

By: Jackson

S.B. No. 1110

A BILL TO BE ENTITLED

AN ACT

relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.

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

ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

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

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

ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

SECTION 2.01. Section 11.168, Education Code, is amended to read as follows:

Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection (b), the [The] board of trustees of a school district may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

(b) This section does not prohibit the board of trustees of

1 a school district from entering into an agreement for the design,
2 construction, or renovation of improvements to real property not
3 owned or leased by the district if the improvements benefit real
4 property owned or leased by the district. Benefits to real property
5 owned or leased by the district include the design, construction,
6 or renovation of highways, roads, streets, sidewalks, crosswalks,
7 utilities, and drainage improvements that serve or benefit the real
8 property owned or leased by the district.

9 SECTION 2.02. Subsections (a) and (f), Section 44.031,
10 Education Code, are amended to read as follows:

11 (a) Except as provided by this subchapter, all school
12 district contracts for the purchase of goods and services, except
13 contracts for the purchase of produce or vehicle fuel, valued at
14 \$25,000 or more in the aggregate for each 12-month period shall be
15 made by the method, of the following methods, that provides the best
16 value for the district:

17 (1) competitive bidding for services other than
18 construction services;

19 (2) competitive sealed proposals for services other
20 than construction services;

21 (3) a request for proposals, for services other than
22 construction services;

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

25 (5) an interlocal contract;

26 (6) [~~(5)~~] a method provided by Chapter 2267,
27 Government Code, for construction services [~~a design/build~~

1 ~~contract,~~

2 ~~[(6) a contract to construct, rehabilitate, alter, or~~
3 ~~repair facilities that involves using a construction manager,~~

4 ~~[(7) a job order contract for the minor construction,~~
5 ~~repair, rehabilitation, or alteration of a facility];~~

6 (7) ~~[(8)]~~ the reverse auction procedure as defined by
7 Section 2155.062(d), Government Code; or

8 (8) ~~[(9)]~~ the formation of a political subdivision
9 corporation under Section 304.001, Local Government Code.

10 (f) This section does not apply to a contract for
11 professional services rendered, including services of an
12 architect, attorney, engineer, or fiscal agent. A school district
13 may, at its option, contract for professional services rendered by
14 a financial consultant or a technology consultant in the manner
15 provided by Section 2254.003, Government Code, in lieu of the
16 methods provided by this section.

17 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is
18 amended by adding Section 44.0351 to read as follows:

19 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the
20 extent prohibited by other law and to the extent consistent with
21 this subchapter, a school district may use competitive bidding to
22 select a vendor as authorized by Section 44.031(a)(1).

23 (b) Except as provided by this subsection, Subchapter B,
24 Chapter 271, Local Government Code, does not apply to a competitive
25 bidding process under this subchapter. Sections 271.026,
26 271.027(a), and 271.0275, Local Government Code, apply to a
27 competitive bidding process under this subchapter.

1 (c) A school district shall award a competitively bid
2 contract at the bid amount to the bidder offering the best value for
3 the district. In determining the best value for the district, the
4 district is not restricted to considering price alone, but may
5 consider any other factors stated in the selection criteria. The
6 selection criteria may include the factors listed in Section
7 44.031(b).

8 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is
9 amended by adding Section 44.0361 to read as follows:

10 Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In
11 selecting a vendor through competitive sealed proposals as
12 authorized by Section 44.031(a)(2), a school district shall follow
13 the procedures prescribed by this section.

14 (b) The district shall prepare a request for competitive
15 sealed proposals that includes information that vendors may require
16 to respond to the request. The district shall state in the request
17 for proposals the selection criteria that will be used in selecting
18 the successful offeror.

19 (c) The district shall receive, publicly open, and read
20 aloud the names of the offerors and, if any are required to be
21 stated, all prices stated in each proposal. Not later than the 45th
22 day after the date on which the proposals are opened, the district
23 shall evaluate and rank each proposal submitted in relation to the
24 published selection criteria.

25 (d) The district shall select the offeror that offers the
26 best value for the district based on the published selection
27 criteria and on its ranking evaluation. The district shall first

1 attempt to negotiate with the selected offeror a contract. The
2 district may discuss with the selected offeror options for a scope
3 or time modification and any price change associated with the
4 modification. If the district is unable to negotiate a contract
5 with the selected offeror, the district shall, formally and in
6 writing, end negotiations with that offeror and proceed to the next
7 offeror in the order of the selection ranking until a contract is
8 reached or all proposals are rejected.

9 (e) In determining the best value for the district, the
10 district is not restricted to considering price alone, but may
11 consider any other factors stated in the selection criteria.

12 SECTION 2.05. Subchapter B, Chapter 44, Education Code, is
13 amended by adding Section 44.0411 to read as follows:

14 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or
15 specifications is necessary after the performance of a contract is
16 begun or if it is necessary to decrease or increase the quantity of
17 work to be performed or of materials, equipment, or supplies to be
18 furnished, the district may approve change orders making the
19 changes.

20 (b) The total contract price may not be increased because of
21 the changes unless additional money for increased costs is approved
22 for that purpose from available money or is provided for by the
23 authorization of the issuance of time warrants.

24 (c) The district may grant general authority to an
25 administrative official to approve the change orders.

26 (d) A contract with an original contract price of \$1 million
27 or more may not be increased under this section by more than 25

1 percent. If a change order for a contract with an original contract
2 price of less than \$1 million increases the contract amount to \$1
3 million or more, subsequent change orders may not increase the
4 revised contract amount by more than 25 percent.

5 SECTION 2.06. Subchapter A, Chapter 46, Education Code, is
6 amended by adding Section 46.0111 to read as follows:

7 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,
8 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL
9 FACILITY. (a) In this section:

10 (1) "Net proceeds" means the difference between the
11 amount recovered by or on behalf of a school district in an action,
12 by settlement or otherwise, and the legal fees and litigation costs
13 incurred by the district in prosecuting the action.

14 (2) "State's share" means an amount equal to the
15 district's net proceeds from the recovery multiplied by a
16 percentage determined by dividing the amount of state assistance
17 under this subchapter used to pay the principal of and interest on
18 bonds issued in connection with the instructional facility that is
19 the subject of the action by the total amount of principal and
20 interest paid on the bonds as of the date of the judgment or
21 settlement.

22 (b) A school district that brings an action for recovery of
23 damages for the defective design, construction, renovation, or
24 improvement of an instructional facility financed by bonds
25 for which the district receives state assistance under this
26 subchapter shall provide the commissioner with written notice of
27 the action.

1 (c) The commissioner may join in the action on behalf of the
2 state to protect the state's share in the action.

3 (d) A school district shall use the net proceeds from an
4 action brought by the district for the defective design,
5 construction, renovation, or improvement of an instructional
6 facility financed by bonds for which the district receives state
7 assistance under this subchapter to repair the defective design,
8 construction, renovation, or improvement of the instructional
9 facility on which the action is brought or to replace the facility.
10 Section 46.008 applies to the repair.

11 (e) The state's share is state property. The school
12 district shall send to the comptroller any portion of the state's
13 share not used by the school district to repair the defective
14 design, construction, renovation, or improvement of the
15 instructional facility on which the action is brought or to replace
16 the facility. Section 42.258 applies to the state's share under
17 this subsection.

18 SECTION 2.07. Section 791.011, Government Code, is amended
19 by amending Subsection (h) and adding Subsection (i) to read as
20 follows:

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

24 (i) An interlocal contract may not be used to purchase
25 construction services unless the services are in connection with
26 the design or construction of a specific facility to be jointly
27 owned, used, or financed by the parties to the contract or:

- 1 (1) the services are in connection with a job order
- 2 contract;
- 3 (2) the governing body of the governmental entity for
- 4 whom the work will ultimately be performed approves the purchase in
- 5 open session;
- 6 (3) public notice is provided in a manner consistent
- 7 with a direct contract for job order contracting services; and
- 8 (4) work orders under the contract comply with Section
- 9 2267.403.

10 SECTION 2.08. Section 2166.2525, Government Code, is

11 amended to read as follows:

12 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The

13 ~~[commission shall adopt rules that determine the circumstances for~~

14 ~~use of each]~~ method of contracting allowed under this subchapter

15 for design and construction services is any method provided by

16 Chapter 2267. ~~[In developing the rules, the commission shall~~

17 ~~solicit advice and comment from design and construction~~

18 ~~professionals regarding the criteria the commission will use in~~

19 ~~determining which contracting method is best suited for a project.]~~

20 SECTION 2.09. Subtitle F, Title 10, Government Code, is

21 amended by adding Chapter 2267 to read as follows:

22 CHAPTER 2267. CONTRACTING AND DELIVERY PROCEDURES FOR

23 CONSTRUCTION PROJECTS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 2267.001. DEFINITIONS. In this chapter:

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

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

3 (3) "Facility" means, unless otherwise specifically
4 provided, an improvement to real property.

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

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

14 (6) "Public work contract" means a contract for
15 constructing, altering, or repairing a public building or carrying
16 out or completing any public work.

17 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
18 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.

19 This chapter applies to a public work contract made by a
20 governmental entity or quasi-governmental entity authorized by
21 state law to make a public work contract, including:

22 (1) a state agency as defined by Section 2151.002,
23 including the Texas Facilities Commission;

24 (2) a local government, including:

25 (A) a county;

26 (B) a municipality;

27 (C) a school district;

1 (D) any other special district or authority,
2 including a hospital district, a defense base development authority
3 established under Chapter 379B, Local Government Code, and a
4 conservation and reclamation district, including a river authority
5 or any other type of water district; and

6 (E) any other political subdivision of this
7 state;

8 (3) a public junior college as defined by Section
9 61.003, Education Code;

10 (4) any entity owned by a municipality; and

11 (5) any other entity that owns or operates a facility
12 for the benefit of a municipality or county.

13 Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW
14 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this
15 section, this chapter prevails over any other law relating to a
16 public work contract.

17 (b) This chapter does not prevail over a conflicting
18 provision in a law relating to contracting with a historically
19 underutilized business.

20 (c) This chapter does not prevail over a conflicting
21 provision in an ordinance or resolution passed by the governing
22 body of a municipally owned electric utility in a procedure
23 described by Section 252.022(c), Local Government Code, that:

24 (1) requires the use of competitive bidding or
25 competitive sealed proposals; or

26 (2) prescribes a design-build procurement procedure
27 that conflicts with this chapter.

1 Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF
2 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

3 (1) a contract entered into by the Texas Department of
4 Transportation; or

5 (2) a project that receives money from a state or
6 federal highway fund.

7 Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER
8 EDUCATION. (a) In this section, "institution of higher
9 education," "public junior college," and "university system" have
10 the meanings assigned by Section 61.003, Education Code.

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

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

14 (2) a university system.

15 Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.
16 This chapter does not apply to a regional tollway authority under
17 Chapter 366, Transportation Code.

18 [Sections 2267.007-2267.050 reserved for expansion]

19 SUBCHAPTER B. GENERAL POWERS AND DUTIES

20 Sec. 2267.051. RULES. A governmental entity may adopt
21 rules as necessary to implement this chapter.

22 Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental
23 entity shall advertise or publish notice of requests for bids,
24 proposals, or qualifications in a manner prescribed by law.

25 (b) For a contract entered into by a governmental entity
26 under a method provided by this chapter, the governmental entity
27 shall publish notice of the time and place the bid or proposal or

1 request for qualifications will be received and opened in a manner
2 prescribed by law.

3 (c) For a contract entered into by a municipality, river
4 authority, conservation and reclamation district created pursuant
5 to Section 59, Article XVI, Texas Constitution, and located in a
6 county with a population of more than 250,000, or defense base
7 development authority under any of the methods provided by this
8 chapter, the municipality, river authority, conservation and
9 reclamation district created pursuant to Section 59, Article XVI,
10 Texas Constitution, and located in a county with a population of
11 more than 250,000, or defense base development authority shall
12 publish notice of the time and place the bids or proposals, or the
13 responses to a request for qualifications, will be received and
14 opened. The notice must be published in a newspaper of general
15 circulation in the county in which the defense base development
16 authority's or municipality's central administrative office is
17 located or the county in which the greatest amount of the river
18 authority's or such conservation and reclamation district's
19 territory is located once each week for at least two weeks before
20 the deadline for receiving bids, proposals, or responses. If there
21 is not a newspaper of general circulation in that county, the notice
22 shall be published in a newspaper of general circulation in the
23 county nearest the county seat of the county in which the defense
24 base development authority's or municipality's central
25 administrative office is located or the county in which the
26 greatest amount of the river authority's or such conservation and
27 reclamation district's territory is located. In a two-step

1 procurement process, the time and place the second step bids,
2 proposals, or responses will be received are not required to be
3 published separately.

4 (d) For a contract entered into by a county under any of the
5 methods provided by this chapter, the county shall publish notice
6 of the time and place the bids or proposals, or the responses to a
7 request for qualifications, will be received and opened. The
8 notice must be published in a newspaper of general circulation in
9 the county once each week for at least two weeks before the deadline
10 for receiving bids, proposals, or responses. If there is not a
11 newspaper of general circulation in the county, the notice shall
12 be:

13 (1) posted at the courthouse door of the county; and
14 (2) published in a newspaper of general circulation in
15 the nearest county.

16 Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing
17 body of a governmental entity may delegate its authority under this
18 chapter regarding an action authorized or required by this chapter
19 to a designated representative, committee, or other person.

20 (b) The governmental entity shall provide notice of the
21 delegation, the limits of the delegation, and the name or title of
22 each person designated under Subsection (a) by rule or in the
23 request for bids, proposals, or qualifications or in an addendum to
24 the request.

25 Sec. 2267.054. RIGHT TO WORK. (a) This section applies to
26 a governmental entity when the governmental entity is engaged in:

27 (1) procuring goods or services under this chapter;

1 (2) awarding a contract under this chapter; or
2 (3) overseeing procurement or construction for a
3 public work or public improvement under this chapter.

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

6 (1) may not consider whether a person is a member of or
7 has another relationship with any organization; and

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

12 Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining
13 the award of a contract under this chapter, the governmental entity
14 may consider:

15 (1) the price;

16 (2) the offeror's experience and reputation;

17 (3) the quality of the offeror's goods or services;

18 (4) the impact on the ability of the governmental
19 entity to comply with rules relating to historically underutilized
20 businesses;

21 (5) the offeror's safety record;

22 (6) the offeror's proposed personnel;

23 (7) whether the offeror's financial capability is
24 appropriate to the size and scope of the project; and

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

27 (b) In determining the award of a contract under this

1 chapter, the governmental entity shall:

2 (1) consider and apply any existing laws, including
3 any criteria, related to historically underutilized businesses;
4 and

5 (2) consider and apply any existing laws, rules, or
6 applicable municipal charters, including laws applicable to local
7 governments, related to the use of women, minority, small, or
8 disadvantaged businesses.

9 Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING
10 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

11 (a) The governing body of a governmental entity that considers a
12 construction contract using a method authorized by this chapter
13 other than competitive bidding must, before advertising, determine
14 which method provides the best value for the governmental entity.

15 (b) The governmental entity shall base its selection among
16 offerors on applicable criteria listed for the particular method
17 used. The governmental entity shall publish in the request for
18 proposals or qualifications the criteria that will be used to
19 evaluate the offerors, and the applicable weighted value for each
20 criterion.

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

24 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An
25 architect or engineer required to be selected or designated under
26 this chapter has full responsibility for complying with Chapter
27 1051 or 1001, Occupations Code, as applicable.

1 (b) If the selected or designated architect or engineer is
2 not a full-time employee of the governmental entity, the
3 governmental entity shall select the architect or engineer on the
4 basis of demonstrated competence and qualifications as provided by
5 Section 2254.004.

6 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.

7 (a) Independently of the contractor, construction
8 manager-at-risk, or design-build firm, the governmental entity
9 shall provide or contract for the construction materials
10 engineering, testing, and inspection services and the verification
11 testing services necessary for acceptance of the facility by the
12 governmental entity.

13 (b) The governmental entity shall select the services for
14 which it contracts under this section in accordance with Section
15 2254.004.

16 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS
17 REQUIRED. A person who submits a bid, proposal, or qualification to
18 a governmental entity shall seal it before delivery.

19 [Sections 2267.060-2267.100 reserved for expansion]

20 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

21 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE
22 BIDDING. (a) In this chapter, "competitive bidding" is a
23 procurement method by which a governmental entity contracts with a
24 contractor for the construction, alteration, rehabilitation, or
25 repair of a facility by awarding the contract to the lowest
26 responsible bidder.

27 (b) Except as otherwise provided by this chapter or other

1 law, a governmental entity may contract for the construction,
2 alteration, rehabilitation, or repair of a facility only after the
3 entity advertises for bids for the contract in a manner prescribed
4 by law, receives competitive bids, and awards the contract to the
5 lowest responsible bidder.

6 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The
7 governmental entity shall select or designate an architect or
8 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
9 as applicable, to prepare the construction documents required for a
10 project to be awarded by competitive bidding.

11 Sec. 2267.103. PREPARATION OF REQUEST. The governmental
12 entity shall prepare a request for competitive bids that includes
13 construction documents, estimated budget, project scope, estimated
14 project completion date, and other information that a contractor
15 may require to submit a bid.

16 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental
17 entity shall receive, publicly open, and read aloud the names of the
18 offerors and their bids.

19 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the
20 seventh day after the date the contract is awarded, the
21 governmental entity shall document the basis of its selection and
22 shall make the evaluations public.

23 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
24 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
25 specifically provided by this section, Subchapter B, Chapter 271,
26 Local Government Code, does not apply to a competitive bidding
27 process conducted under this chapter. Sections 271.026,

1 271.027(a), and 271.0275, Local Government Code, apply to a
2 competitive bidding process conducted under this chapter by a
3 governmental entity as defined by Section 271.021, Local Government
4 Code.

5 [Sections 2267.107-2267.150 reserved for expansion]

6 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

7 Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE
8 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
9 proposals" is a procurement method by which a governmental entity
10 requests proposals, ranks the offerors, negotiates as prescribed,
11 and then contracts with a general contractor for the construction,
12 rehabilitation, alteration, or repair of a facility.

13 (b) In selecting a contractor through competitive sealed
14 proposals, a governmental entity shall follow the procedures
15 provided by this subchapter.

16 Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The
17 governmental entity shall select or designate an architect or
18 engineer to prepare construction documents for the project.

19 Sec. 2267.153. PREPARATION OF REQUEST. The governmental
20 entity shall prepare a request for competitive sealed proposals
21 that includes construction documents, selection criteria and the
22 weighted value for each criterion, estimated budget, project scope,
23 estimated project completion date, and other information that a
24 contractor may require to respond to the request.

25 Sec. 2267.154. EVALUATION OF OFFERORS. (a) The
26 governmental entity shall receive, publicly open, and read aloud
27 the names of the offerors and any monetary proposals made by the

1 offerors.

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

5 Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental
6 entity shall select the offeror that submits the proposal that
7 offers the best value for the governmental entity based on:

8 (1) the selection criteria in the request for proposal
9 and the weighted value for those criteria in the request for
10 proposal; and

11 (2) its ranking evaluation.

12 (b) The governmental entity shall first attempt to
13 negotiate a contract with the selected offeror. The governmental
14 entity and its architect or engineer may discuss with the selected
15 offeror options for a scope or time modification and any price
16 change associated with the modification.

17 (c) If the governmental entity is unable to negotiate a
18 contract with the selected offeror, the governmental entity shall,
19 formally and in writing, end negotiations with that offeror and
20 proceed to the next offeror in the order of the selection ranking
21 until a contract is reached or all proposals are rejected.

22 [Sections 2267.156-2267.200 reserved for expansion]

23 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

24 Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
25 MANAGER-AGENT. (a) In this chapter, the "construction
26 manager-agent method" is a delivery method by which a governmental
27 entity contracts with a construction manager-agent to provide

1 consultation or administrative services during the design and
2 construction phase and to manage multiple contracts with various
3 construction prime contractors.

4 (b) A construction manager-agent is a sole proprietorship,
5 partnership, corporation, or other legal entity that serves as the
6 agent for the governmental entity by providing construction
7 administration and management services described by Subsection (a)
8 for the construction, rehabilitation, alteration, or repair of a
9 facility.

10 (c) A governmental entity may retain a construction
11 manager-agent for assistance in the construction, rehabilitation,
12 alteration, or repair of a facility only as provided by this
13 subchapter.

14 Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION
15 MANAGER-AGENT. The contract between the governmental entity and
16 the construction manager-agent may require the construction
17 manager-agent to provide:

18 (1) administrative personnel;

19 (2) equipment necessary to perform duties under this
20 subchapter;

21 (3) on-site management; and

22 (4) other services specified in the contract.

23 Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A
24 construction manager-agent may not:

25 (1) self-perform any aspect of the construction,
26 rehabilitation, alteration, or repair of the facility;

27 (2) be a party to a construction subcontract for the

1 construction, rehabilitation, alteration, or repair of the
2 facility; or

3 (3) provide or be required to provide performance and
4 payment bonds for the construction, rehabilitation, alteration, or
5 repair of the facility.

6 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION
7 MANAGER-AGENT. A construction manager-agent represents the
8 governmental entity in a fiduciary capacity.

9 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or
10 before the selection of a construction manager-agent, the
11 governmental entity shall select or designate an architect or
12 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
13 as applicable, to prepare the construction documents for the
14 project.

15 (b) The governmental entity's architect or engineer may not
16 serve, alone or in combination with another person, as the
17 construction manager-agent unless the architect or engineer is
18 hired to serve as the construction manager-agent under a separate
19 or concurrent selection process conducted in accordance with this
20 subchapter. This subsection does not prohibit the governmental
21 entity's architect or engineer from providing customary
22 construction phase services under the architect's or engineer's
23 original professional service agreement in accordance with
24 applicable licensing laws.

25 (c) To the extent that the construction manager-agent's
26 services are defined as part of the practice of architecture or
27 engineering under Chapter 1051 or 1001, Occupations Code, those

1 services must be conducted by a person licensed under the
2 applicable chapter.

3 Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental
4 entity using the construction manager-agent method shall procure,
5 in accordance with applicable law and in any manner authorized by
6 this chapter, a general contractor or trade contractors who will
7 serve as the prime contractor for their specific portion of the work
8 and provide performance and payment bonds to the governmental
9 entity in accordance with applicable laws.

10 Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
11 governmental entity shall select a construction manager-agent on
12 the basis of demonstrated competence and qualifications in the same
13 manner that an architect or engineer is selected under Section
14 2254.004.

15 Sec. 2267.208. INSURANCE. A construction manager-agent
16 selected under this subchapter shall maintain professional
17 liability or errors and omissions insurance in the amount of at
18 least \$1 million for each occurrence.

19 [Sections 2267.209-2267.250 reserved for expansion]

20 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

21 Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
22 MANAGER-AT-RISK. (a) In this chapter, the "construction
23 manager-at-risk method" is a delivery method by which a
24 governmental entity contracts with an architect or engineer for
25 design and construction phase services and contracts separately
26 with a construction manager-at-risk to serve as the general
27 contractor and to provide consultation during the design and

1 construction, rehabilitation, alteration, or repair of a facility.

2 (b) A construction manager-at-risk is a sole
3 proprietorship, partnership, corporation, or other legal entity
4 that assumes the risk for construction, rehabilitation,
5 alteration, or repair of a facility at the contracted price as a
6 general contractor and provides consultation to the governmental
7 entity regarding construction during and after the design of the
8 facility. The contracted price may be a guaranteed maximum price.

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

13 Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or
14 before the selection of a construction manager-at-risk, the
15 governmental entity shall select or designate an architect or
16 engineer to prepare the construction documents for the project.

17 (b) The governmental entity's architect or engineer for a
18 project may not serve, alone or in combination with another person,
19 as the construction manager-at-risk unless the architect or
20 engineer is hired to serve as the construction manager-at-risk
21 under a separate or concurrent selection process conducted in
22 accordance with this subchapter. This subsection does not prohibit
23 the governmental entity's architect or engineer from providing
24 customary construction phase services under the architect's or
25 engineer's original professional service agreement in accordance
26 with applicable licensing laws.

27 Sec. 2267.253. SELECTION PROCESS. (a) The governmental

1 entity shall select the construction manager-at-risk in a one-step
2 or two-step process.

3 (b) The governmental entity shall prepare a single request
4 for proposals, in the case of a one-step process, and an initial
5 request for qualifications, in the case of a two-step process, that
6 includes:

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

9 (2) general information on the project site, project
10 scope, schedule, selection criteria and the weighted value for each
11 criterion, and estimated budget and the time and place for receipt
12 of the proposals or qualifications; and

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

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

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

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

26 (f) At each step, the governmental entity shall receive,
27 publicly open, and read aloud the names of the offerors. At the

1 appropriate step, the governmental entity shall also read aloud the
2 fees and prices, if any, stated in each proposal as the proposal is
3 opened.

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

8 Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental
9 entity shall select the offeror that submits the proposal that
10 offers the best value for the governmental entity based on the
11 published selection criteria and on its ranking evaluation.

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

14 (c) If the governmental entity is unable to negotiate a
15 satisfactory contract with the selected offeror, the governmental
16 entity shall, formally and in writing, end negotiations with that
17 offeror and proceed to negotiate with the next offeror in the order
18 of the selection ranking until a contract is reached or
19 negotiations with all ranked offerors end.

20 (d) Not later than the seventh day after the date the
21 contract is awarded, the governmental entity shall make the
22 rankings determined under Section 2267.253(g) public.

23 Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction
24 manager-at-risk shall publicly advertise for bids or proposals and
25 receive bids or proposals from trade contractors or subcontractors
26 for the performance of all major elements of the work other than the
27 minor work that may be included in the general conditions.

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

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

6 (2) the governmental entity determines that the
7 construction manager-at-risk's bid or proposal provides the best
8 value for the governmental entity.

9 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The
10 construction manager-at-risk shall review all trade contractor or
11 subcontractor bids or proposals in a manner that does not disclose
12 the contents of the bid or proposal during the selection process to
13 a person not employed by the construction manager-at-risk,
14 architect, engineer, or governmental entity. All bids or proposals
15 shall be made available to the governmental entity on request and to
16 the public after the later of the award of the contract or the
17 seventh day after the date of final selection of bids or proposals.

18 (b) If the construction manager-at-risk reviews, evaluates,
19 and recommends to the governmental entity a bid or proposal from a
20 trade contractor or subcontractor but the governmental entity
21 requires another bid or proposal to be accepted, the governmental
22 entity shall compensate the construction manager-at-risk by a
23 change in price, time, or guaranteed maximum cost for any
24 additional cost and risk that the construction manager-at-risk
25 incurs because of the governmental entity's requirement that
26 another bid or proposal be accepted.

27 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected

1 trade contractor or subcontractor defaults in the performance of
2 its work or fails to execute a subcontract after being selected in
3 accordance with this subchapter, the construction manager-at-risk
4 may itself fulfill, without advertising, the contract requirements
5 or select a replacement trade contractor or subcontractor to
6 fulfill the contract requirements.

7 Sec. 2267.258. PERFORMANCE OR PAYMENT BOND. (a) If a
8 fixed contract amount or guaranteed maximum price has not been
9 determined at the time the contract is awarded, the penal sums of
10 the performance and payment bonds delivered to the governmental
11 entity must each be in an amount equal to the construction budget,
12 as specified in the request for proposals or qualifications.

13 (b) The construction manager-at-risk shall deliver the
14 bonds not later than the 10th day after the date the construction
15 manager-at-risk executes the contract unless the construction
16 manager-at-risk furnishes a bid bond or other financial security
17 acceptable to the governmental entity to ensure that the
18 construction manager will furnish the required performance and
19 payment bonds when a guaranteed maximum price is established.

20 [Sections 2267.259-2267.300 reserved for expansion]

21 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

22 Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
23 this chapter, "design-build" is a project delivery method by which
24 a governmental entity contracts with a single entity to provide
25 both design and construction services for the construction,
26 rehabilitation, alteration, or repair of a facility.

27 Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;

1 EXCEPTIONS. This subchapter applies only to a facility that is a
2 building or an associated structure, including an electric utility
3 structure. This subchapter does not apply to:

4 (1) a highway, road, street, bridge, underground
5 utility, water supply project, water plant, wastewater plant, water
6 and wastewater distribution or conveyance facility, wharf, dock,
7 airport runway or taxiway, drainage project, or related type of
8 project associated with civil engineering construction; or

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

11 Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
12 governmental entity may use the design-build method for the
13 construction, rehabilitation, alteration, or repair of a building
14 or associated structure only as provided by this subchapter. In
15 using that method, the governmental entity shall enter into a
16 single contract with a design-build firm for the design and
17 construction of the building or associated structure.

18 Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm
19 under this subchapter must be a sole proprietorship, partnership,
20 corporation, or other legal entity or team that includes an
21 architect or engineer and a construction contractor.

22 Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
23 REPRESENTATIVE. The governmental entity shall select or designate
24 an architect or engineer independent of the design-build firm to
25 act as the governmental entity's representative for the duration of
26 the project.

27 Sec. 2267.306. PREPARATION OF REQUEST. (a) The

1 governmental entity shall prepare a request for qualifications that
2 includes general information on the project site, project scope,
3 budget, special systems, selection criteria and the weighted value
4 for each criterion, and other information that may assist potential
5 design-build firms in submitting proposals for the project.

6 (b) The governmental entity shall also prepare the design
7 criteria package that includes more detailed information on the
8 project. If the preparation of the design criteria package
9 requires architectural or engineering services that constitute the
10 practice of architecture within the meaning of Chapter 1051,
11 Occupations Code, or the practice of engineering within the meaning
12 of Chapter 1001, Occupations Code, those services shall be provided
13 in accordance with the applicable law.

14 (c) The design criteria package must include a set of
15 documents that provides sufficient information, including criteria
16 for selection, to permit a design-build firm to prepare a response
17 to the governmental entity's request for qualifications and to
18 provide any additional information requested. The design criteria
19 package must specify criteria the governmental entity considers
20 necessary to describe the project and may include, as appropriate,
21 the legal description of the site, survey information concerning
22 the site, interior space requirements, special material
23 requirements, material quality standards, conceptual criteria for
24 the project, special equipment requirements, cost or budget
25 estimates, time schedules, quality assurance and quality control
26 requirements, site development requirements, applicable codes and
27 ordinances, provisions for utilities, parking requirements, and

1 any other requirement.

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

5 Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
6 each design-build firm that responded to the request for
7 qualifications, the governmental entity shall evaluate the firm's
8 experience, technical competence, and capability to perform, the
9 past performance of the firm and members of the firm, and other
10 appropriate factors submitted by the firm in response to the
11 request for qualifications, except that cost-related or
12 price-related evaluation factors are not permitted.

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

17 (c) The governmental entity shall qualify a maximum of five
18 responders to submit proposals that contain additional information
19 and, if the governmental entity chooses, to interview for final
20 selection.

21 (d) The governmental entity shall evaluate the additional
22 information submitted by the offerors on the basis of the selection
23 criteria stated in the request for qualifications and the results
24 of any interview.

25 (e) The governmental entity may request additional
26 information regarding demonstrated competence and qualifications,
27 considerations of the safety and long-term durability of the

1 project, the feasibility of implementing the project as proposed,
2 the ability of the offeror to meet schedules, or costing
3 methodology. As used in this subsection, "costing methodology"
4 means an offeror's policies on subcontractor markup, definition of
5 general conditions, range of cost for general conditions, policies
6 on retainage, policies on contingencies, discount for prompt
7 payment, and expected staffing for administrative duties. The term
8 does not include a guaranteed maximum price or bid for overall
9 design or construction.

10 (f) The governmental entity shall rank each proposal
11 submitted on the basis of the criteria set forth in the request for
12 qualifications.

13 Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
14 governmental entity shall select the design-build firm that submits
15 the proposal offering the best value for the governmental entity on
16 the basis of the published selection criteria and on its ranking
17 evaluations.

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

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

26 (d) Not later than the seventh day after the date the
27 contract is awarded, the governmental entity shall make the

1 rankings determined under Section 2267.307(f) public.

2 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After
3 selection of the design-build firm, that firm's architects or
4 engineers shall submit all design elements for review and
5 determination of scope compliance to the governmental entity or the
6 governmental entity's architect or engineer before or concurrently
7 with construction.

8 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The
9 design-build firm shall supply a set of construction documents for
10 the completed project to the governmental entity at the conclusion
11 of construction. The documents must note any changes made during
12 construction.

13 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
14 or performance bond is not required and may not provide coverage for
15 the design portion of the design-build contract with the
16 design-build firm under this subchapter.

17 (b) If a fixed contract amount or guaranteed maximum price
18 has not been determined at the time the design-build contract is
19 awarded, the penal sums of the performance and payment bonds
20 delivered to the governmental entity must each be in an amount equal
21 to the construction budget, as specified in the design criteria
22 package.

23 (c) The design-build firm shall deliver the bonds not later
24 than the 10th day after the date the design-build firm executes the
25 contract unless the design-build firm furnishes a bid bond or other
26 financial security acceptable to the governmental entity to ensure
27 that the design-build firm will furnish the required performance

1 and payment bonds before construction begins.

2 [Sections 2267.312-2267.350 reserved for expansion]

3 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS

4 PROJECTS

5 Sec. 2267.351. DEFINITIONS. In this subchapter:

6 (1) "Civil works project" means:

7 (A) roads, streets, bridges, utilities, water
8 supply projects, water plants, wastewater plants, water
9 distribution and wastewater conveyance facilities, desalination
10 projects, airport runways and taxiways, storm drainage and flood
11 control projects, or transit projects;

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

15 (C) buildings or structures that are incidental
16 to projects or facilities that are described by Paragraphs (A) and
17 (B) and that are primarily civil engineering construction projects.

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

22 (3) "Design criteria package" means a set of documents
23 that:

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

27 (B) permits a design-build firm to:

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

3 (ii) submit a proposal on the project.

4 Sec. 2267.352. APPLICABILITY. This subchapter applies to a
5 governmental entity with a population of more than 100,000 within
6 its geographic boundaries or service area.

7 Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:
8 DESIGN-BUILD. (a) A governmental entity may use the design-build
9 method for the construction, rehabilitation, alteration, or repair
10 of a civil works project. In using this method and in entering into
11 a contract for the services of a design-build firm, the contracting
12 governmental entity and the design-build firm shall follow the
13 procedures provided by this subchapter.

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

18 (1) if a metropolitan transit authority created under
19 Chapter 451, Transportation Code, enters into a contract for a
20 project involving a bus rapid transit system created under Chapter
21 451, Transportation Code, the bus rapid transit system is a single
22 integrated project; and

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

26 (c) A governmental entity shall use the following criteria
27 as a minimum basis for determining the circumstances under which

1 the design-build method is appropriate for a project:

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

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

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

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

12 (d) A governmental entity shall make a formal finding on the
13 criteria described by Subsection (c) before preparing a request for
14 qualifications under Section 2267.357.

15 Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS.

16 (a) Before September 1, 2011:

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

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

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

25 (B) enter into contracts for additional civil
26 works projects in any fiscal year, but not more than the number of
27 civil works projects prescribed by the limit in Subdivision (1) for

1 the municipality, provided that:

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

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

8 (b) Before September 1, 2013, a governmental entity with a
9 population of 100,000 or more but less than 500,000 may, under this
10 subchapter, enter into contracts for not more than two projects in
11 any fiscal year.

12 (c) After the period described by Subsection (a) or (b):

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

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

19 (A) independently enter into contracts for not
20 more than two civil works projects in any fiscal year; and

21 (B) enter into contracts for additional civil
22 works projects in any fiscal year, but not more than the number of
23 civil works projects prescribed by the limit in Subdivision (1) for
24 the municipality, provided that:

25 (i) the additional contracts for the civil
26 works projects entered into by the utility under this paragraph are
27 allocated to the number of contracts the municipality that appoints

1 the utility's governing board may enter under Subdivision (1); and
2 (ii) the governing body of the municipality
3 must approve the contracts; and

4 (3) a governmental entity with a population of 100,000
5 or more but less than 500,000 may, under this subchapter, enter into
6 contracts for not more than four projects in any fiscal year.

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

11 Sec. 2267.355. USE OF ENGINEER. (a) The governmental
12 entity shall select or designate an engineer who is independent of
13 the design-build firm to act as its representative for the
14 procurement process and for the duration of the work on the civil
15 works project. The selected or designated engineer has full
16 responsibility for complying with Chapter 1001, Occupations Code.

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

21 Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.

22 (a) The governmental entity shall provide or contract for,
23 independently of the design-build firm, the following services as
24 necessary for the acceptance of the civil works project by the
25 entity:

26 (1) inspection services;

27 (2) construction materials engineering and testing;

1 and

2 (3) verification testing services.

3 (b) The governmental entity shall select the services for
4 which it contracts under this section in accordance with Section
5 2254.004.

6 Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The
7 governmental entity shall prepare a request for qualifications that
8 includes:

9 (1) information on the civil works project site;

10 (2) project scope;

11 (3) project budget;

12 (4) project schedule;

13 (5) criteria for selection under Section 2267.359 and
14 the weighting of the criteria; and

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

17 (b) The governmental entity shall also prepare a design
18 criteria package as described by Section 2267.358.

19 Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A
20 design criteria package may include, as appropriate:

21 (1) budget or cost estimates;

22 (2) information on the site;

23 (3) performance criteria;

24 (4) special material requirements;

25 (5) initial design calculations;

26 (6) known utilities;

27 (7) capacity requirements;

1 (8) quality assurance and quality control
2 requirements;

3 (9) the type, size, and location of structures; and

4 (10) notice of any ordinances, rules, or goals adopted
5 by the governmental entity relating to awarding contracts to
6 historically underutilized businesses.

7 Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The
8 governmental entity shall receive proposals and shall evaluate each
9 offeror's experience, technical competence, and capability to
10 perform, the past performance of the offeror's team and members of
11 the team, and other appropriate factors submitted by the team or
12 firm in response to the request for qualifications, except that
13 cost-related or price-related evaluation factors are not permitted
14 at this stage.

15 (b) Each offeror must:

16 (1) select or designate each engineer that is a member
17 of its team based on demonstrated competence and qualifications, in
18 the manner provided by Section 2254.004; and

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

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

25 Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The
26 governmental entity shall select a design-build firm using a
27 combination of technical and cost proposals as provided by Section

1 2267.361.

2 Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND
3 COST PROPOSALS. (a) A governmental entity shall request proposals
4 from design-build firms identified under Section 2267.359(c). A
5 firm must submit a proposal not later than the 180th day after the
6 date the governmental entity makes a public request for the
7 proposals from the selected firms. The request for proposals must
8 include:

9 (1) a design criteria package;

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

13 (3) detailed instructions for preparing the technical
14 proposal and the items to be included, including a description of
15 the form and level of completeness of drawings expected; 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 technical proposal is a component of the proposal
20 under this section.

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

23 (d) The technical proposal must address:

24 (1) project approach;

25 (2) anticipated problems;

26 (3) proposed solutions to anticipated problems;

27 (4) ability to meet schedules;

1 (5) conceptual engineering design; and
2 (6) other information requested by the governmental
3 entity.

4 (e) The governmental entity shall first open, evaluate, and
5 score each responsive technical proposal submitted on the basis of
6 the criteria described in the request for proposals and assign
7 points on the basis of the weighting specified in the request for
8 proposals. The governmental entity may reject as nonresponsive any
9 firm that makes a significant change to the composition of its firm
10 as initially submitted. The governmental entity shall subsequently
11 open, evaluate, and score the cost proposals from firms that
12 submitted a responsive technical proposal and assign points on the
13 basis of the weighting specified in the request for proposals. The
14 governmental entity shall select the design-build firm in
15 accordance with the formula provided in the request for proposals.

16 Sec. 2267.362. NEGOTIATION. After selecting the
17 highest-ranked design-build firm under Section 2267.361, the
18 governmental entity shall first attempt to negotiate a contract
19 with the selected firm. If the governmental entity is unable to
20 negotiate a satisfactory contract with the selected firm, the
21 entity shall, formally and in writing, end all negotiations with
22 that firm and proceed to negotiate with the next firm in the order
23 of the selection ranking until a contract is reached or
24 negotiations with all ranked firms end.

25 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental
26 entity shall assume:

27 (1) all risks and costs associated with:

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

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

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

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

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

15 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

16 (a) Unless a stipend is paid under Subsection (c), the
17 design-build firm retains all rights to the work product submitted
18 in a proposal. The governmental entity may not release or disclose
19 to any person, including the successful offeror, the work product
20 contained in an unsuccessful proposal. The governmental entity
21 shall return all copies of the proposal and other information
22 submitted to an unsuccessful offeror. The governmental entity or
23 its agents may not make use of any unique or nonordinary design
24 element, technique, method, or process contained in the
25 unsuccessful proposal that was not also contained in the successful
26 proposal at the time of the original submittal, unless the entity
27 acquires a license from the unsuccessful offeror.

1 (b) A violation of this section voids the contract for the
2 project entered into by the governmental entity. The governmental
3 entity is liable to any unsuccessful offeror, or any member of the
4 design-build team or its assignee, for one-half of the cost savings
5 associated with the unauthorized use of the work product of the
6 unsuccessful offeror. Any interested party may bring an action for
7 an injunction, declaratory relief, or damages for a violation of
8 this section. A party who prevails in an action under this
9 subsection is entitled to reasonable attorney's fees as approved by
10 the court.

11 (c) The governmental entity may offer an unsuccessful
12 design-build firm that submits a response to the entity's request
13 for additional information under Section 2267.361 a stipend for
14 preliminary engineering costs associated with the development of
15 the proposal. The stipend must be one-half of one percent of the
16 contract amount and must be specified in the initial request for
17 proposals. If the offer is accepted and paid, the governmental
18 entity may make use of any work product contained in the proposal,
19 including the techniques, methods, processes, and information
20 contained in the proposal. The use by the governmental entity of
21 any design element contained in an unsuccessful proposal is at the
22 sole risk and discretion of the entity and does not confer liability
23 on the recipient of the stipend under this subsection.

24 (d) Notwithstanding other law, including Chapter 552, work
25 product contained in an unsuccessful proposal submitted and
26 rejected under this subchapter is confidential and may not be
27 released unless a stipend offer has been accepted and paid as

1 provided by Subsection (c).

2 Sec. 2267.365. COMPLETION OF DESIGN. (a) Following
3 selection of a design-build firm under this subchapter, the firm's
4 engineers shall submit all design elements for review and
5 determination of scope compliance to the governmental entity before
6 or concurrently with construction.

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

10 Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the
11 conclusion of construction, the design-build firm shall supply to
12 the governmental entity a record set of construction documents for
13 the project prepared as provided by Chapter 1001, Occupations Code.

14 Sec. 2267.367. PERFORMANCE OR PAYMENT BOND. (a) A
15 performance or payment bond is not required for the portion of a
16 design-build contract under this section that includes design
17 services only.

18 (b) If a fixed contract amount or guaranteed maximum price
19 has not been determined at the time a design-build contract is
20 awarded, the penal sums of the performance and payment bonds
21 delivered to the governmental entity must each be in an amount equal
22 to the construction budget, if commercially available and
23 practical, as specified in the design criteria package.

24 (c) If the governmental entity awards a design-build
25 contract under Section 2267.362, the design-build firm shall
26 deliver the bonds not later than the 10th day after the date the
27 design-build firm executes the contract unless the design-build

1 firm furnishes a bid bond or other financial security acceptable to
2 the governmental entity to ensure that the design-build firm will
3 furnish the required performance and payment bonds before the
4 commencement of construction.

5 [Sections 2267.368-2267.400 reserved for expansion]

6 SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

7 Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,
8 "job order contracting" is a procurement method used for
9 maintenance, repair, alteration, renovation, remediation, or minor
10 construction of a facility when the work is of a recurring nature
11 but the delivery times, type, and quantities of work required are
12 indefinite.

13 Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
14 EXCEPTIONS. This subchapter applies only to a facility that is a
15 building, the design and construction of which is governed by
16 accepted building codes, or a structure or land, whether improved
17 or unimproved, that is associated with a building. This subchapter
18 does not apply to:

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

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

26 Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
27 FACILITIES. (a) A governmental entity may award job order

1 contracts for the maintenance, repair, alteration, renovation,
2 remediation, or minor construction of a facility if:

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

5 (2) indefinite quantities and orders are awarded
6 substantially on the basis of predescribed and prepriced tasks.

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

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

11 (1) \$500,000 under the contract; or

12 (2) a lesser amount as established by the governing
13 body.

14 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental
15 entity may establish contractual unit prices for a job order
16 contract by:

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

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

23 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
24 governmental entity may use the competitive sealed proposal method
25 under Subchapter D for job order contracts.

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

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

4 Sec. 2267.406. AWARDING OF JOB ORDER CONTRACTS. The
5 governmental entity may award job order contracts to one or more job
6 order contractors in connection with each solicitation of
7 proposals.

8 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order
9 contract may be used to accomplish work only for the governmental
10 entity that awards the contract unless:

11 (1) the solicitation for the job order contract and
12 the contract specifically provide for use by other persons; or

13 (2) the governmental entity enters into an interlocal
14 agreement that provides otherwise.

15 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order
16 contract or an order issued under the contract requires
17 architectural or engineering services that constitute the practice
18 of architecture within the meaning of Chapter 1051, Occupations
19 Code, or the practice of engineering within the meaning of Chapter
20 1001, Occupations Code, the governmental entity shall select or
21 designate an architect or engineer to prepare the construction
22 documents for the project.

23 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a
24 job order contract may not exceed two years. The governmental
25 entity may renew the contract annually for not more than three
26 additional years.

27 Sec. 2267.410. JOB ORDERS. (a) An order for a job or

1 project under a job order contract must be signed by the
2 governmental entity's representative and the contractor.

3 (b) The order may be:

4 (1) a fixed price, lump-sum contract based
5 substantially on contractual unit pricing applied to estimated
6 quantities; or

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

9 Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The
10 contractor shall provide payment and performance bonds, if required
11 by law, based on the amount or estimated amount of any order.

12 [Sections 2267.412-2267.450 reserved for expansion]

13 SUBCHAPTER J. ENFORCEMENT

14 Sec. 2267.451. VOID CONTRACT. (a) A contract, including a
15 job order, entered into in violation of this chapter and any bonds
16 issued in connection with the contract are voidable as against
17 public policy.

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

24 Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
25 chapter may be enforced through an action for declaratory or
26 injunctive relief filed not later than the 10th day after the date
27 on which the contract is awarded.

1 (b) This section does not apply to enforcement of a contract
2 entered into by a state agency. In this subsection, "state agency"
3 has the meaning assigned by Section 2151.002. The term includes the
4 Texas Facilities Commission.

5 SECTION 2.10. Section 252.048, Local Government Code, is
6 amended by adding Subsection (c-1) to read as follows:

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

13 SECTION 2.11. Section 271.054, Local Government Code, is
14 amended to read as follows:

15 Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the
16 governing body of an issuer may enter into a contract requiring an
17 expenditure by or imposing an obligation or liability on the
18 issuer, or on a subdivision of the issuer if the issuer is a county,
19 of more than \$25,000, the governing body must:

20 (1) submit the proposed contract to competitive
21 bidding; or

22 (2) use an alternate method of project delivery
23 authorized by Chapter 2267, Government Code.

24 SECTION 2.12. Section 271.060, Local Government Code, is
25 amended by amending Subsection (b) and adding Subsection (c) to
26 read as follows:

27 (b) The total price of a contract may not be increased by a

1 change order unless provision has been made for the payment of the
2 added cost by the appropriation of current funds or bond funds for
3 that purpose, by the authorization of the issuance of certificates,
4 or by a combination of those procedures.

5 (c) A contract with an [The] original contract price of \$1
6 million or more may not be increased by more than 25 percent. If a
7 change order for a contract with an original contract price of less
8 than \$1 million increases the contract amount to \$1 million or more,
9 subsequent change orders may not increase the revised contract
10 amount by more than 25 percent [~~The original price may not be~~
11 ~~decreased by more than 25 percent without the consent of the~~
12 ~~contractor~~].

13 ARTICLE 3. ADDITIONAL EXEMPTIONS

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

16 (j) Chapter 2267, Government Code, does not apply to this
17 section.

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

20 (k) Chapter 2267, Government Code, does not apply to this
21 section.

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

24 (k) Chapter 2267 does not apply to this section.

25 SECTION 3.04. Chapter 302, Local Government Code, is
26 amended by adding Section 302.007 to read as follows:

27 Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW.

1 Chapter 2267, Government Code, does not apply to this chapter.

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

4 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.

5 Chapter 2267, Government Code, does not apply to this chapter.

6 SECTION 3.06. Section 22.084, Transportation Code, is
7 amended by adding Subsection (c) to read as follows:

8 (c) Chapter 2267, Government Code, does not apply to an
9 agreement entered into under this section.

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

12 (c-1) Chapter 2267, Government Code, does not apply to
13 agreements entered into pursuant to this section.

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

16 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.

17 Chapter 2267, Government Code, does not apply to this subchapter.

18 SECTION 3.09. Subchapter C, Chapter 452, Transportation
19 Code, is amended by adding Section 452.1095 to read as follows:

20 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR
21 CERTAIN AUTHORITIES. Chapter 2267, Government Code, does not apply
22 to an authority consisting of one subregion governed by a
23 subregional board created under Subchapter O.

24 SECTION 3.10. Section 60.401, Water Code, is amended by
25 adding Subsection (d) to read as follows:

26 (d) Chapter 2267, Government Code, does not apply to this
27 subchapter.

1 SECTION 3.11. Section 60.452, Water Code, is amended by
2 adding Subsection (d) to read as follows:

3 (d) Chapter 2267, Government Code, does not apply to this
4 subchapter.

5 ARTICLE 4. CONFORMING AMENDMENT

6 SECTION 4.01. Subsection (a), Section 252.021, Local
7 Government Code, is amended to read as follows:

8 (a) Before a municipality may enter into a contract that
9 requires an expenditure of more than \$50,000 from one or more
10 municipal funds, the municipality must:

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

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

16 (3) comply with a method described by Chapter 2267,
17 Government Code [~~Subchapter H or J, Chapter 271~~].

18 SECTION 4.02. Subsection (d), Section 252.022, Local
19 Government Code, is amended to read as follows:

20 (d) This chapter does not apply to an expenditure described
21 by Section 252.021(a) if the governing body of a municipality
22 determines that a method described by Chapter 2267, Government Code
23 [~~Subchapter H, Chapter 271~~], provides a better value for the
24 municipality with respect to that expenditure than the procedures
25 described in this chapter and the municipality adopts and uses a
26 method described in that subchapter with respect to that
27 expenditure.

ARTICLE 5. REPEALER

SECTION 5.01. The following are repealed:

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

(2) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code;

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

(4) Subchapters H and J, Chapter 271, Local Government Code; and

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

ARTICLE 6. TRANSITION; EFFECTIVE DATE

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

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

SECTION 6.02. This Act takes effect September 1, 2009.