation, alteration, or repair of the facility.

17 Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION
18 MANAGER-AGENT. A construction manager-agent represents the
19 governmental entity in a fiduciary capacity.

20 Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or
21 before the selection of a construction manager-agent, the
22 governmental entity shall select or designate an architect or
23 engineer to prepare the construction documents for the project.

24 (b) The governmental entity's architect or engineer may not
25 serve, alone or in combination with another person, as the
26 construction manager-agent unless the architect or engineer is
27 hired to serve as the construction manager-agent under a separate

1 or concurrent selection process conducted in accordance with this
2 subchapter. This subsection does not prohibit the governmental
3 entity's architect or engineer from providing customary
4 construction phase services under the architect's or engineer's
5 original professional service agreement in accordance with
6 applicable licensing laws.

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

12 Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental
13 entity using the construction manager-agent method shall procure,
14 in accordance with applicable law and in any manner authorized by
15 this chapter, a general contractor or trade contractors who will
16 serve as the prime contractor for their specific portion of the
17 work.

18 Sec. 2264.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
19 governmental entity shall select a construction manager-agent on
20 the basis of demonstrated competence and qualifications in the same
21 manner that an architect or engineer is selected under Section
22 2254.004.

23 Sec. 2264.208. INSURANCE. A construction manager-agent
24 selected under this subchapter shall maintain professional
25 liability or errors and omissions insurance in the amount of at
26 least \$1 million for each occurrence.

27 [Sections 2264.209-2264.250 reserved for expansion]

1 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

2 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
3 MANAGER-AT-RISK. (a) In this chapter, the "construction
4 manager-at-risk method" is a delivery method by which a
5 governmental entity contracts with an architect or engineer for
6 design and construction phase services and contracts separately
7 with a construction manager-at-risk to serve as the general
8 contractor and to provide consultation during the design and
9 construction, rehabilitation, alteration, or repair of a facility.

10 (b) A construction manager-at-risk is a sole
11 proprietorship, partnership, corporation, or other legal entity
12 that assumes the risk for construction, rehabilitation,
13 alteration, or repair of a facility at the contracted price as a
14 general contractor and provides consultation to the governmental
15 entity regarding construction during and after the design of the
16 facility. The contracted price may be a guaranteed maximum price.

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

21 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or
22 before the selection of a construction manager-at-risk, the
23 governmental entity shall select or designate an architect or
24 engineer to prepare the construction documents for the project.

25 (b) The governmental entity's architect or engineer for a
26 project may not serve, alone or in combination with another person,
27 as the construction manager-at-risk unless the architect or

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

8 Sec. 2264.253. SELECTION PROCESS. (a) The governmental
9 entity shall select the construction manager-at-risk in a one-step
10 or two-step process.

11 (b) The governmental entity shall prepare a single request
12 for proposals, in the case of a one-step process, and an initial
13 request for qualifications, in the case of a two-step process, that
14 includes:

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

17 (2) general information on the project site, project
18 scope, schedule, selection criteria and the weighted value for each
19 criterion, and estimated budget and the time and place for receipt
20 of the proposals or qualifications; and

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

23 (c) The governmental entity shall state the selection
24 criteria in the request for proposals or qualifications.

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

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

7 (f) At each step, the governmental entity shall receive,
8 publicly open, and read aloud the names of the offerors. At the
9 appropriate step, the governmental entity shall also read aloud the
10 fees and prices, if any, stated in each proposal as the proposal is
11 opened.

12 (g) Not later than the 45th day after the date of opening the
13 final proposals, the governmental entity shall evaluate and rank
14 each proposal submitted in relation to the criteria set forth in the
15 request for proposals.

16 Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental
17 entity shall select the offeror that submits the proposal that
18 offers the best value for the governmental entity based on the
19 published selection criteria and on its ranking evaluation.

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

22 (c) If the governmental entity is unable to negotiate a
23 satisfactory contract with the selected offeror, the governmental
24 entity shall, formally and in writing, end negotiations with that
25 offeror and proceed to negotiate with the next offeror in the order
26 of the selection ranking until a contract is reached or
27 negotiations with all ranked offerors end.

1 (d) Not later than the seventh day after the date the
2 contract is awarded, the governmental entity shall make the
3 rankings determined under Section 2264.253(g) public.

4 Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction
5 manager-at-risk shall publicly advertise for bids or proposals and
6 receive bids or proposals from trade contractors or subcontractors
7 for the performance of all major elements of the work other than the
8 minor work that may be included in the general conditions.

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

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

14 (2) the governmental entity determines that the
15 construction manager-at-risk's bid or proposal provides the best
16 value for the governmental entity.

17 Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The
18 construction manager-at-risk shall review all trade contractor or
19 subcontractor bids or proposals in a manner that does not disclose
20 the contents of the bid or proposal during the selection process to
21 a person not employed by the construction manager-at-risk,
22 architect, engineer, or governmental entity. All bids or proposals
23 shall be made available to the governmental entity on request and to
24 the public after the later of the award of the contract or the
25 seventh day after the date of final selection of bids or proposals.

26 (b) If the construction manager-at-risk reviews, evaluates,
27 and recommends to the governmental entity a bid or proposal from a

1 trade contractor or subcontractor but the governmental entity
2 requires another bid or proposal to be accepted, the governmental
3 entity shall compensate the construction manager-at-risk by a
4 change in price, time, or guaranteed maximum cost for any
5 additional cost and risk that the construction manager-at-risk
6 incurs because of the governmental entity's requirement that
7 another bid or proposal be accepted.

8 Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected
9 trade contractor or subcontractor defaults in the performance of
10 its work or fails to execute a subcontract after being selected in
11 accordance with this subchapter, the construction manager-at-risk
12 may itself fulfill, without advertising, the contract requirements
13 or select a replacement trade contractor or subcontractor to
14 fulfill the contract requirements.

15 Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed
16 contract amount or guaranteed maximum price has not been determined
17 at the time the contract is awarded, the penal sums of the
18 performance and payment bonds delivered to the governmental entity
19 must each be in an amount equal to the construction budget, as
20 specified in the request for proposals or qualifications.

21 (b) The construction manager-at-risk shall deliver the
22 bonds not later than the 10th day after the date the construction
23 manager-at-risk executes the contract unless the construction
24 manager-at-risk furnishes a bid bond or other financial security
25 acceptable to the governmental entity to ensure that the
26 construction manager will furnish the required performance and
27 payment bonds when a guaranteed maximum price is established.

1 [Sections 2264.259-2264.300 reserved for expansion]

2 SUBCHAPTER G. DESIGN-BUILD METHOD

3 Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
4 this chapter, "design-build" is a project delivery method by which
5 a governmental entity contracts with a single entity to provide
6 both design and construction services for the construction,
7 rehabilitation, alteration, or repair of a facility.

8 Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
9 EXCEPTIONS. This subchapter applies only to a facility that is a
10 building or an associated structure. This subchapter does not
11 apply to:

12 (1) a highway, road, street, bridge, utility, water
13 supply project, water plant, wastewater plant, water and wastewater
14 distribution or conveyance facility, wharf, dock, airport runway or
15 taxiway, drainage project, or related type of project associated
16 with civil engineering construction; or

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

19 Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
20 governmental entity may use the design-build method for the
21 construction, rehabilitation, alteration, or repair of a building
22 or associated structure only as provided by this subchapter. In
23 using that method, the governmental entity shall enter into a
24 single contract with a design-build firm for the design and
25 construction of the building or associated structure.

26 Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm
27 under this subchapter must be a sole proprietorship, partnership,

1 corporation, or other legal entity or team that includes an
2 architect or engineer and a construction contractor.

3 Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
4 REPRESENTATIVE. The governmental entity shall select or designate
5 an architect or engineer independent of the design-build firm to
6 act as the governmental entity's representative for the duration of
7 the project.

8 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
9 governmental entity shall prepare a request for qualifications that
10 includes general information on the project site, project scope,
11 budget, special systems, selection criteria and the weighted value
12 for each criterion, and other information that may assist potential
13 design-build firms in submitting proposals for the project.

14 (b) The governmental entity shall also prepare the design
15 criteria package that includes more detailed information on the
16 project. If the preparation of the design criteria package
17 requires architectural or engineering services that constitute the
18 practice of architecture within the meaning of Chapter 1051,
19 Occupations Code, or the practice of engineering within the meaning
20 of Chapter 1001, Occupations Code, those services shall be provided
21 in accordance with the applicable law.

22 (c) The design criteria package must include a set of
23 documents that provides sufficient information, including criteria
24 for selection, to permit a design-build firm to prepare a response
25 to the governmental entity's request for qualifications and to
26 provide any additional information requested. The design criteria
27 package must specify criteria the governmental entity considers

1 necessary to describe the project and may include, as appropriate,
2 the legal description of the site, survey information concerning
3 the site, interior space requirements, special material
4 requirements, material quality standards, conceptual criteria for
5 the project, special equipment requirements, cost or budget
6 estimates, time schedules, quality assurance and quality control
7 requirements, site development requirements, applicable codes and
8 ordinances, provisions for utilities, parking requirements, and
9 any other requirement.

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

13 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
14 each design-build firm that responded to the request for
15 qualifications, the governmental entity shall evaluate the firm's
16 experience, technical competence, and capability to perform, the
17 past performance of the firm and members of the firm, and other
18 appropriate factors submitted by the firm in response to the
19 request for qualifications, except that cost-related or
20 price-related evaluation factors are not permitted.

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

25 (c) The governmental entity shall qualify a maximum of five
26 responders to submit proposals that contain additional information
27 and, if the governmental entity chooses, to interview for final

1 selection.

2 (d) The governmental entity shall evaluate the additional
3 information submitted by the offerors on the basis of the selection
4 criteria stated in the request for qualifications and the results
5 of any interview.

6 (e) The governmental entity may request additional
7 information regarding demonstrated competence and qualifications,
8 considerations of the safety and long-term durability of the
9 project, the feasibility of implementing the project as proposed,
10 the ability of the offeror to meet schedules, or costing
11 methodology. As used in this subsection, "costing methodology"
12 means an offeror's policies on subcontractor markup, definition of
13 general conditions, range of cost for general conditions, policies
14 on retainage, policies on contingencies, discount for prompt
15 payment, and expected staffing for administrative duties. The term
16 does not include a guaranteed maximum price or bid for overall
17 design or construction.

18 (f) The governmental entity shall rank each proposal
19 submitted on the basis of the criteria set forth in the request for
20 qualifications.

21 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
22 governmental entity shall select the design-build firm that submits
23 the proposal offering the best value for the governmental entity on
24 the basis of the published selection criteria and on its ranking
25 evaluations.

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

1 (c) If the governmental entity is unable to negotiate a
2 satisfactory contract with the selected firm, the governmental
3 entity shall, formally and in writing, end all negotiations with
4 that firm and proceed to negotiate with the next firm in the order
5 of the selection ranking until a contract is reached or
6 negotiations with all ranked firms end.

7 (d) Not later than the seventh day after the date the
8 contract is awarded, the governmental entity shall make the
9 rankings determined under Section 2264.307(f) public.

10 Sec. 2264.309. SUBMISSION OF DESIGN AFTER SELECTION. After
11 selection of the design-build firm, that firm's architects or
12 engineers shall submit all design elements for review and
13 determination of scope compliance to the governmental entity or the
14 governmental entity's architect or engineer before or concurrently
15 with construction.

16 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
17 design-build firm shall supply a set of construction documents for
18 the completed project to the governmental entity at the conclusion
19 of construction. The documents must note any changes made during
20 construction.

21 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
22 or performance bond is not required and may not provide coverage for
23 the design portion of the design-build contract with the
24 design-build firm under this subchapter.

25 (b) If a fixed contract amount or guaranteed maximum price
26 has not been determined at the time the design-build contract is
27 awarded, the penal sums of the performance and payment bonds

1 delivered to the governmental entity must each be in an amount equal
2 to the construction budget, as specified in the design criteria
3 package.

4 (c) The design-build firm shall deliver the bonds not later
5 than the 10th day after the date the design-build firm executes the
6 contract unless the design-build firm furnishes a bid bond or other
7 financial security acceptable to the governmental entity to ensure
8 that the design-build firm will furnish the required performance
9 and payment bonds before construction begins.

10 [Sections 2264.312-2264.350 reserved for expansion]

11 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

12 Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter,
13 "job order contracting" is a procurement method used for
14 maintenance, repair, alteration, renovation, remediation, or minor
15 construction of an existing facility when the work is of a recurring
16 nature but the delivery times, type, and quantities of work
17 required are indefinite.

18 Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
19 EXCEPTIONS. This subchapter applies only to a facility that is a
20 building or an associated structure. This subchapter does not
21 apply to:

22 (1) a highway, road, street, bridge, utility, water
23 supply project, water plant, wastewater plant, water and wastewater
24 distribution or conveyance facility, wharf, dock, airport runway or
25 taxiway, drainage project, or related type of project associated
26 with civil engineering construction; or

27 (2) a building or structure that is incidental to a

1 project that is primarily a civil engineering construction project.

2 Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
3 FACILITIES. (a) A governmental entity may award job order
4 contracts for the maintenance, repair, alteration, renovation,
5 remediation, or minor construction of a facility if:

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

8 (2) indefinite quantities and orders are awarded
9 substantially on the basis of prescribed and prepriced tasks.

10 (b) The governmental entity shall establish the maximum
11 aggregate contract price when it advertises the proposal.

12 (c) The governing body of a governmental entity shall
13 approve each job order that exceeds:

14 (1) \$500,000 under the contract; or

15 (2) a lesser amount as established by the governing
16 body.

17 Sec. 2264.354. CONTRACTUAL UNIT PRICES. The governmental
18 entity may establish contractual unit prices for a job order
19 contract by:

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

22 (2) providing a list of work items and requiring the
23 offerors to propose one or more coefficients or multipliers to be
24 applied to the price book or prepriced work items as the price
25 proposal.

26 Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
27 governmental entity may use the competitive sealed proposal method

1 under Subchapter D for job order contracts.

2 (b) The governmental entity shall advertise for, receive,
3 and publicly open sealed proposals for job order contracts.

4 (c) The governmental entity may require offerors to submit
5 information in addition to rates, including experience, past
6 performance, and proposed personnel and methodology.

7 Sec. 2264.356. AWARDING OF JOB ORDER CONTRACTS. The
8 governmental entity may award job order contracts to one or more job
9 order contractors in connection with each solicitation of
10 proposals.

11 Sec. 2264.357. USE OF ARCHITECT OR ENGINEER. If a job order
12 contract or an order issued under the contract requires
13 architectural or engineering services that constitute the practice
14 of architecture within the meaning of Chapter 1051, Occupations
15 Code, or the practice of engineering within the meaning of Chapter
16 1001, Occupations Code, the governmental entity shall select or
17 designate an architect or engineer to prepare the construction
18 documents for the project.

19 Sec. 2264.358. JOB ORDER CONTRACT TERM. The base term for a
20 job order contract may not exceed two years. The governmental
21 entity may renew the contract annually for not more than three
22 additional years.

23 Sec. 2264.359. JOB ORDERS. (a) An order for a job or
24 project under a job order contract must be signed by the
25 governmental entity's representative and the contractor.

26 (b) The order may be:

27 (1) a fixed price, lump-sum contract based

1 substantially on contractual unit pricing applied to estimated
2 quantities; or

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

5 Sec. 2264.360. PAYMENT AND PERFORMANCE BONDS. The
6 contractor shall provide payment and performance bonds, if required
7 by law, based on the amount or estimated amount of any order.

8 [Sections 2264.361-2264.400 reserved for expansion]

9 SUBCHAPTER I. ENFORCEMENT

10 Sec. 2264.401. VOID CONTRACT. (a) A contract, including a
11 job order, entered into in violation of this chapter and any bonds
12 issued in connection with the contract are voidable as against
13 public policy.

14 (b) An action to void a contract under this section does not
15 excuse the obligation of the governmental entity to pay for any
16 service performed or material delivered in good faith by a
17 contractor, architect, engineer, design-builder, or construction
18 manager before the date on which the contract is determined to be
19 void.

20 Sec. 2264.402. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
21 chapter may be enforced through an action for declaratory or
22 injunctive relief filed not later than the 10th day after the date
23 on which the contract is awarded.

24 (b) This section does not apply to enforcement of a contract
25 entered into by a state agency. In this subsection, "state agency"
26 has the meaning assigned by Section 2151.002. The term includes the
27 Texas Building and Procurement Commission.

1 SECTION 2.06. Sections 44.031(a) and (f), Education Code,
2 are amended to read as follows:

3 (a) Except as provided by this subchapter, all school
4 district contracts, except contracts for the purchase of produce or
5 vehicle fuel, valued at \$25,000 or more in the aggregate for each
6 12-month period shall be made by the method, of the following
7 methods, that provides the best value for the district:

8 (1) competitive bidding;

9 (2) competitive sealed proposals;

10 (3) a request for proposals, for services other than
11 construction services;

12 (4) a catalogue purchase as provided by Subchapter B,
13 Chapter 2157, Government Code;

14 (5) an interlocal contract;

15 (6) a method provided by Chapter 2264, Government
16 Code;

17 (7) ~~[a design/build contract,~~

18 ~~[(7) a contract to construct, rehabilitate, alter, or~~
19 ~~repair facilities that involves using a construction manager,~~

20 ~~[(8) a job order contract for the minor construction,~~
21 ~~repair, rehabilitation, or alteration of a facility,~~

22 ~~[(9)]~~ the reverse auction procedure as defined by
23 Section 2155.062(d), Government Code; or

24 (8) ~~[(10)]~~ the formation of a political subdivision
25 corporation under Section 304.001, Local Government Code.

26 (f) This section does not apply to a contract for
27 professional services rendered, including services of an

1 architect, attorney, engineer, or fiscal agent. A school district
2 may, at its option, contract for professional services rendered by
3 a financial consultant or a technology consultant in the manner
4 provided by Section 2254.003, Government Code, in lieu of the
5 methods provided by this section.

6 SECTION 2.07. Section 252.048, Local Government Code, is
7 amended by adding Subsection (c-1) to read as follows:

8 (c-1) If a change order for a public works contract in a
9 municipality with a population of 500,000 or more involves a
10 decrease or an increase of \$100,000 or less, or a lesser amount as
11 provided by ordinance, the governing body of the municipality may
12 grant general authority to an administrative official of the
13 municipality to approve the change order.

14 SECTION 2.08. Section 431.101(g), Transportation Code, is
15 amended to read as follows:

16 (g) A local government corporation [~~created by a navigation~~
17 ~~district~~] must comply with all state law related to the design and
18 construction of projects, including the procurement of design and
19 construction services, that applies to the local government
20 [~~navigation district~~] that created the corporation.

21 ARTICLE 3. ADDITIONAL EXEMPTIONS

22 SECTION 3.01. Section 44.901, Education Code, is amended by
23 adding Subsection (j) to read as follows:

24 (j) Chapter 2264, Government Code, does not apply to this
25 section.

26 SECTION 3.02. Section 51.927, Education Code, is amended by
27 adding Subsection (k) to read as follows:

1 (k) Chapter 2264, Government Code, does not apply to this
2 section.

3 SECTION 3.03. Section 2166.406, Government Code, is amended
4 by adding Subsection (k) to read as follows:

5 (k) Chapter 2264 does not apply to this section.

6 SECTION 3.04. Chapter 302, Local Government Code, is
7 amended by adding Section 302.006 to read as follows:

8 Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW.

9 Chapter 2264, Government Code, does not apply to this chapter.

10 SECTION 3.05. Subchapter E, Chapter 335, Local Government
11 Code, is amended by adding Section 335.077 to read as follows:

12 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.

13 Chapter 2264, Government Code, does not apply to this chapter.

14 SECTION 3.06. Section 22.074, Transportation Code, is
15 amended by adding Subsection (f) to read as follows:

16 (f) Chapter 2264, Government Code, does not apply to a joint
17 board whose constituent agencies are populous home-rule
18 municipalities.

19 SECTION 3.07. Section 370.305, Transportation Code, is
20 amended by adding Subsection (c-1) to read as follows:

21 (c-1) Chapter 2264, Government Code, does not apply to
22 agreements entered into pursuant to this section.

23 SECTION 3.08. Subchapter Q, Chapter 451, Transportation
24 Code, is amended by adding Section 451.8025 to read as follows:

25 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.

26 Chapter 2264, Government Code, does not apply to this subchapter.

27 SECTION 3.09. Subchapter C, Chapter 452, Transportation

1 Code, is amended by adding Section 452.1095 to read as follows:

2 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR
3 CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply
4 to an authority consisting of one subregion governed by a
5 subregional board created under Subchapter O.

6 SECTION 3.10. Section 60.452, Water Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) Chapter 2264, Government Code, does not apply to this
9 subchapter.

10 ARTICLE 4. CONFORMING AMENDMENT

11 SECTION 4.01. Section 252.021(a), Local Government Code, is
12 amended to read as follows:

13 (a) Before a municipality may enter into a contract that
14 requires an expenditure of more than \$25,000 from one or more
15 municipal funds, the municipality must:

16 (1) comply with the procedure prescribed by this
17 subchapter and Subchapter C for competitive sealed bidding or
18 competitive sealed proposals;

19 (2) use the reverse auction procedure, as defined by
20 Section 2155.062(d), Government Code, for purchasing; or

21 (3) comply with a method described by Chapter 2264,
22 Government Code [~~Subchapter H, Chapter 271~~].

23 ARTICLE 5. REPEALER

24 SECTION 5.01. The following are repealed:

25 (1) Sections 44.0312, 44.0315, 44.035, 44.036,
26 44.037, 44.038, 44.039, 44.040, 44.041, and 44.043, Education Code;

27 (2) Sections 2166.2511, 2166.2526, 2166.2531,

1 2166.2532, 2166.2533, and 2166.2535, Government Code;

2 (3) Section 252.043(d-1), Local Government Code;

3 (4) Subchapter H, Chapter 271, Local Government Code;

4 and

5 (5) Section 431.101(e), Transportation Code.

6 ARTICLE 6. TRANSITION; EFFECTIVE DATE

7 SECTION 6.01. (a) The changes in law made by this Act apply
8 only to a contract or construction project for which a governmental
9 entity first advertises or otherwise requests bids, proposals,
10 offers, or qualifications, or makes a similar solicitation, on or
11 after the effective date of this Act.

12 (b) A contract or construction project for which a
13 governmental entity first advertises or otherwise requests bids,
14 proposals, offers, or qualifications, or makes a similar
15 solicitation, before the effective date of this Act is governed by
16 the law as it existed immediately before the effective date of this
17 Act, and that law is continued in effect for that purpose.

18 SECTION 6.02. This Act takes effect September 1, 2007.