

By: Corte

H.B. No. 3755

A BILL TO BE ENTITLED

AN ACT

relating to the procurement methods of municipal water utilities for the design, construction, rehabilitation, alteration, or repair of certain projects.

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. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 271.181. DEFINITIONS. In this subchapter:

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

(2) "Civil works project" means a water supply project, water plant project, wastewater plant project, water or wastewater distribution or conveyance facility project, or desalination project.

(3) "Design-build contract" means a single contract with a design-build firm for the design and construction of a civil works project.

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

(5) "Design criteria package" means a set of documents

1 that provides sufficient information to describe the civil works
2 project and permit a design-build firm to:

3 (A) prepare a response to a municipal water
4 utility's request for qualifications; and

5 (B) provide any additional information,
6 including information included in the criteria for selection.

7 (6) "Engineer" means an individual licensed as an
8 engineer under Chapter 1001, Occupations Code.

9 (7) "Municipal water utility" means a municipally
10 owned water utility in which the governing board of the utility is
11 the governing body of the municipality or appointed by the
12 governing body of the municipality.

13 Sec. 271.182. APPLICABILITY OF OTHER LAW. Any provision in
14 the charter of a home-rule municipality or regulation, if any, of a
15 municipal water utility that requires the use of competitive sealed
16 proposals or prescribes procurement procedures and that is in
17 conflict with this subchapter controls over this subchapter unless
18 the governing body of the municipality or municipal water utility
19 elects to have this subchapter supersede the charter or regulation.

20 Sec. 271.183. NOTICE REQUIREMENTS. (a) For a contract
21 entered into by a municipal water utility under any of the methods
22 provided by this subchapter, the entity shall publish notice of the
23 time and place the proposals, or the responses to a request for
24 qualifications, will be received and opened.

25 (b) The notice must be published in a newspaper of general
26 circulation in the county in which the municipal water utility's
27 central administrative office is located or the county in which the

1 greatest amount of the municipal water utility's territory is
2 located once each week for at least two weeks before the date of the
3 deadline for receiving proposals or responses.

4 (c) If there is not a newspaper of general circulation in
5 that county, the notice must be published in a newspaper of general
6 circulation in the county nearest the county seat of the county in
7 which the municipal water utility's central administrative office
8 is located or the county in which the greatest amount of the
9 municipal water utility's territory is located.

10 Sec. 271.184. CONTRACTS FOR CIVIL WORKS PROJECTS:
11 DESIGN-BUILD. (a) A municipal water utility may use the
12 design-build method for the design, construction, rehabilitation,
13 alteration, or repair of a civil works project. In using this method
14 and in entering into a contract for the services of a design-build
15 firm, the contracting municipal water utility and the design-build
16 firm shall follow the procedures provided by this subchapter.

17 (b) A municipal water utility may not enter into a contract
18 for more than two projects under this subchapter in any fiscal year.

19 (c) A contract for a project under this subchapter may cover
20 only a single integrated project. A municipal water utility may not
21 enter into a contract for aggregated projects at multiple
22 locations.

23 (d) A municipal water utility shall use the following
24 criteria as a minimum basis for determining the circumstances under
25 which the design-build method is appropriate for a project:

26 (1) the extent to which the utility can adequately
27 define the project requirements;

1 (2) the specific time advantages in the delivery of
2 the project;

3 (3) the ability to ensure that a competitive
4 procurement can be held; and

5 (4) the capability of the utility to manage and
6 oversee the project, including the availability of experienced
7 personnel or outside consultants who are familiar with the
8 design-build method of project delivery.

9 (e) The governing board of the municipal water utility shall
10 make a formal finding on the criteria described by Subsection (d)
11 before preparing a request for qualifications under Section
12 271.187.

13 Sec. 271.185. USE OF ENGINEER OR ARCHITECT. (a) The
14 municipal water utility shall select or designate an engineer or
15 architect who is independent of the design-build firm to act as its
16 representative for the procurement process and for the duration of
17 the work on the civil works project.

18 (b) If the engineer or architect is not an employee of the
19 municipal water utility, the municipal water utility shall select
20 the engineer or architect on the basis of demonstrated competence
21 and qualifications as provided by Section 2254.004, Government
22 Code.

23 Sec. 271.186. USE OF OTHER PROFESSIONAL SERVICES. (a) The
24 municipal water utility shall provide or contract for,
25 independently of the design-build firm, the following services
26 necessary for the acceptance of the civil works project by the
27 utility:

1 (1) construction materials testing and inspection
2 services; and

3 (2) verification testing services.

4 (b) If testing services under this section are not provided
5 by the municipal water utility, the utility shall select the
6 services for which it contracts under this section in accordance
7 with Section 2254.004, Government Code.

8 Sec. 271.187. REQUEST FOR QUALIFICATIONS. (a) The
9 municipal water utility shall prepare a request for qualifications
10 that includes at a minimum:

11 (1) specific information on the civil works project
12 site;

13 (2) project scope;

14 (3) project budget;

15 (4) project schedule;

16 (5) criteria for selection under Section 271.189 and
17 the weighting of the criteria; and

18 (6) other information that may assist potential
19 design-build firms in submitting proposals for the project.

20 (b) The municipal water utility shall also prepare a design
21 criteria package as described by Section 271.188.

22 Sec. 271.188. CONTENTS OF DESIGN CRITERIA PACKAGE. A
23 design criteria package must include, as appropriate:

24 (1) legal description of the site;

25 (2) survey information regarding the site;

26 (3) interior space requirements;

27 (4) special material requirements;

- 1 (5) material quality standards;
- 2 (6) conceptual criteria for the project;
- 3 (7) special equipment requirements;
- 4 (8) budget or cost estimates;
- 5 (9) time schedules;
- 6 (10) quality assurance and quality control
- 7 requirements;
- 8 (11) site development requirements;
- 9 (12) applicable codes and ordinances;
- 10 (13) provisions for utilities;
- 11 (14) parking requirements; and
- 12 (15) any other requirements, as applicable.

13 Sec. 271.189. EVALUATION OF DESIGN-BUILD FIRMS. (a) The
14 municipal water utility shall publish a request for qualifications.
15 After receiving responses, the municipal water utility shall
16 evaluate each offeror's experience, technical competence,
17 capability to perform, the past performance of the offeror's team
18 and members of the team, and other appropriate factors submitted by
19 the team or firm in response to the request for qualifications,
20 except that cost-related or price-related evaluation factors are
21 not permitted at this stage.

22 (b) Each offeror must certify to the municipal water utility
23 that each engineer or architect that is a member of its team was
24 selected based on demonstrated competence and qualifications, in
25 the manner provided by Section 2254.004, Government Code.

26 (c) The municipal water utility shall qualify a maximum of
27 three offerors to submit additional information and, if the

1 municipal water utility chooses, to interview for final selection.

2 Sec. 271.190. SELECTION OF DESIGN-BUILD FIRM. The
3 municipal water utility shall select a design-build firm using one
4 of the following selection options:

5 (1) qualifications-based selection as provided by
6 Section 271.191; or

7 (2) a combination of technical and price proposals as
8 provided by Section 271.192.

9 Sec. 271.191. PROCEDURES FOR QUALIFICATIONS-BASED
10 SELECTION. A municipal water utility that selects a design-build
11 firm using the qualifications-based selection option:

12 (1) may request that the firms identified under
13 Section 271.189(c) provide on or before the 90th day after the date
14 of the request additional information regarding demonstrated
15 competence and qualifications, project approaches, the ability of
16 the firm to meet schedules, or other factors as appropriate, except
17 that price, quantity, or cost-related criteria may not be
18 requested, accepted, or considered;

19 (2) may not require firms to submit and may not accept
20 or consider conceptual or detailed engineering or architectural
21 designs as part of the proposal; and

22 (3) shall:

23 (A) rank each proposal submitted on the basis of
24 the criteria set forth in the request for qualifications and the
25 results of any interview; and

26 (B) select the design-build firm that is most
27 highly qualified on the basis of the published selection criteria

1 and on its ranking evaluations.

2 Sec. 271.192. PROCEDURES FOR COMBINATION OF TECHNICAL AND
3 COST PROPOSALS. (a) A municipal water utility that selects a
4 design-build firm using a combination of technical and cost
5 proposals shall request proposals from firms identified under
6 Section 271.189(c). A firm must submit a proposal on or before the
7 90th day after the date the municipal water utility makes the
8 request for the proposals from the selected firms. The request for
9 proposals must include:

10 (1) a design criteria package;

11 (2) except as provided by Subsection (b), a
12 geotechnical report containing information regarding geotechnical
13 site information;

14 (3) detailed instructions for preparing the technical
15 proposal and the items to be included; and

16 (4) the relative weighting of the technical and price
17 proposals and the formula by which the proposals will be evaluated
18 and ranked.

19 (b) The municipal water utility, if possible, shall make the
20 project site available to each offeror described by Subsection
21 (a)(1) to conduct a site investigation, including a geotechnical
22 investigation.

23 (c) The technical proposal component under this section
24 must be weighted a minimum of 50 percent.

25 (d) Each proposal must include a sealed technical proposal
26 and a separate sealed price proposal.

27 (e) The technical proposal must address:

- 1 (1) project approach;
- 2 (2) anticipated problems;
- 3 (3) proposed solutions to anticipated problems;
- 4 (4) ability to meet schedules;
- 5 (5) conceptual engineering design; and
- 6 (6) other information requested by the municipal water
7 utility.

8 (f) The municipal water utility shall first open, evaluate,
9 and score each responsive technical proposal submitted on the basis
10 of the criteria described in the request for proposals. The
11 municipal water utility may reject as nonresponsive any firm that
12 makes a significant change to the composition of its firm as
13 initially submitted. The municipal water utility shall
14 subsequently open, evaluate, and score the price proposals from
15 firms that submitted a responsive technical proposal. The municipal
16 water utility shall select the design-build firm in accordance with
17 the formula provided in the request for proposal under Subsection
18 (a)(4).

19 Sec. 271.193. NEGOTIATION. After selecting the highest
20 ranked design-build firm under Section 271.191 or 271.192, the
21 municipal water utility shall first attempt to negotiate a contract
22 with the selected firm. If the municipal water utility is unable to
23 negotiate a satisfactory contract with the selected firm, the
24 utility shall, formally and in writing, end all negotiations with
25 that firm and proceed to negotiate with the next firm in the order
26 of the selection ranking until a contract is reached or
27 negotiations with all ranked firms end.

1 Sec. 271.194. ASSUMPTION OF RISKS. The municipal water
2 utility is responsible for all cost increases associated with:

3 (1) scope changes and modifications requested by the
4 municipal water utility that did not result from an error or
5 omission of the design-build firm;

6 (2) regulatory permitting for which the municipal
7 water utility is responsible as required by law or as provided by
8 contract;

9 (3) acquisition of the property; and

10 (4) delay resulting from natural disasters or other
11 force majeure events that cannot be insured by the offeror.

12 Sec. 271.195. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

13 (a) A municipal water utility may not use any unique design
14 element, technique, method, process, or information contained in an
15 unsuccessful proposal unless:

16 (1) the unsuccessful design-build firm agrees in
17 writing to the municipal water utility's use of the design element,
18 technique, method, process, or information; and

19 (2) not later than the 30th day after the date a
20 contract is executed under this subchapter, the municipal water
21 utility provides the unsuccessful design-build firm a stipend that
22 is equal to a minimum of one-half of one percent of the final
23 contract price.

24 (b) If the stipend is paid, the municipal water utility may
25 make use of the unique design element, technique, method, process,
26 or information contained in the proposal. The use by the municipal
27 water utility of any design element, technique, method, process, or

1 information is at the sole risk and discretion of the utility and
2 does not confer liability on the recipient of the stipend under this
3 section.

4 (c) If a municipal water utility requests and receives
5 proposals and subsequently cancels the request, the utility may not
6 reissue the request or a substantially similar request before the
7 third anniversary of the date the utility issued the original
8 request for qualifications under this subchapter unless the utility
9 provides each offeror who submitted a proposal as requested under
10 Section 271.191 or 271.192 the minimum stipend required by this
11 section. A stipend paid under this subsection does not grant the
12 municipal water utility any right to use any unique design element,
13 technique, method, process, or information contained in an
14 unsuccessful proposal.

15 Sec. 271.196. COMPLETION OF DESIGN. (a) Following
16 selection of a design-build firm under this subchapter, the firm's
17 engineers shall complete the design, submitting all design elements
18 for review and determination of scope compliance to the municipal
19 water utility before or concurrently with construction.

20 (b) An appropriately licensed design professional shall
21 sign and seal design documents before the documents are released
22 for construction.

23 Sec. 271.197. FINAL CONSTRUCTION DOCUMENTS. The
24 design-build firm shall supply to the municipal water utility a
25 signed and sealed set of as-built construction documents for the
26 project at the conclusion of construction.

27 Sec. 271.198. PERFORMANCE OR PAYMENT BOND. A payment or

1 performance bond is not required for, and may not provide coverage
2 for, the portion of a design-build contract under this subchapter
3 that includes design services only. If a fixed contract amount or
4 guaranteed maximum price has not been determined at the time a
5 design-build contract is awarded, the penal sums of the performance
6 and payment bonds delivered to the municipal water utility must
7 each be in an amount equal to the project budget, as specified in
8 the design criteria package. The design-build firm shall deliver
9 the bonds not later than the 10th day after the date the
10 design-build firm executes the contract unless the design-build
11 firm furnishes a bid bond or other financial security acceptable to
12 the municipal water utility to ensure that the design-build firm
13 will furnish the required performance and payment bonds when a
14 guaranteed maximum price is established.

15 SECTION 2. This Act takes effect September 1, 2007.