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No equivalent provision.

SECTION \_\_. Section 252.021(a), Local Government Code, is amended to read as follows:

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

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

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

(3) comply with a method described by Subchapter H or J, Chapter 271.

No equivalent provision.

SECTION 1. Sections 271.111(7) and (10), Local Government Code, are amended to read as follows:

(7) "Facility" means unless otherwise specifically provided, buildings the design and construction of which are governed by accepted building codes. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(10) "Governmental entity" means a municipality,

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county, hospital district, water district or authority created under Section 59, Article XVI, Texas Constitution, including a river authority or conservation and reclamation district, or a defense base development authority established under Chapter 379B [~~378 as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999~~].

No equivalent provision.

SECTION 2. Section 271.116, Local Government Code, is amended by adding Subsection (a-1) to read as follows:  
(a-1) In this section "facility" means an improvement to real property.

No equivalent provision.

SECTION 3. Section 271.118, Local Government Code, is amended by adding Subsection (a-1) to read as follows:  
(a-1) In this section "facility" means an improvement to real property.

No equivalent provision.

SECTION 4. Section 271.120(i), Local Government Code, is amended to read as follows:  
(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter

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1051, Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the facility [these services shall be provided in accordance with applicable law]. If the architect or engineer is not a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

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) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B)

SECTION 5. 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) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B)

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and that are primarily civil engineering construction projects.

(3) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil works construction in Texas.

(4) "Design criteria package" means a set of documents that:

(A) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and

(B) permits a design-build firm to:

(i) assess the scope of work and the risk involved; and

(ii) submit a proposal on the project.

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

(6) "Local governmental entity" means a municipality, a county, a river authority, a defense base development authority established under Chapter 379B, a municipally owned water utility with a separate governing board appointed by the governing body of a municipality, or any other special district or authority authorized by law to enter into a public works contract for a civil works project. The term does not include a water district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, with a population of less than 50,000.

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and that are primarily civil engineering construction projects.

(3) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil works construction in Texas.

(4) "Design criteria package" means a set of documents that:

(A) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and

(B) permits a design-build firm to:

(i) assess the scope of work and the risk involved; and

(ii) submit a proposal on the project.

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

(6) "Local governmental entity" means a municipality, a county, a river authority, a defense base development authority established under Chapter 379B, a municipally owned water utility with a separate governing board appointed by the governing body of a municipality, or any other special district or authority authorized by law to enter into a public works contract for a civil works project. The term does not include a regional tollway authority created under Chapter 366, Transportation Code; a regional mobility authority created under Chapter 370, Transportation Code; or a water district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, with a population of less than 50,000.

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Sec. 271.182. APPLICABILITY. (a) Before September 1, 2009, this subchapter applies to a local governmental entity with a population of 500,000 or more within its geographic boundaries or service area.

(b) On or after September 1, 2009, and before September 1, 2011, this subchapter applies to a local governmental entity with a population of more than 100,000 within its geographic boundaries or service area.

(c) On or after September 1, 2011, and before September 1, 2013, this subchapter applies to a local governmental entity with a population of more than 50,000 within its geographic boundaries or service area.

Sec. 271.183. APPLICABILITY OF OTHER LAW. (a) The purchasing requirements of Section 361.426, Health and Safety Code, apply to purchases by a local governmental entity made under this subchapter.

(b) Except as provided by this section, to the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

Sec. 271.184. NOTICE REQUIREMENTS. (a) A local governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in any manner prescribed by law.

(b) For a contract entered into by a local governmental entity under any of the methods provided by this subchapter, the entity shall publish notice of the time and place the bid or proposals or the request for qualifications will be received and opened in any manner

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Sec. 271.182. APPLICABILITY. (a) Before September 1, 2009, this subchapter applies to a local governmental entity with a population of 500,000 or more within its geographic boundaries or service area.

(b) On or after September 1, 2009, and before September 1, 2011, this subchapter applies to a local governmental entity with a population of more than 100,000 within its geographic boundaries or service area.

Sec. 271.183. APPLICABILITY OF OTHER LAW. (a) The purchasing requirements of Section 361.426, Health and Safety Code, apply to purchases by a local governmental entity made under this subchapter.

(b) Except as provided by this section, to the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

Sec. 271.184. NOTICE REQUIREMENTS. (a) A local governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in any manner prescribed by law.

(b) For a contract entered into by a local governmental entity under any of the methods provided by this subchapter, the entity shall publish notice of the time and place the bid or proposals or the request for qualifications will be received and opened in any manner

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prescribed by law.

Sec. 271.185. CONTRACTS FOR CIVIL WORKS PROJECTS: DESIGN-BUILD. (a) A local governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project. In using this method and in entering into a contract for the services of a design-build firm, the contracting local governmental entity and the design-build firm shall follow the procedures provided by this subchapter.

(b) A contract for a project under this subchapter may cover only a single integrated project. A local governmental entity may not enter into a contract for aggregated projects at multiple locations. If a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a bus rapid transit system created under Chapter 451, Transportation Code, the bus rapid transit system is a single integrated project **for purposes of this subsection.**

(c) A local governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define the project requirements;

(2) the time constraints for the delivery of the project;

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prescribed by law.

Sec. 271.185. CONTRACTS FOR CIVIL WORKS PROJECTS: DESIGN-BUILD. (a) A local governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project. In using this method and in entering into a contract for the services of a design-build firm, the contracting local governmental entity and the design-build firm shall follow the procedures provided by this subchapter.

(b) A contract for a project under this subchapter may cover only a single integrated project. A local governmental entity may not enter into a contract for aggregated projects at multiple locations. **For purposes of this subsection:**

**(1) if a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a bus rapid transit system created under Chapter 451, Transportation Code, the bus rapid transit system is a single integrated project; and**

**(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.**

(c) A local governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define the project requirements;

(2) the time constraints for the delivery of the project;

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

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

(d) A local governmental entity shall make a formal finding on the criteria described by Subsection (c) before preparing a request for qualifications under Section 271.189.

Sec. 271.186. LIMITATION ON NUMBER OF PROJECTS. (a) During the first four years that this subchapter applies to a local governmental entity under Section 271.182, the entity may, under this subchapter, enter into contracts for not more than two projects in any fiscal year.

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

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

(d) A local governmental entity shall make a formal finding on the criteria described by Subsection (c) before preparing a request for qualifications under Section 271.189.

Sec. 271.186. LIMITATION ON NUMBER OF PROJECTS. (a) During the first four years that this subchapter applies to a local governmental entity under Section 271.182:

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than three projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 may, under this subchapter, enter into contracts for not more than two projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into a contract for not more than one civil works project in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in

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(b) After the period described by Subsection (a):  
(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than **four** projects in any fiscal year;  
(2) a local governmental entity with a population of 100,000 or more but less than 500,000 may, under this subchapter, enter into contracts for not more than **three** projects in any fiscal year; and  
(3) a local governmental entity with a population of less than 100,000 may, under this subchapter, enter into contracts for not more than two projects in any fiscal year.

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Subdivision (1) for the municipality, provided that:  
(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and  
(ii) the governing body of the municipality must approve the contracts.

(b) After the period described by Subsection (a):  
(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than **six** projects in any fiscal year;  
(2) a local governmental entity with a population of 100,000 or more but less than 500,000 may, under this subchapter, enter into contracts for not more than **four** projects in any fiscal year; and  
(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:  
(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and  
(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

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Sec. 271.187. USE OF ENGINEER. (a) The local governmental entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The selected or designated engineer has full responsibility for complying with Chapter 1001, Occupations Code.

(b) If the engineer is not a full-time employee of the local governmental entity, the local governmental entity shall select the engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

Sec. 271.188. USE OF OTHER PROFESSIONAL SERVICES. (a) The local governmental entity shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the civil works project by the entity:

(1) inspection services;

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

(c) For purposes of determining the number of eligible projects under this section, a municipally owned water utility with a separate governing board appointed by the governing body of the municipality is considered part of the municipality.

Sec. 271.187. USE OF ENGINEER. (a) The local governmental entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The selected or designated engineer has full responsibility for complying with Chapter 1001, Occupations Code.

(b) If the engineer is not a full-time employee of the local governmental entity, the local governmental entity shall select the engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

Sec. 271.188. USE OF OTHER PROFESSIONAL SERVICES. (a) The local governmental entity shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the civil works project by the entity:

(1) inspection services;

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(2) construction materials engineering and testing; and  
(3) verification testing services.  
(b) The local governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004, Government Code.  
Sec. 271.189. REQUEST FOR QUALIFICATIONS.  
(a) The local governmental entity shall prepare a request for qualifications that includes:  
(1) information on the civil works project site;  
(2) project scope;  
(3) project budget;  
(4) project schedule;  
(5) criteria for selection under Section 271.191 and the weighting of the criteria; and  
(6) other information that may assist potential design-build firms in submitting proposals for the project.  
(b) The local governmental entity shall also prepare a design criteria package as described by Section 271.190.  
Sec. 271.190. CONTENTS OF DESIGN CRITERIA PACKAGE. A design criteria package may include, as appropriate:  
(1) budget or cost estimates;  
(2) information on the site;  
(3) performance criteria;  
(4) special material requirements;  
(5) initial design calculations;  
(6) known utilities;  
(7) capacity requirements;  
(8) quality assurance and quality control requirements;  
and

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(2) construction materials engineering and testing; and  
(3) verification testing services.  
(b) The local governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004, Government Code.  
Sec. 271.189. REQUEST FOR QUALIFICATIONS.  
(a) The local governmental entity shall prepare a request for qualifications that includes:  
(1) information on the civil works project site;  
(2) project scope;  
(3) project budget;  
(4) project schedule;  
(5) criteria for selection under Section 271.191 and the weighting of the criteria; and  
(6) other information that may assist potential design-build firms in submitting proposals for the project.  
(b) The local governmental entity shall also prepare a design criteria package as described by Section 271.190.  
Sec. 271.190. CONTENTS OF DESIGN CRITERIA PACKAGE. A design criteria package may include, as appropriate:  
(1) budget or cost estimates;  
(2) information on the site;  
(3) performance criteria;  
(4) special material requirements;  
(5) initial design calculations;  
(6) known utilities;  
(7) capacity requirements;  
(8) quality assurance and quality control requirements;

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(9) the type, size, and location of structures.

Sec. 271.191. EVALUATION OF DESIGN-BUILD FIRMS. (a) The local governmental entity shall receive proposals and shall evaluate each offeror's experience, technical competence, capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted at this stage.

(b) Each offeror must:

(1) 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; and

(2) certify to the local governmental entity that each selection or designation was based on demonstrated competence and qualifications, in the manner provided by Section 2254.004, Government Code.

(c) The local governmental entity shall qualify a maximum of three offerors to submit additional information and, if the entity chooses, to interview for final selection.

Sec. 271.192. SELECTION OF DESIGN-BUILD FIRM. The local governmental entity shall select a design-build firm using one of the following selection options:

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(9) the type, size, and location of structures; and  
(10) notice of any ordinances, rules, or goals adopted by the local governmental entity relating to awarding contracts to historically underutilized businesses.

Sec. 271.191. EVALUATION OF DESIGN-BUILD FIRMS. (a) The local governmental entity shall receive proposals and shall evaluate each offeror's experience, technical competence, capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted at this stage.

(b) Each offeror must:

(1) 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; and

(2) certify to the local governmental entity that each selection or designation was based on demonstrated competence and qualifications, in the manner provided by Section 2254.004, Government Code.

(c) The local governmental entity shall qualify offerors to submit additional information and, if the entity chooses, to interview for final selection.

Sec. 271.192. SELECTION OF DESIGN-BUILD FIRM. The local governmental entity shall select a design-build firm using a combination of technical and cost proposals as provided by Section 271.193.

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(1) qualifications-based selection as provided by Section 271.193; or

(2) a combination of technical and cost proposals as provided by Section 271.194.

Sec. 271.193. PROCEDURES FOR QUALIFICATIONS-BASED SELECTION. A local governmental entity that selects a design-build firm using the qualifications-based selection option:

(1) may request that the firms identified under Section 271.191(c) provide additional information regarding demonstrated competence and qualifications, project approaches, the ability of the firm to meet schedules, or other factors as appropriate, except that price or cost-related criteria may not be utilized;

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

(3) shall:

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

(B) select the design-build firm that is most highly qualified on the basis of the published selection criteria and on its ranking evaluations.

Sec. 271.194. PROCEDURES FOR COMBINATION OF TECHNICAL AND COST PROPOSALS. (a) A local governmental entity that selects a design-build firm using a combination of technical and cost proposals shall request proposals from firms identified under Section 271.191(c). A firm must submit a proposal not later than

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Sec. 271.193. PROCEDURES FOR COMBINATION OF TECHNICAL AND COST PROPOSALS. (a) A local governmental entity shall request proposals from design-build firms identified under Section 271.191(c). A firm must submit a proposal not later than the 180th day after the date the local governmental entity makes a

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the 180th day after the date the local governmental entity makes a public request for the proposals from the selected firms. The request for proposals must include:

(1) a design criteria package;  
(2) a report containing geotechnical information relating to the project site;

(3) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and

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

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

(c) Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) project approach;

(2) anticipated problems;

(3) proposed solutions to anticipated problems;

(4) ability to meet schedules;

(5) conceptual engineering design; and

(6) other information requested by the local governmental entity.

(e) The local governmental entity shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the

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public request for the proposals from the selected firms. The request for proposals must include:

(1) a design criteria package;

(2) if the project site is identified, a geotechnical baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal;

(3) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and

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

(b) The technical proposal is a component of the proposal under this section.

(c) Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) project approach;

(2) anticipated problems;

(3) proposed solutions to anticipated problems;

(4) ability to meet schedules;

(5) conceptual engineering design; and

(6) other information requested by the local governmental entity.

(e) The local governmental entity shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the

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request for proposals and assign points on the basis of the weighting specified in the request for proposals. The local governmental entity may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted. The local governmental entity shall subsequently open, evaluate, and score the cost proposals from firms that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The local governmental entity shall select the design-build firm in accordance with the formula provided in the request for proposals.

Sec. 271.195. NEGOTIATION. After selecting the highest ranked design-build firm under Section 271.193 or 271.194, the local governmental entity shall first attempt to negotiate a contract with the selected firm. If the local governmental entity is unable to negotiate a satisfactory contract with the selected firm, the entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Sec. 271.196. ASSUMPTION OF RISKS. The local governmental entity shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications;

(B) unknown or differing site conditions;

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request for proposals and assign points on the basis of the weighting specified in the request for proposals. The local governmental entity may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted. The local governmental entity shall subsequently open, evaluate, and score the cost proposals from firms that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The local governmental entity shall select the design-build firm in accordance with the formula provided in the request for proposals.

Sec. 271.194. NEGOTIATION. After selecting the highest ranked design-build firm under Section 271.193, the local governmental entity shall first attempt to negotiate a contract with the selected firm. If the local governmental entity is unable to negotiate a satisfactory contract with the selected firm, the entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Sec. 271.195. ASSUMPTION OF RISKS. The local governmental entity shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the local governmental entity;

(B) unknown or differing site conditions unless otherwise provided by the local governmental entity in the request for proposals and final contract;

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(C) regulatory permitting, if the local governmental entity is responsible for those risks and costs by law or contract; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition.

Sec. 271.197. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Not later than the 30th day after the date a contract is executed under this subchapter, 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 associated with the development of the proposal that is equal to a minimum of one-half of one percent of the preliminary estimate or budgeted cost for the construction of the project. A greater amount may be negotiated with a firm as compensation for the use of intellectual property. If the offer is accepted and paid, the local governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the local governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient

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(C) regulatory permitting, if the local governmental entity is responsible for those risks and costs by law or contract; and

(D) natural disasters and other force majeure events unless otherwise provided by the local governmental entity in the request for proposals and final contract; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

Sec. 271.196. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The local governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The local governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The local governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.

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of the stipend under this subsection.

(b) If a design-build firm rejects the offer of the stipend, the firm retains all rights to the work product and the local governmental entity may not make use of any unique design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal. If the local governmental entity wants to acquire the rights to the work product of an unsuccessful firm and the local governmental entity and that firm are unable to reach an agreement on the value of the work product, the matter may be submitted to binding arbitration.

(c) If a local governmental entity requests and receives proposals and subsequently cancels the request or suspends the selection process for more than 270 days after the date the local governmental entity requests the design-build firms to provide additional information, each offeror who submitted a proposal as requested shall receive the minimum stipend required by this section.

(d) To the extent of a conflict between this section and a federal law or rule governing the expenditure of federal transit funds by a transit authority created under Chapter 451, Transportation Code, the federal law or rule prevails.

(b) A violation of this section voids the contract for the project entered into by the local governmental entity. The local governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings



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associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

(c) The local governmental entity may offer an unsuccessful design-build firm that submits a response to the entity's request for additional information under Section 271.193 a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the local governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the local governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.(d) Notwithstanding other law, including Chapter 552, Government Code, work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).

Sec. 271.198. COMPLETION OF DESIGN. (a)  
Following selection of a design-build firm under this

Sec. 271.197. COMPLETION OF DESIGN. (a)  
Following selection of a design-build firm under this

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subchapter, the firm's engineers shall submit all design elements for review and determination of scope compliance to the local governmental entity before or concurrently with construction.

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

Sec. 271.199. FINAL CONSTRUCTION DOCUMENTS. At the conclusion of construction, the design-build firm shall supply to the local governmental entity a record set of construction documents for the project prepared as provided by Chapter 1001, Occupations Code.

Sec. 271.200. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only.

(b) 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, as specified in the design criteria package.

(c) The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the local governmental entity to ensure that

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subchapter, the firm's engineers shall submit all design elements for review and determination of scope compliance to the local governmental entity before or concurrently with construction.

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

Sec. 271.198. FINAL CONSTRUCTION DOCUMENTS. At the conclusion of construction, the design-build firm shall supply to the local governmental entity a record set of construction documents for the project prepared as provided by Chapter 1001, Occupations Code.

Sec. 271.199. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required for the portion of a design-build contract under this section that includes design services only.

(b) 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, if commercially available and practical, as specified in the design criteria package.

(c) If the local governmental entity awards a design-build contract under Section 271.193, the design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other

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the design-build firm will furnish the required performance and payment bonds before the commencement of construction.

No equivalent provision.

SECTION 2. Section 271.904(a), Local Government Code, is amended to read as follows:

(a) A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify, [ø] hold harmless, or defend the governmental agency against liability for damage, other than liability for damage that is caused by or results from an act of [the] negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by [ø] the indemnitor or the indemnitor's agent, consultant under contract, or another

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financial security acceptable to the local governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before the commencement of construction.

SECTION 6. Chapter 271.112, Local Government Code, is amended by adding Subsection (g) to read as follows:

(g) If the contract for a facility involves the use of state or federal highway funds, the purchasing requirements of the appropriate state or federal funding entity apply, unless otherwise waived by the appropriate state or federal funding entity.

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entity over which the indemnitor exercises control  
~~[governmental agency or its agent or employee].~~

No equivalent provision.

SECTION 3. Section 46.008, Education Code, is amended to read as follows:

Sec. 46.008. STANDARDS. (a) The commissioner shall establish standards for adequacy of school facilities. The standards must include requirements related to space, educational adequacy, and construction quality. All new facilities constructed after September 1, 1998, must meet the standards to be eligible to be financed

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SECTION 8. Section 44.041(i), Education Code, is amended to read as follows:

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, the district shall select or designate an architect or engineer to prepare the construction documents for the facility ~~[those services shall be provided in accordance with applicable law].~~ If the architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

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with state or local tax funds.

(b) Any portable, modular building capable of being relocated that is purchased or leased after September 1, 2007, for use as a school facility, regardless of whether the building is an industrialized building as defined by Section 1202.003, Occupations Code, must be inspected as provided by Subchapter E, Chapter 1202, Occupations Code, to ensure compliance with the mandatory building codes or approved designs, plans, and specifications.

SECTION 4. Section 51.784(i), Education Code, is amended to read as follows:

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, the board shall select or designate an architect or engineer to prepare the construction documents for the facility [~~those services shall be provided in accordance with applicable law~~]. If the architect or engineer is not a full-time employee of the institution, the board shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

SECTION 10. Same as House version.

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No equivalent provision.

SECTION \_\_. Section 791.011, Government Code, is amended by adding Subsection (h) to read as follows:

(h) An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase engineering or architectural services.

No equivalent provision.

SECTION 11. Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.007 to read as follows:

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

(b) This section does not apply to the enforcement of a contract entered into by a state agency as that term is defined by Section 2151.002. In this subsection, "state agency" includes the Texas Building and Procurement Commission.

No equivalent provision.

SECTION 12. Section 2254.003(b), Government Code, is amended to read as follows:

(b) The professional fees under the contract[:  
~~[(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and~~  
[(2)] may not exceed any maximum provided by law.

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No equivalent provision.

SECTION 13. Section 431.101(g), Transportation Code, is amended to read as follows:

(g) A local government corporation [~~created by a navigation district~~] must 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 [~~navigation district~~] that created the corporation.

No equivalent provision.

SECTION 14. Subchapter D, Chapter 431, Transportation Code, is amended by adding Section 431.110 to read as follows:

Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN IMPROVEMENTS. Any competitive bidding requirement or restriction on a local government that created a local government corporation does not apply to an expenditure by the local government corporation for:

(1) an improvement:

(A) that is constructed in a reinvestment zone; and

(B) the construction of which is managed by a private venture participant; or

(2) an improvement constructed by the corporation for which more than 50 percent of the construction is funded by a private entity.

No equivalent provision.

SECTION 15. Section 60.452, Water Code, is amended by adding Subsection (c) to read as follows:

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(c) Subchapter J, Chapter 271, Local Government Code, does not apply to this subchapter.

SECTION 5. Section 60.464(i), Water Code, is amended to read as follows:

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, the district shall select or designate an architect or engineer to prepare the construction documents for the facility [those services shall be provided in accordance with applicable law]. If the architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

SECTION 16. Same as House version.

SECTION 6. The changes in law made by this Act apply only 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. A contract for which a request for proposals or a request for qualifications is first published or distributed before the effective date of this Act is governed by the law in effect at the time the request is published or distributed, and the

SECTION 17. Same as House version.



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former law is continued in effect for that purpose.

SECTION 7. (a) Except as provided by Subsection (b), this Act takes effect September 1, 2007.

(b) This Act takes effect only if H.B. No. 447, Acts of the 80th Legislature, Regular Session, 2007, takes effect. If H.B. No. 447, Acts of the 80th Legislature, Regular Session, 2007, does not take effect, this Act has no effect.

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

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