

By: Corte

H.B. No. 3753

A BILL TO BE ENTITLED

AN ACT

relating to procurement methods of certain water utility systems for the design, construction, and operation of certain facilities.

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

SECTION 1. Chapter 271, Local Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ALTERNATIVE PROJECT DELIVERY METHODS FOR FACILITIES

Sec. 271.181. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Section 1051.001, Occupations Code.

(2) "Desalination facility" means a water desalination project and all related wells and water supply, treatment, drainage, discharge, distribution, or conveyance facilities, and buildings or structures that are incidental to the construction, operation, and maintenance of the water desalination project.

(3) "Design-build contract" means a single contract with a design-build firm for the design and construction or the design, construction, and operation of a desalination facility.

(4) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.

(5) "Engineer" means an individual licensed as an

1 engineer under Chapter 1001, Occupations Code.

2 (6) "Water system" means a municipally owned water or
3 wastewater system with a governing board appointed by the governing
4 body of the municipality.

5 Sec. 271.182. APPLICABILITY OF OTHER LAW. (a) Any provision
6 in the charter of a home-rule municipality or regulation, if any, of
7 a water system that requires the use of competitive sealed
8 proposals or prescribes procurement procedures and that is in
9 conflict with this subchapter controls over this subchapter unless
10 the governing body of the municipality or water system, as
11 appropriate, elects to have this subchapter supersede the charter
12 or regulation.

13 (b) The purchasing requirements of Section 361.426, Health
14 and Safety Code, apply to purchases by a water system made under
15 this subchapter.

16 (c) Except as provided by this section, to the extent of any
17 conflict, this subchapter prevails over any other law relating to
18 the design, construction, or operation of a desalination facility
19 except a law relating to contracting with historically
20 underutilized businesses.

21 Sec. 271.183. NOTICE REQUIREMENTS. For a contract entered
22 into by a water system under the methods provided by this
23 subchapter, the water system shall publish notice of the time and
24 place the proposals, or the responses to a request for
25 qualifications, will be received and opened. The notice must be
26 published in a newspaper of general circulation in the county in
27 which the water system's central administrative office is located

1 or the county in which the greatest amount of the water system's
2 territory is located once each week for at least two weeks before
3 the date of the deadline for receiving proposals or responses. If
4 there is not a newspaper of general circulation in that county, the
5 notice must be published in a newspaper of general circulation in
6 the county nearest the county seat of the county in which the water
7 system's central administrative office is located or the county in
8 which the greatest amount of the water system's territory is
9 located.

10 Sec. 271.184. DELEGATION. The governing board of a water
11 system may, as it considers appropriate, delegate its authority
12 under this subchapter regarding an action authorized or required by
13 this subchapter to be taken by a water system to a designated
14 person, representative, or committee.

15 Sec. 271.185. CONTRACTS FOR DESALINATION FACILITY:
16 DESIGN-BUILD. (a) A water system may use the design-build method
17 for the design, construction, rehabilitation, alteration,
18 operation, or repair of a desalination facility if the governing
19 board of the water system determines that the design-build method
20 provides the best value for the water system. In using this method
21 and in entering into a contract for the services of a design-build
22 firm, the contracting water system and the design-build firm shall
23 follow the procedures provided by this subchapter and Sections
24 271.113(b) and 271.114.

25 (b)(1) The water system shall evaluate and select a
26 design-build firm in two phases.

27 (2) In phase one, the water system shall prepare a

1 request for qualifications as provided by Section 271.186 and
2 evaluate each offeror's experience, technical competence, and
3 capability to perform, the past performance of the offeror's team
4 and members of the team, and other appropriate factors submitted by
5 the team or firm in response to the request for qualifications,
6 except that cost-related or price-related evaluation factors are
7 not permitted. The water system may interview any of the offerors
8 that submit a response to the request for qualifications. The water
9 system may qualify a maximum of five offerors on the basis of
10 demonstrated competence and qualifications to participate in the
11 second phase of the evaluation and selection process.

12 (3) In phase two, the water system shall request
13 proposals from the offerors qualified to participate in this phase
14 under Subsection (b)(2). The request for proposals must include
15 the selection criteria stated in the request for qualifications.
16 The water system may request additional information regarding
17 demonstrated competence and qualifications, considerations of the
18 safety and long-term durability of the desalination facility, the
19 feasibility of implementing the desalination facility as proposed,
20 the ability of the offeror to meet schedules, the overall cost of
21 the desalination facility, the anticipated operations and
22 maintenance budget at various levels, and any other information
23 that may assist the water system in evaluating and selecting a
24 design-build firm. Each proposal submitted by an offeror under
25 this phase must include a technical proposal that includes
26 preliminary design drawings, a project schedule, and a lump-sum
27 contract price for all services provided under the contract. The

1 water system may interview and negotiate with any respondent to the
2 request for proposals before and after the submission of a response
3 to the request and before the award to provide clarification and
4 assure full understanding of and responsiveness to the requirements
5 for the request for proposals. Offerors must be accorded fair and
6 equal treatment with respect to any opportunity for discussion with
7 or clarification by the water system. In conducting any
8 discussions under this subdivision regarding price, information
9 regarding price may not be disclosed to competing offerors.
10 Revision of a request for proposal is permitted under this
11 subdivision after the initial submission and before the award to
12 allow an offeror to submit a best and final proposal. The water
13 system shall select the design-build firm that submits the final
14 proposal offering the best value for the water system.

15 (c) The water system may:

16 (1) cancel a request for qualifications or a request
17 for proposals; or

18 (2) reject any proposal in whole or in part.

19 Sec. 271.186. REQUEST FOR QUALIFICATIONS. The water system
20 shall prepare a request for qualifications that may include:

21 (1) general information on the desalination facility
22 project;

23 (2) project scope;

24 (3) proposed budget;

25 (4) project schedule;

26 (5) any known special systems;

27 (6) the maximum number of design-build firms to be

1 qualified to participate in the second phase of the evaluation and
2 selection process; and

3 (7) other information that may assist potential
4 design-build firms in submitting proposals for the project.

5 Sec. 271.187. DISPOSITION OF PROPOSALS AFTER AWARD. (a)
6 All proposals submitted under this subchapter are property of the
7 water system.

8 (b) Before the execution of a contract under this
9 subchapter, only the name of a design-build firm qualified to
10 participate in phase two is available for public disclosure and all
11 other information received by the water system in response to a
12 request for qualifications or the request for proposals is
13 confidential.

14 (c) Except as provided by Subsection (d), information
15 contained in a proposal is open to public inspection not later than
16 the seventh day after the date the water system executes a contract
17 with a design-build firm under this subchapter.

18 (d) If a design-build firm requests, the water system will
19 consider trade secrets or any other proprietary information
20 contained in a proposal confidential to the extent permitted by
21 law.

22 Sec. 271.188. PERFORMANCE OR PAYMENT BOND. A payment or
23 performance bond is not required for, and may not provide coverage
24 for, the portion of a design-build contract under this subchapter
25 that includes design services only. If a fixed contract amount or
26 guaranteed maximum price has not been determined at the time a
27 design-build contract is awarded, the penal sums of the performance

1 and payment bonds delivered to the water system must each be in an
2 amount equal to the project budget, as specified in the request for
3 qualifications or request for proposals. The design-build firm
4 shall deliver the bonds not later than the 10th day after the date
5 the design-build firm executes the contract unless the design-build
6 firm furnishes a bid bond or other financial security acceptable to
7 the water system to ensure that the design-build firm will furnish
8 the required performance and payment bonds when a guaranteed
9 maximum price is established.

10 SECTION 2. The changes in law made by this Act apply only to
11 a contract for which a request for proposals or a request for
12 qualifications is first published or distributed on or after the
13 effective date of this Act. A contract for which a request for
14 proposals or a request for qualifications is first published or
15 distributed before the effective date of this Act is governed by the
16 law in effect at the time the request is published or distributed,
17 and the former law is continued in effect for that purpose.

18 SECTION 3. This Act takes effect September 1, 2007.