

1-1 By: Jackson S.B. No. 1110  
1-2 (In the Senate - Filed February 24, 2009; March 13, 2009,  
1-3 read first time and referred to Committee on Government  
1-4 Organization; April 2, 2009, reported adversely, with favorable  
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1110 By: Nelson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to contracts by governmental entities and related  
1-11 professional services and to public works performance and payment  
1-12 bonds.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

1-15 SECTION 1.01. Section 2253.021, Government Code, is amended  
1-16 by adding Subsection (h) to read as follows:

1-17 (h) A reverse auction procedure may not be used to obtain  
1-18 services related to a public work contract for which a bond is  
1-19 required under this section. In this subsection, "reverse auction  
1-20 procedure" has the meaning assigned by Section 2155.062 or a  
1-21 procedure similar to that described by Section 2155.062.

1-22 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

1-23 SECTION 2.01. Section 11.168, Education Code, is amended to  
1-24 read as follows:

1-25 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR  
1-26 CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection  
1-27 (b), the [The] board of trustees of a school district may not enter  
1-28 into an agreement authorizing the use of school district employees,  
1-29 property, or resources for the provision of materials or labor for  
1-30 the design, construction, or renovation of improvements to real  
1-31 property not owned or leased by the district.

1-32 (b) This section does not prohibit the board of trustees of  
1-33 a school district from entering into an agreement for the design,  
1-34 construction, or renovation of improvements to real property not  
1-35 owned or leased by the district if the improvements benefit real  
1-36 property owned or leased by the district. Benefits to real property  
1-37 owned or leased by the district include the design, construction,  
1-38 or renovation of highways, roads, streets, sidewalks, crosswalks,  
1-39 utilities, and drainage improvements that serve or benefit the real  
1-40 property owned or leased by the district.

1-41 SECTION 2.02. Subsections (a) and (f), Section 44.031,  
1-42 Education Code, are amended to read as follows:

1-43 (a) Except as provided by this subchapter, all school  
1-44 district contracts for the purchase of goods and services, except  
1-45 contracts for the purchase of produce or vehicle fuel, valued at  
1-46 \$25,000 or more in the aggregate for each 12-month period shall be  
1-47 made by the method, of the following methods, that provides the best  
1-48 value for the district:

1-49 (1) competitive bidding for services other than  
1-50 construction services;

1-51 (2) competitive sealed proposals for services other  
1-52 than construction services;

1-53 (3) a request for proposals, for services other than  
1-54 construction services;

1-55 (4) a catalogue purchase as provided by Subchapter B,  
1-56 Chapter 2157, Government Code;

1-57 (5) an interlocal contract;

1-58 (6) [~~5~~] a method provided by Chapter 2267,  
1-59 Government Code, for construction services [~~a design/build~~  
1-60 contract,

1-61 [(6) a contract to construct, rehabilitate, alter, or  
1-62 repair facilities that involves using a construction manager,

1-63 [(7) a job order contract for the minor construction,

2-1 ~~repair, rehabilitation, or alteration of a facility];~~  
2-2 (7) ~~[(8)]~~ the reverse auction procedure as defined by  
2-3 Section 2155.062(d), Government Code; or  
2-4 (8) ~~[(9)]~~ the formation of a political subdivision  
2-5 corporation under Section 304.001, Local Government Code.

2-6 (f) This section does not apply to a contract for  
2-7 professional services rendered, including services of an  
2-8 architect, attorney, engineer, or fiscal agent. A school district  
2-9 may, at its option, contract for professional services rendered by  
2-10 a financial consultant or a technology consultant in the manner  
2-11 provided by Section 2254.003, Government Code, in lieu of the  
2-12 methods provided by this section.

2-13 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is  
2-14 amended by adding Section 44.0351 to read as follows:

2-15 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the  
2-16 extent prohibited by other law and to the extent consistent with  
2-17 this subchapter, a school district may use competitive bidding to  
2-18 select a vendor as authorized by Section 44.031(a)(1).

2-19 (b) Except as provided by this subsection, Subchapter B,  
2-20 Chapter 271, Local Government Code, does not apply to a competitive  
2-21 bidding process under this subchapter. Sections 271.026,  
2-22 271.027(a), and 271.0275, Local Government Code, apply to a  
2-23 competitive bidding process under this subchapter.

2-24 (c) A school district shall award a competitively bid  
2-25 contract at the bid amount to the bidder offering the best value for  
2-26 the district. In determining the best value for the district, the  
2-27 district is not restricted to considering price alone, but may  
2-28 consider any other factors stated in the selection criteria. The  
2-29 selection criteria may include the factors listed in Section  
2-30 44.031(b).

2-31 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is  
2-32 amended by adding Section 44.0361 to read as follows:

2-33 Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In  
2-34 selecting a vendor through competitive sealed proposals as  
2-35 authorized by Section 44.031(a)(2), a school district shall follow  
2-36 the procedures prescribed by this section.

2-37 (b) The district shall prepare a request for competitive  
2-38 sealed proposals that includes information that vendors may require  
2-39 to respond to the request. The district shall state in the request  
2-40 for proposals the selection criteria that will be used in selecting  
2-41 the successful offeror.

2-42 (c) The district shall receive, publicly open, and read  
2-43 aloud the names of the offerors and, if any are required to be  
2-44 stated, all prices stated in each proposal. Not later than the 45th  
2-45 day after the date on which the proposals are opened, the district  
2-46 shall evaluate and rank each proposal submitted in relation to the  
2-47 published selection criteria.

2-48 (d) The district shall select the offeror that offers the  
2-49 best value for the district based on the published selection  
2-50 criteria and on its ranking evaluation. The district shall first  
2-51 attempt to negotiate with the selected offeror a contract. The  
2-52 district may discuss with the selected offeror options for a scope  
2-53 or time modification and any price change associated with the  
2-54 modification. If the district is unable to negotiate a contract  
2-55 with the selected offeror, the district shall, formally and in  
2-56 writing, end negotiations with that offeror and proceed to the next  
2-57 offeror in the order of the selection ranking until a contract is  
2-58 reached or all proposals are rejected.

2-59 (e) In determining the best value for the district, the  
2-60 district is not restricted to considering price alone, but may  
2-61 consider any other factors stated in the selection criteria.

2-62 SECTION 2.05. Subchapter B, Chapter 44, Education Code, is  
2-63 amended by adding Section 44.0411 to read as follows:

2-64 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or  
2-65 specifications is necessary after the performance of a contract is  
2-66 begun or if it is necessary to decrease or increase the quantity of  
2-67 work to be performed or of materials, equipment, or supplies to be  
2-68 furnished, the district may approve change orders making the  
2-69 changes.

3-1           (b) The total contract price may not be increased because of  
3-2 the changes unless additional money for increased costs is approved  
3-3 for that purpose from available money or is provided for by the  
3-4 authorization of the issuance of time warrants.

3-5           (c) The district may grant general authority to an  
3-6 administrative official to approve the change orders.

3-7           (d) A contract with an original contract price of \$1 million  
3-8 or more may not be increased under this section by more than 25  
3-9 percent. If a change order for a contract with an original contract  
3-10 price of less than \$1 million increases the contract amount to \$1  
3-11 million or more, subsequent change orders may not increase the  
3-12 revised contract amount by more than 25 percent.

3-13           SECTION 2.06. Subchapter A, Chapter 46, Education Code, is  
3-14 amended by adding Section 46.0111 to read as follows:

3-15           Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,  
3-16 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL  
3-17 FACILITY. (a) In this section:

3-18           (1) "Net proceeds" means the difference between the  
3-19 amount recovered by or on behalf of a school district in an action,  
3-20 by settlement or otherwise, and the legal fees and litigation costs  
3-21 incurred by the district in prosecuting the action.

3-22           (2) "State's share" means an amount equal to the  
3-23 district's net proceeds from the recovery multiplied by a  
3-24 percentage determined by dividing the amount of state assistance  
3-25 under this subchapter used to pay the principal of and interest on  
3-26 bonds issued in connection with the instructional facility that is  
3-27 the subject of the action by the total amount of principal and  
3-28 interest paid on the bonds as of the date of the judgment or  
3-29 settlement.

3-30           (b) A school district that brings an action for recovery of  
3-31 damages for the defective design, construction, renovation, or  
3-32 improvement of an instructional facility financed by bonds  
3-33 for which the district receives state assistance under this  
3-34 subchapter shall provide the commissioner with written notice of  
3-35 the action.

3-36           (c) The commissioner may join in the action on behalf of the  
3-37 state to protect the state's share in the action.

3-38           (d) A school district shall use the net proceeds from an  
3-39 action brought by the district for the defective design,  
3-40 construction, renovation, or improvement of an instructional  
3-41 facility financed by bonds for which the district receives state  
3-42 assistance under this subchapter to repair the defective design,  
3-43 construction, renovation, or improvement of the instructional  
3-44 facility on which the action is brought or to replace the facility.  
3-45 Section 46.008 applies to the repair.

3-46           (e) The state's share is state property. The school  
3-47 district shall send to the comptroller any portion of the state's  
3-48 share not used by the school district to repair the defective  
3-49 design, construction, renovation, or improvement of the  
3-50 instructional facility on which the action is brought or to replace  
3-51 the facility. Section 42.258 applies to the state's share under  
3-52 this subsection.

3-53           SECTION 2.07. Section 791.011, Government Code, is amended  
3-54 by amending Subsection (h) and adding Subsection (i) to read as  
3-55 follows:

3-56           (h) An interlocal contract or any other agreement between a  
3-57 governmental entity and a purchasing cooperative may not be used to  
3-58 purchase engineering or architectural services.

3-59           (i) An interlocal contract may not be used to purchase  
3-60 construction services unless the services are in connection with  
3-61 the design or construction of a specific facility to be jointly  
3-62 owned, used, or financed by the parties to the contract or:

3-63           (1) the services are in connection with a job order  
3-64 contract;

3-65           (2) the governing body of the governmental entity for  
3-66 whom the work will ultimately be performed approves the purchase in  
3-67 open session;

3-68           (3) public notice is provided in a manner consistent  
3-69 with a direct contract for job order contracting services; and

4-1 (4) work orders under the contract comply with Section  
4-2 2267.403.

4-3 SECTION 2.08. Section 2166.2525, Government Code, is  
4-4 amended to read as follows:

4-5 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The  
4-6 [~~commission shall adopt rules that determine the circumstances for~~  
4-7 ~~use of each]~~ method of contracting allowed under this subchapter  
4-8 for design and construction services is any method provided by  
4-9 Chapter 2267. [In developing the rules, the commission shall  
4-10 solicit advice and comment from design and construction  
4-11 professionals regarding the criteria the commission will use in  
4-12 determining which contracting method is best suited for a project.]

4-13 SECTION 2.09. Subtitle F, Title 10, Government Code, is  
4-14 amended by adding Chapter 2267 to read as follows:

4-15 CHAPTER 2267. CONTRACTING AND DELIVERY PROCEDURES FOR  
4-16 CONSTRUCTION PROJECTS

4-17 SUBCHAPTER A. GENERAL PROVISIONS

4-18 Sec. 2267.001. DEFINITIONS. In this chapter:

4-19 (1) "Architect" means an individual registered as an  
4-20 architect under Chapter 1051, Occupations Code.

4-21 (2) "Engineer" means an individual licensed as an  
4-22 engineer under Chapter 1001, Occupations Code.

4-23 (3) "Facility" means, unless otherwise specifically  
4-24 provided, an improvement to real property.

4-25 (4) "General conditions" in the context of a contract  
4-26 for the construction, rehabilitation, alteration, or repair of a  
4-27 facility means on-site management, administrative personnel,  
4-28 insurance, bonds, equipment, utilities, and incidental work,  
4-29 including minor field labor and materials.

4-30 (5) "General contractor" means a sole proprietorship,  
4-31 partnership, corporation, or other legal entity that assumes the  
4-32 risk for constructing, rehabilitating, altering, or repairing all  
4-33 or part of a facility at the contracted price.

4-34 (6) "Public work contract" means a contract for  
4-35 constructing, altering, or repairing a public building or carrying  
4-36 out or completing any public work.

4-37 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
4-38 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.  
4-39 This chapter applies to a public work contract made by a  
4-40 governmental entity or quasi-governmental entity authorized by  
4-41 state law to make a public work contract, including:

4-42 (1) a state agency as defined by Section 2151.002,  
4-43 including the Texas Facilities Commission;

4-44 (2) a local government, including:

4-45 (A) a county;

4-46 (B) a municipality;

4-47 (C) a school district;

4-48 (D) any other special district or authority,  
4-49 including a hospital district, a defense base development authority  
4-50 established under Chapter 379B, Local Government Code, and a  
4-51 conservation and reclamation district, including a river authority  
4-52 or any other type of water district; and

4-53 (E) any other political subdivision of this  
4-54 state;

4-55 (3) a public junior college as defined by Section  
4-56 61.003, Education Code;

4-57 (4) any entity owned by a municipality; and

4-58 (5) any other entity that owns or operates a facility  
4-59 for the benefit of a municipality or county.

4-60 Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW  
4-61 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this  
4-62 section, this chapter prevails over any other law relating to a  
4-63 public work contract.

4-64 (b) This chapter does not prevail over a conflicting  
4-65 provision in a law relating to contracting with a historically  
4-66 underutilized business.

4-67 (c) This chapter does not prevail over a conflicting  
4-68 provision in an ordinance or resolution passed by the governing  
4-69 body of a municipally owned electric utility in a procedure

5-1 described by Section 252.022(c), Local Government Code, that:  
5-2 (1) requires the use of competitive bidding or  
5-3 competitive sealed proposals; or  
5-4 (2) prescribes a design-build procurement procedure  
5-5 that conflicts with this chapter.  
5-6 Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF  
5-7 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:  
5-8 (1) a contract entered into by the Texas Department of  
5-9 Transportation; or  
5-10 (2) a project that receives money from a state or  
5-11 federal highway fund.  
5-12 Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER  
5-13 EDUCATION. (a) In this section, "institution of higher  
5-14 education," "public junior college," and "university system" have  
5-15 the meanings assigned by Section 61.003, Education Code.  
5-16 (b) This chapter applies to a public junior college but does  
5-17 not apply to:  
5-18 (1) any other institution of higher education; or  
5-19 (2) a university system.  
5-20 Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.  
5-21 This chapter does not apply to a regional tollway authority under  
5-22 Chapter 366, Transportation Code.  
5-23 [Sections 2267.007-2267.050 reserved for expansion]  
5-24 SUBCHAPTER B. GENERAL POWERS AND DUTIES  
5-25 Sec. 2267.051. RULES. A governmental entity may adopt  
5-26 rules as necessary to implement this chapter.  
5-27 Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental  
5-28 entity shall advertise or publish notice of requests for bids,  
5-29 proposals, or qualifications in a manner prescribed by law.  
5-30 (b) For a contract entered into by a governmental entity  
5-31 under a method provided by this chapter, the governmental entity  
5-32 shall publish notice of the time and place the bid or proposal or  
5-33 request for qualifications will be received and opened in a manner  
5-34 prescribed by law.  
5-35 (c) For a contract entered into by a municipality, river  
5-36 authority, conservation and reclamation district created pursuant  
5-37 to Section 59, Article XVI, Texas Constitution, and located in a  
5-38 county with a population of more than 250,000, or defense base  
5-39 development authority under any of the methods provided by this  
5-40 chapter, the municipality, river authority, conservation and  
5-41 reclamation district created pursuant to Section 59, Article XVI,  
5-42 Texas Constitution, and located in a county with a population of  
5-43 more than 250,000, or defense base development authority shall  
5-44 publish notice of the time and place the bids or proposals, or the  
5-45 responses to a request for qualifications, will be received and  
5-46 opened. The notice must be published in a newspaper of general  
5-47 circulation in the county in which the defense base development  
5-48 authority's or municipality's central administrative office is  
5-49 located or the county in which the greatest amount of the river  
5-50 authority's or such conservation and reclamation district's  
5-51 territory is located once each week for at least two weeks before  
5-52 the deadline for receiving bids, proposals, or responses. If there  
5-53 is not a newspaper of general circulation in that county, the notice  
5-54 shall be published in a newspaper of general circulation in the  
5-55 county nearest the county seat of the county in which the defense  
5-56 base development authority's or municipality's central  
5-57 administrative office is located or the county in which the  
5-58 greatest amount of the river authority's or such conservation and  
5-59 reclamation district's territory is located. In a two-step  
5-60 procurement process, the time and place the second step bids,  
5-61 proposals, or responses will be received are not required to be  
5-62 published separately.  
5-63 (d) For a contract entered into by a county under any of the  
5-64 methods provided by this chapter, the county shall publish notice  
5-65 of the time and place the bids or proposals, or the responses to a  
5-66 request for qualifications, will be received and opened. The  
5-67 notice must be published in a newspaper of general circulation in  
5-68 the county once each week for at least two weeks before the deadline  
5-69 for receiving bids, proposals, or responses. If there is not a

6-1 newspaper of general circulation in the county, the notice shall  
6-2 be:

- 6-3 (1) posted at the courthouse door of the county; and
- 6-4 (2) published in a newspaper of general circulation in  
6-5 the nearest county.

6-6 Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing  
6-7 body of a governmental entity may delegate its authority under this  
6-8 chapter regarding an action authorized or required by this chapter  
6-9 to a designated representative, committee, or other person.

6-10 (b) The governmental entity shall provide notice of the  
6-11 delegation, the limits of the delegation, and the name or title of  
6-12 each person designated under Subsection (a) by rule or in the  
6-13 request for bids, proposals, or qualifications or in an addendum to  
6-14 the request.

6-15 Sec. 2267.054. RIGHT TO WORK. (a) This section applies to  
6-16 a governmental entity when the governmental entity is engaged in:

- 6-17 (1) procuring goods or services under this chapter;
- 6-18 (2) awarding a contract under this chapter; or
- 6-19 (3) overseeing procurement or construction for a  
6-20 public work or public improvement under this chapter.

6-21 (b) In engaging in an activity to which this section  
6-22 applies, a governmental entity:

- 6-23 (1) may not consider whether a person is a member of or  
6-24 has another relationship with any organization; and
- 6-25 (2) shall ensure that its bid specifications and any  
6-26 subsequent contract or other agreement do not deny or diminish the  
6-27 right of a person to work because of the person's membership or  
6-28 other relationship status with respect to an organization.

6-29 Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining  
6-30 the award of a contract under this chapter, the governmental entity  
6-31 may consider:

- 6-32 (1) the price;
- 6-33 (2) the offeror's experience and reputation;
- 6-34 (3) the quality of the offeror's goods or services;
- 6-35 (4) the impact on the ability of the governmental  
6-36 entity to comply with rules relating to historically underutilized  
6-37 businesses;
- 6-38 (5) the offeror's safety record;
- 6-39 (6) the offeror's proposed personnel;
- 6-40 (7) whether the offeror's financial capability is  
6-41 appropriate to the size and scope of the project; and
- 6-42 (8) any other relevant factor specifically listed in  
6-43 the request for bids, proposals, or qualifications.

6-44 (b) In determining the award of a contract under this  
6-45 chapter, the governmental entity shall:

- 6-46 (1) consider and apply any existing laws, including  
6-47 any criteria, related to historically underutilized businesses;  
6-48 and
- 6-49 (2) consider and apply any existing laws, rules, or  
6-50 applicable municipal charters, including laws applicable to local  
6-51 governments, related to the use of women, minority, small, or  
6-52 disadvantaged businesses.

6-53 Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING  
6-54 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

6-55 (a) The governing body of a governmental entity that considers a  
6-56 construction contract using a method authorized by this chapter  
6-57 other than competitive bidding must, before advertising, determine  
6-58 which method provides the best value for the governmental entity.

6-59 (b) The governmental entity shall base its selection among  
6-60 offerors on applicable criteria listed for the particular method  
6-61 used. The governmental entity shall publish in the request for  
6-62 proposals or qualifications the criteria that will be used to  
6-63 evaluate the offerors, and the applicable weighted value for each  
6-64 criterion.

6-65 (c) The governmental entity shall document the basis of its  
6-66 selection and shall make the evaluations public not later than the  
6-67 seventh day after the date the contract is awarded.

6-68 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An  
6-69 architect or engineer required to be selected or designated under

7-1 this chapter has full responsibility for complying with Chapter  
7-2 1051 or 1001, Occupations Code, as applicable.

7-3 (b) If the selected or designated architect or engineer is  
7-4 not a full-time employee of the governmental entity, the  
7-5 governmental entity shall select the architect or engineer on the  
7-6 basis of demonstrated competence and qualifications as provided by  
7-7 Section 2254.004.

7-8 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.

7-9 (a) Independently of the contractor, construction  
7-10 manager-at-risk, or design-build firm, the governmental entity  
7-11 shall provide or contract for the construction materials  
7-12 engineering, testing, and inspection services and the verification  
7-13 testing services necessary for acceptance of the facility by the  
7-14 governmental entity.

7-15 (b) The governmental entity shall select the services for  
7-16 which it contracts under this section in accordance with Section  
7-17 2254.004.

7-18 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS  
7-19 REQUIRED. A person who submits a bid, proposal, or qualification to  
7-20 a governmental entity shall seal it before delivery.

7-21 [Sections 2267.060-2267.100 reserved for expansion]

7-22 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

7-23 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE  
7-24 BIDDING. (a) In this chapter, "competitive bidding" is a  
7-25 procurement method by which a governmental entity contracts with a  
7-26 contractor for the construction, alteration, rehabilitation, or  
7-27 repair of a facility by awarding the contract to the lowest  
7-28 responsible bidder.

7-29 (b) Except as otherwise provided by this chapter or other  
7-30 law, a governmental entity may contract for the construction,  
7-31 alteration, rehabilitation, or repair of a facility only after the  
7-32 entity advertises for bids for the contract in a manner prescribed  
7-33 by law, receives competitive bids, and awards the contract to the  
7-34 lowest responsible bidder.

7-35 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The  
7-36 governmental entity shall select or designate an architect or  
7-37 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
7-38 as applicable, to prepare the construction documents required for a  
7-39 project to be awarded by competitive bidding.

7-40 Sec. 2267.103. PREPARATION OF REQUEST. The governmental  
7-41 entity shall prepare a request for competitive bids that includes  
7-42 construction documents, estimated budget, project scope, estimated  
7-43 project completion date, and other information that a contractor  
7-44 may require to submit a bid.

7-45 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental  
7-46 entity shall receive, publicly open, and read aloud the names of the  
7-47 offerors and their bids.

7-48 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the  
7-49 seventh day after the date the contract is awarded, the  
7-50 governmental entity shall document the basis of its selection and  
7-51 shall make the evaluations public.

7-52 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
7-53 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
7-54 specifically provided by this section, Subchapter B, Chapter 271,  
7-55 Local Government Code, does not apply to a competitive bidding  
7-56 process conducted under this chapter. Sections 271.026,  
7-57 271.027(a), and 271.0275, Local Government Code, apply to a  
7-58 competitive bidding process conducted under this chapter by a  
7-59 governmental entity as defined by Section 271.021, Local Government  
7-60 Code.

7-61 [Sections 2267.107-2267.150 reserved for expansion]

7-62 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

7-63 Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE  
7-64 SEALED PROPOSALS. (a) In this chapter, "competitive sealed  
7-65 proposals" is a procurement method by which a governmental entity  
7-66 requests proposals, ranks the offerors, negotiates as prescribed,  
7-67 and then contracts with a general contractor for the construction,  
7-68 rehabilitation, alteration, or repair of a facility.

7-69 (b) In selecting a contractor through competitive sealed

8-1 proposals, a governmental entity shall follow the procedures  
 8-2 provided by this subchapter.

8-3 Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The  
 8-4 governmental entity shall select or designate an architect or  
 8-5 engineer to prepare construction documents for the project.

8-6 Sec. 2267.153. PREPARATION OF REQUEST. The governmental  
 8-7 entity shall prepare a request for competitive sealed proposals  
 8-8 that includes construction documents, selection criteria and the  
 8-9 weighted value for each criterion, estimated budget, project scope,  
 8-10 estimated project completion date, and other information that a  
 8-11 contractor may require to respond to the request.

8-12 Sec. 2267.154. EVALUATION OF OFFERORS. (a) The  
 8-13 governmental entity shall receive, publicly open, and read aloud  
 8-14 the names of the offerors and any monetary proposals made by the  
 8-15 offerors.

8-16 (b) Not later than the 45th day after the date of opening the  
 8-17 proposals, the governmental entity shall evaluate and rank each  
 8-18 proposal submitted in relation to the published selection criteria.

8-19 Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental  
 8-20 entity shall select the offeror that submits the proposal that  
 8-21 offers the best value for the governmental entity based on:

8-22 (1) the selection criteria in the request for proposal  
 8-23 and the weighted value for those criteria in the request for  
 8-24 proposal; and

8-25 (2) its ranking evaluation.

8-26 (b) The governmental entity shall first attempt to  
 8-27 negotiate a contract with the selected offeror. The governmental  
 8-28 entity and its architect or engineer may discuss with the selected  
 8-29 offeror options for a scope or time modification and any price  
 8-30 change associated with the modification.

8-31 (c) If the governmental entity is unable to negotiate a  
 8-32 contract with the selected offeror, the governmental entity shall,  
 8-33 formally and in writing, end negotiations with that offeror and  
 8-34 proceed to the next offeror in the order of the selection ranking  
 8-35 until a contract is reached or all proposals are rejected.

8-36 [Sections 2267.156-2267.200 reserved for expansion]

8-37 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

8-38 Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 8-39 MANAGER-AGENT. (a) In this chapter, the "construction  
 8-40 manager-agent method" is a delivery method by which a governmental  
 8-41 entity contracts with a construction manager-agent to provide  
 8-42 consultation or administrative services during the design and  
 8-43 construction phase and to manage multiple contracts with various  
 8-44 construction prime contractors.

8-45 (b) A construction manager-agent is a sole proprietorship,  
 8-46 partnership, corporation, or other legal entity that serves as the  
 8-47 agent for the governmental entity by providing construction  
 8-48 administration and management services described by Subsection (a)  
 8-49 for the construction, rehabilitation, alteration, or repair of a  
 8-50 facility.

8-51 (c) A governmental entity may retain a construction  
 8-52 manager-agent for assistance in the construction, rehabilitation,  
 8-53 alteration, or repair of a facility only as provided by this  
 8-54 subchapter.

8-55 Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION  
 8-56 MANAGER-AGENT. The contract between the governmental entity and  
 8-57 the construction manager-agent may require the construction  
 8-58 manager-agent to provide:

8-59 (1) administrative personnel;

8-60 (2) equipment necessary to perform duties under this  
 8-61 subchapter;

8-62 (3) on-site management; and

8-63 (4) other services specified in the contract.

8-64 Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A  
 8-65 construction manager-agent may not:

8-66 (1) self-perform any aspect of the construction,  
 8-67 rehabilitation, alteration, or repair of the facility;

8-68 (2) be a party to a construction subcontract for the  
 8-69 construction, rehabilitation, alteration, or repair of the



9-1 facility; or  
 9-2 (3) provide or be required to provide performance and  
 9-3 payment bonds for the construction, rehabilitation, alteration, or  
 9-4 repair of the facility.

9-5 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION  
 9-6 MANAGER-AGENT. A construction manager-agent represents the  
 9-7 governmental entity in a fiduciary capacity.

9-8 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or  
 9-9 before the selection of a construction manager-agent, the  
 9-10 governmental entity shall select or designate an architect or  
 9-11 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
 9-12 as applicable, to prepare the construction documents for the  
 9-13 project.

9-14 (b) The governmental entity's architect or engineer may not  
 9-15 serve, alone or in combination with another person, as the  
 9-16 construction manager-agent unless the architect or engineer is  
 9-17 hired to serve as the construction manager-agent under a separate  
 9-18 or concurrent selection process conducted in accordance with this  
 9-19 subchapter. This subsection does not prohibit the governmental  
 9-20 entity's architect or engineer from providing customary  
 9-21 construction phase services under the architect's or engineer's  
 9-22 original professional service agreement in accordance with  
 9-23 applicable licensing laws.

9-24 (c) To the extent that the construction manager-agent's  
 9-25 services are defined as part of the practice of architecture or  
 9-26 engineering under Chapter 1051 or 1001, Occupations Code, those  
 9-27 services must be conducted by a person licensed under the  
 9-28 applicable chapter.

9-29 Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental  
 9-30 entity using the construction manager-agent method shall procure,  
 9-31 in accordance with applicable law and in any manner authorized by  
 9-32 this chapter, a general contractor or trade contractors who will  
 9-33 serve as the prime contractor for their specific portion of the work  
 9-34 and provide performance and payment bonds to the governmental  
 9-35 entity in accordance with applicable laws.

9-36 Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
 9-37 governmental entity shall select a construction manager-agent on  
 9-38 the basis of demonstrated competence and qualifications in the same  
 9-39 manner that an architect or engineer is selected under Section  
 9-40 2254.004.

9-41 Sec. 2267.208. INSURANCE. A construction manager-agent  
 9-42 selected under this subchapter shall maintain professional  
 9-43 liability or errors and omissions insurance in the amount of at  
 9-44 least \$1 million for each occurrence.

9-45 [Sections 2267.209-2267.250 reserved for expansion]

9-46 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

9-47 Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 9-48 MANAGER-AT-RISK. (a) In this chapter, the "construction  
 9-49 manager-at-risk method" is a delivery method by which a  
 9-50 governmental entity contracts with an architect or engineer for  
 9-51 design and construction phase services and contracts separately  
 9-52 with a construction manager-at-risk to serve as the general  
 9-53 contractor and to provide consultation during the design and  
 9-54 construction, rehabilitation, alteration, or repair of a facility.

9-55 (b) A construction manager-at-risk is a sole  
 9-56 proprietorship, partnership, corporation, or other legal entity  
 9-57 that assumes the risk for construction, rehabilitation,  
 9-58 alteration, or repair of a facility at the contracted price as a  
 9-59 general contractor and provides consultation to the governmental  
 9-60 entity regarding construction during and after the design of the  
 9-61 facility. The contracted price may be a guaranteed maximum price.

9-62 (c) A governmental entity may use the construction  
 9-63 manager-at-risk method in selecting a general contractor for the  
 9-64 construction, rehabilitation, alteration, or repair of a facility  
 9-65 only as provided by this subchapter.

9-66 Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or  
 9-67 before the selection of a construction manager-at-risk, the  
 9-68 governmental entity shall select or designate an architect or  
 9-69 engineer to prepare the construction documents for the project.

10-1           (b) The governmental entity's architect or engineer for a  
 10-2 project may not serve, alone or in combination with another person,  
 10-3 as the construction manager-at-risk unless the architect or  
 10-4 engineer is hired to serve as the construction manager-at-risk  
 10-5 under a separate or concurrent selection process conducted in  
 10-6 accordance with this subchapter. This subsection does not prohibit  
 10-7 the governmental entity's architect or engineer from providing  
 10-8 customary construction phase services under the architect's or  
 10-9 engineer's original professional service agreement in accordance  
 10-10 with applicable licensing laws.

10-11           Sec. 2267.253. SELECTION PROCESS. (a) The governmental  
 10-12 entity shall select the construction manager-at-risk in a one-step  
 10-13 or two-step process.

10-14           (b) The governmental entity shall prepare a single request  
 10-15 for proposals, in the case of a one-step process, and an initial  
 10-16 request for qualifications, in the case of a two-step process, that  
 10-17 includes:

10-18                 (1) a statement as to whether the selection process is  
 10-19 a one-step or two-step process;

10-20                 (2) general information on the project site, project  
 10-21 scope, schedule, selection criteria and the weighted value for each  
 10-22 criterion, and estimated budget and the time and place for receipt  
 10-23 of the proposals or qualifications; and

10-24                 (3) other information that may assist the governmental  
 10-25 entity in its selection of a construction manager-at-risk.

10-26           (c) The governmental entity shall state the selection  
 10-27 criteria in the request for proposals or qualifications.

10-28           (d) If a one-step process is used, the governmental entity  
 10-29 may request, as part of the offeror's proposal, proposed fees and  
 10-30 prices for fulfilling the general conditions.

10-31           (e) If a two-step process is used, the governmental entity  
 10-32 may not request fees or prices in step one. In step two, the  
 10-33 governmental entity may request that five or fewer offerors,  
 10-34 selected solely on the basis of qualifications, provide additional  
 10-35 information, including the construction manager-at-risk's proposed  
 10-36 fee and prices for fulfilling the general conditions.

10-37           (f) At each step, the governmental entity shall receive,  
 10-38 publicly open, and read aloud the names of the offerors. At the  
 10-39 appropriate step, the governmental entity shall also read aloud the  
 10-40 fees and prices, if any, stated in each proposal as the proposal is  
 10-41 opened.

10-42           (g) Not later than the 45th day after the date of opening the  
 10-43 final proposals, the governmental entity shall evaluate and rank  
 10-44 each proposal submitted in relation to the criteria set forth in the  
 10-45 request for proposals.

10-46           Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental  
 10-47 entity shall select the offeror that submits the proposal that  
 10-48 offers the best value for the governmental entity based on the  
 10-49 published selection criteria and on its ranking evaluation.

10-50           (b) The governmental entity shall first attempt to  
 10-51 negotiate a contract with the selected offeror.

10-52           (c) If the governmental entity is unable to negotiate a  
 10-53 satisfactory contract with the selected offeror, the governmental  
 10-54 entity shall, formally and in writing, end negotiations with that  
 10-55 offeror and proceed to negotiate with the next offeror in the order  
 10-56 of the selection ranking until a contract is reached or  
 10-57 negotiations with all ranked offerors end.

10-58           (d) Not later than the seventh day after the date the  
 10-59 contract is awarded, the governmental entity shall make the  
 10-60 rankings determined under Section 2267.253(g) public.

10-61           Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction  
 10-62 manager-at-risk shall publicly advertise for bids or proposals and  
 10-63 receive bids or proposals from trade contractors or subcontractors  
 10-64 for the performance of all major elements of the work other than the  
 10-65 minor work that may be included in the general conditions.

10-66           (b) A construction manager-at-risk may seek to perform  
 10-67 portions of the work itself if:

10-68                 (1) the construction manager-at-risk submits its bid  
 10-69 or proposal for those portions of the work in the same manner as all

11-1 other trade contractors or subcontractors; and  
 11-2 (2) the governmental entity determines that the  
 11-3 construction manager-at-risk's bid or proposal provides the best  
 11-4 value for the governmental entity.

11-5 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The  
 11-6 construction manager-at-risk shall review all trade contractor or  
 11-7 subcontractor bids or proposals in a manner that does not disclose  
 11-8 the contents of the bid or proposal during the selection process to  
 11-9 a person not employed by the construction manager-at-risk,  
 11-10 architect, engineer, or governmental entity. All bids or proposals  
 11-11 shall be made available to the governmental entity on request and to  
 11-12 the public after the later of the award of the contract or the  
 11-13 seventh day after the date of final selection of bids or proposals.

11-14 (b) If the construction manager-at-risk reviews, evaluates,  
 11-15 and recommends to the governmental entity a bid or proposal from a  
 11-16 trade contractor or subcontractor but the governmental entity  
 11-17 requires another bid or proposal to be accepted, the governmental  
 11-18 entity shall compensate the construction manager-at-risk by a  
 11-19 change in price, time, or guaranteed maximum cost for any  
 11-20 additional cost and risk that the construction manager-at-risk  
 11-21 incurs because of the governmental entity's requirement that  
 11-22 another bid or proposal be accepted.

11-23 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected  
 11-24 trade contractor or subcontractor defaults in the performance of  
 11-25 its work or fails to execute a subcontract after being selected in  
 11-26 accordance with this subchapter, the construction manager-at-risk  
 11-27 may itself fulfill, without advertising, the contract requirements  
 11-28 or select a replacement trade contractor or subcontractor to  
 11-29 fulfill the contract requirements.

11-30 Sec. 2267.258. PERFORMANCE OR PAYMENT BOND. (a) If a  
 11-31 fixed contract amount or guaranteed maximum price has not been  
 11-32 determined at the time the contract is awarded, the penal sums of  
 11-33 the performance and payment bonds delivered to the governmental  
 11-34 entity must each be in an amount equal to the construction budget,  
 11-35 as specified in the request for proposals or qualifications.

11-36 (b) The construction manager-at-risk shall deliver the  
 11-37 bonds not later than the 10th day after the date the construction  
 11-38 manager-at-risk executes the contract unless the construction  
 11-39 manager-at-risk furnishes a bid bond or other financial security  
 11-40 acceptable to the governmental entity to ensure that the  
 11-41 construction manager will furnish the required performance and  
 11-42 payment bonds when a guaranteed maximum price is established.

11-43 [Sections 2267.259-2267.300 reserved for expansion]

11-44 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

11-45 Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In  
 11-46 this chapter, "design-build" is a project delivery method by which  
 11-47 a governmental entity contracts with a single entity to provide  
 11-48 both design and construction services for the construction,  
 11-49 rehabilitation, alteration, or repair of a facility.

11-50 Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
 11-51 EXCEPTIONS. This subchapter applies only to a facility that is a  
 11-52 building or an associated structure, including an electric utility  
 11-53 structure. This subchapter does not apply to:

11-54 (1) a highway, road, street, bridge, underground  
 11-55 utility, water supply project, water plant, wastewater plant, water  
 11-56 and wastewater distribution or conveyance facility, wharf, dock,  
 11-57 airport runway or taxiway, drainage project, or related type of  
 11-58 project associated with civil engineering construction; or

11-59 (2) a building or structure that is incidental to a  
 11-60 project that is primarily a civil engineering construction project.

11-61 Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
 11-62 governmental entity may use the design-build method for the  
 11-63 construction, rehabilitation, alteration, or repair of a building  
 11-64 or associated structure only as provided by this subchapter. In  
 11-65 using that method, the governmental entity shall enter into a  
 11-66 single contract with a design-build firm for the design and  
 11-67 construction of the building or associated structure.

11-68 Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm  
 11-69 under this subchapter must be a sole proprietorship, partnership,

12-1 corporation, or other legal entity or team that includes an  
 12-2 architect or engineer and a construction contractor.

12-3 Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT  
 12-4 REPRESENTATIVE. The governmental entity shall select or designate  
 12-5 an architect or engineer independent of the design-build firm to  
 12-6 act as the governmental entity's representative for the duration of  
 12-7 the project.

12-8 Sec. 2267.306. PREPARATION OF REQUEST. (a) The  
 12-9 governmental entity shall prepare a request for qualifications that  
 12-10 includes general information on the project site, project scope,  
 12-11 budget, special systems, selection criteria and the weighted value  
 12-12 for each criterion, and other information that may assist potential  
 12-13 design-build firms in submitting proposals for the project.

12-14 (b) The governmental entity shall also prepare the design  
 12-15 criteria package that includes more detailed information on the  
 12-16 project. If the preparation of the design criteria package  
 12-17 requires architectural or engineering services that constitute the  
 12-18 practice of architecture within the meaning of Chapter 1051,  
 12-19 Occupations Code, or the practice of engineering within the meaning  
 12-20 of Chapter 1001, Occupations Code, those services shall be provided  
 12-21 in accordance with the applicable law.

12-22 (c) The design criteria package must include a set of  
 12-23 documents that provides sufficient information, including criteria  
 12-24 for selection, to permit a design-build firm to prepare a response  
 12-25 to the governmental entity's request for qualifications and to  
 12-26 provide any additional information requested. The design criteria  
 12-27 package must specify criteria the governmental entity considers  
 12-28 necessary to describe the project and may include, as appropriate,  
 12-29 the legal description of the site, survey information concerning  
 12-30 the site, interior space requirements, special material  
 12-31 requirements, material quality standards, conceptual criteria for  
 12-32 the project, special equipment requirements, cost or budget  
 12-33 estimates, time schedules, quality assurance and quality control  
 12-34 requirements, site development requirements, applicable codes and  
 12-35 ordinances, provisions for utilities, parking requirements, and  
 12-36 any other requirement.

12-37 (d) The governmental entity may not require offerors to  
 12-38 submit detailed architectural or engineering designs as part of a  
 12-39 proposal or a response to a request for qualifications.

12-40 Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For  
 12-41 each design-build firm that responded to the request for  
 12-42 qualifications, the governmental entity shall evaluate the firm's  
 12-43 experience, technical competence, and capability to perform, the  
 12-44 past performance of the firm and members of the firm, and other  
 12-45 appropriate factors submitted by the firm in response to the  
 12-46 request for qualifications, except that cost-related or  
 12-47 price-related evaluation factors are not permitted.

12-48 (b) Each firm must certify to the governmental entity that  
 12-49 each architect or engineer that is a member of the firm was selected  
 12-50 based on demonstrated competence and qualifications, in the manner  
 12-51 provided by Section 2254.004.

12-52 (c) The governmental entity shall qualify a maximum of five  
 12-53 responders to submit proposals that contain additional information  
 12-54 and, if the governmental entity chooses, to interview for final  
 12-55 selection.

12-56 (d) The governmental entity shall evaluate the additional  
 12-57 information submitted by the offerors on the basis of the selection  
 12-58 criteria stated in the request for qualifications and the results  
 12-59 of any interview.

12-60 (e) The governmental entity may request additional  
 12-61 information regarding demonstrated competence and qualifications,  
 12-62 considerations of the safety and long-term durability of the  
 12-63 project, the feasibility of implementing the project as proposed,  
 12-64 the ability of the offeror to meet schedules, or costing  
 12-65 methodology. As used in this subsection, "costing methodology"  
 12-66 means an offeror's policies on subcontractor markup, definition of  
 12-67 general conditions, range of cost for general conditions, policies  
 12-68 on retainage, policies on contingencies, discount for prompt  
 12-69 payment, and expected staffing for administrative duties. The term

13-1 does not include a guaranteed maximum price or bid for overall  
13-2 design or construction.

13-3 (f) The governmental entity shall rank each proposal  
13-4 submitted on the basis of the criteria set forth in the request for  
13-5 qualifications.

13-6 Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The  
13-7 governmental entity shall select the design-build firm that submits  
13-8 the proposal offering the best value for the governmental entity on  
13-9 the basis of the published selection criteria and on its ranking  
13-10 evaluations.

13-11 (b) The governmental entity shall first attempt to  
13-12 negotiate a contract with the selected firm.

13-13 (c) If the governmental entity is unable to negotiate a  
13-14 satisfactory contract with the selected firm, the governmental  
13-15 entity shall, formally and in writing, end all negotiations with  
13-16 that firm and proceed to negotiate with the next firm in the order  
13-17 of the selection ranking until a contract is reached or  
13-18 negotiations with all ranked firms end.

13-19 (d) Not later than the seventh day after the date the  
13-20 contract is awarded, the governmental entity shall make the  
13-21 rankings determined under Section 2267.307(f) public.

13-22 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After  
13-23 selection of the design-build firm, that firm's architects or  
13-24 engineers shall submit all design elements for review and  
13-25 determination of scope compliance to the governmental entity or the  
13-26 governmental entity's architect or engineer before or concurrently  
13-27 with construction.

13-28 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The  
13-29 design-build firm shall supply a set of construction documents for  
13-30 the completed project to the governmental entity at the conclusion  
13-31 of construction. The documents must note any changes made during  
13-32 construction.

13-33 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
13-34 or performance bond is not required and may not provide coverage for  
13-35 the design portion of the design-build contract with the  
13-36 design-build firm under this subchapter.

13-37 (b) If a fixed contract amount or guaranteed maximum price  
13-38 has not been determined at the time the design-build contract is  
13-39 awarded, the penal sums of the performance and payment bonds  
13-40 delivered to the governmental entity must each be in an amount equal  
13-41 to the construction budget, as specified in the design criteria  
13-42 package.

13-43 (c) The design-build firm shall deliver the bonds not later  
13-44 than the 10th day after the date the design-build firm executes the  
13-45 contract unless the design-build firm furnishes a bid bond or other  
13-46 financial security acceptable to the governmental entity to ensure  
13-47 that the design-build firm will furnish the required performance  
13-48 and payment bonds before construction begins.

13-49 [Sections 2267.312-2267.350 reserved for expansion]

13-50 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS  
13-51 PROJECTS

13-52 Sec. 2267.351. DEFINITIONS. In this subchapter:

13-53 (1) "Civil works project" means:

13-54 (A) roads, streets, bridges, utilities, water  
13-55 supply projects, water plants, wastewater plants, water  
13-56 distribution and wastewater conveyance facilities, desalination  
13-57 projects, airport runways and taxiways, storm drainage and flood  
13-58 control projects, or transit projects;

13-59 (B) types of projects or facilities related to  
13-60 those described by Paragraph (A) and associated with civil  
13-61 engineering construction; and

13-62 (C) buildings or structures that are incidental  
13-63 to projects or facilities that are described by Paragraphs (A) and  
13-64 (B) and that are primarily civil engineering construction projects.

13-65 (2) "Design-build firm" means a partnership,  
13-66 corporation, or other legal entity or team that includes an  
13-67 engineer and a construction contractor qualified to engage in civil  
13-68 works construction in Texas.

13-69 (3) "Design criteria package" means a set of documents

14-1 that:  
 14-2 (A) provides sufficient information to convey  
 14-3 the intent, goals, criteria, and objectives of the civil works  
 14-4 project; and  
 14-5 (B) permits a design-build firm to:  
 14-6 (i) assess the scope of work and the risk  
 14-7 involved; and  
 14-8 (ii) submit a proposal on the project.  
 14-9 Sec. 2267.352. APPLICABILITY. This subchapter applies to a  
 14-10 governmental entity with a population of more than 100,000 within  
 14-11 its geographic boundaries or service area.  
 14-12 Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:  
 14-13 DESIGN-BUILD. (a) A governmental entity may use the design-build  
 14-14 method for the construction, rehabilitation, alteration, or repair  
 14-15 of a civil works project. In using this method and in entering into  
 14-16 a contract for the services of a design-build firm, the contracting  
 14-17 governmental entity and the design-build firm shall follow the  
 14-18 procedures provided by this subchapter.  
 14-19 (b) A contract for a project under this subchapter may cover  
 14-20 only a single integrated project. A governmental entity may not  
 14-21 enter into a contract for aggregated projects at multiple  
 14-22 locations. For purposes of this subsection:  
 14-23 (1) if a metropolitan transit authority created under  
 14-24 Chapter 451, Transportation Code, enters into a contract for a  
 14-25 project involving a bus rapid transit system created under Chapter  
 14-26 451, Transportation Code, the bus rapid transit system is a single  
 14-27 integrated project; and  
 14-28 (2) a water treatment plant, including a desalination  
 14-29 plant, that includes treatment facilities, well fields, and  
 14-30 pipelines is a single integrated project.  
 14-31 (c) A governmental entity shall use the following criteria  
 14-32 as a minimum basis for determining the circumstances under which  
 14-33 the design-build method is appropriate for a project:  
 14-34 (1) the extent to which the entity can adequately  
 14-35 define the project requirements;  
 14-36 (2) the time constraints for the delivery of the  
 14-37 project;  
 14-38 (3) the ability to ensure that a competitive  
 14-39 procurement can be held; and  
 14-40 (4) the capability of the entity to manage and oversee  
 14-41 the project, including the availability of experienced personnel or  
 14-42 outside consultants who are familiar with the design-build method  
 14-43 of project delivery.  
 14-44 (d) A governmental entity shall make a formal finding on the  
 14-45 criteria described by Subsection (c) before preparing a request for  
 14-46 qualifications under Section 2267.357.  
 14-47 Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS.  
 14-48 (a) Before September 1, 2011:  
 14-49 (1) a governmental entity with a population of 500,000  
 14-50 or more may, under this subchapter, enter into contracts for not  
 14-51 more than three projects in any fiscal year; and  
 14-52 (2) a municipally owned water utility with a separate  
 14-53 governing board appointed by the governing body of a municipality  
 14-54 with a population of 500,000 or more may:  
 14-55 (A) independently enter into a contract for not  
 14-56 more than one civil works project in any fiscal year; and  
 14-57 (B) enter into contracts for additional civil  
 14-58 works projects in any fiscal year, but not more than the number of  
 14-59 civil works projects prescribed by the limit in Subdivision (1) for  
 14-60 the municipality, provided that:  
 14-61 (i) the additional contracts for the civil  
 14-62 works projects entered into by the utility under this paragraph are  
 14-63 allocated to the number of contracts the municipality that appoints  
 14-64 the utility's governing board may enter under Subdivision (1); and  
 14-65 (ii) the governing body of the municipality  
 14-66 must approve the contracts.  
 14-67 (b) Before September 1, 2013, a governmental entity with a  
 14-68 population of 100,000 or more but less than 500,000 may, under this  
 14-69 subchapter, enter into contracts for not more than two projects in

15-1 any fiscal year.

15-2 (c) After the period described by Subsection (a) or (b):

15-3 (1) a governmental entity with a population of 500,000  
15-4 or more may, under this subchapter, enter into contracts for not  
15-5 more than six projects in any fiscal year;

15-6 (2) a municipally owned water utility with a separate  
15-7 governing board appointed by the governing body of a municipality  
15-8 with a population of 500,000 or more may:

15-9 (A) independently enter into contracts for not  
15-10 more than two civil works projects in any fiscal year; and

15-11 (B) enter into contracts for additional civil  
15-12 works projects in any fiscal year, but not more than the number of  
15-13 civil works projects prescribed by the limit in Subdivision (1) for  
15-14 the municipality, provided that:

15-15 (i) the additional contracts for the civil  
15-16 works projects entered into by the utility under this paragraph are  
15-17 allocated to the number of contracts the municipality that appoints  
15-18 the utility's governing board may enter under Subdivision (1); and

15-19 (ii) the governing body of the municipality  
15-20 must approve the contracts; and

15-21 (3) a governmental entity with a population of 100,000  
15-22 or more but less than 500,000 may, under this subchapter, enter into  
15-23 contracts for not more than four projects in any fiscal year.

15-24 (d) For purposes of determining the number of eligible  
15-25 projects under this section, a municipally owned water utility with  
15-26 a separate governing board appointed by the governing body of the  
15-27 municipality is considered part of the municipality.

15-28 Sec. 2267.355. USE OF ENGINEER. (a) The governmental  
15-29 entity shall select or designate an engineer who is independent of  
15-30 the design-build firm to act as its representative for the  
15-31 procurement process and for the duration of the work on the civil  
15-32 works project. The selected or designated engineer has full  
15-33 responsibility for complying with Chapter 1001, Occupations Code.

15-34 (b) If the engineer is not a full-time employee of the  
15-35 governmental entity, the governmental entity shall select the  
15-36 engineer on the basis of demonstrated competence and qualifications  
15-37 as provided by Section 2254.004.

15-38 Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.

15-39 (a) The governmental entity shall provide or contract for,  
15-40 independently of the design-build firm, the following services as  
15-41 necessary for the acceptance of the civil works project by the  
15-42 entity:

15-43 (1) inspection services;

15-44 (2) construction materials engineering and testing;

15-45 and

15-46 (3) verification testing services.

15-47 (b) The governmental entity shall select the services for  
15-48 which it contracts under this section in accordance with Section  
15-49 2254.004.

15-50 Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The  
15-51 governmental entity shall prepare a request for qualifications that  
15-52 includes:

15-53 (1) information on the civil works project site;

15-54 (2) project scope;

15-55 (3) project budget;

15-56 (4) project schedule;

15-57 (5) criteria for selection under Section 2267.359 and  
15-58 the weighting of the criteria; and

15-59 (6) other information that may assist potential  
15-60 design-build firms in submitting proposals for the project.

15-61 (b) The governmental entity shall also prepare a design  
15-62 criteria package as described by Section 2267.358.

15-63 Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A  
15-64 design criteria package may include, as appropriate:

15-65 (1) budget or cost estimates;

15-66 (2) information on the site;

15-67 (3) performance criteria;

15-68 (4) special material requirements;

15-69 (5) initial design calculations;

16-1                   (6) known utilities;  
 16-2                   (7) capacity requirements;  
 16-3                   (8) quality assurance and quality control  
 16-4 requirements;  
 16-5                   (9) the type, size, and location of structures; and  
 16-6                   (10) notice of any ordinances, rules, or goals adopted  
 16-7 by the governmental entity relating to awarding contracts to  
 16-8 historically underutilized businesses.

16-9                   Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The  
 16-10 governmental entity shall receive proposals and shall evaluate each  
 16-11 offeror's experience, technical competence, and capability to  
 16-12 perform, the past performance of the offeror's team and members of  
 16-13 the team, and other appropriate factors submitted by the team or  
 16-14 firm in response to the request for qualifications, except that  
 16-15 cost-related or price-related evaluation factors are not permitted  
 16-16 at this stage.

16-17                   (b) Each offeror must:  
 16-18                   (1) select or designate each engineer that is a member  
 16-19 of its team based on demonstrated competence and qualifications, in  
 16-20 the manner provided by Section 2254.004; and  
 16-21                   (2) certify to the governmental entity that each  
 16-22 selection or designation was based on demonstrated competence and  
 16-23 qualifications, in the manner provided by Section 2254.004.

16-24                   (c) The governmental entity shall qualify offerors to  
 16-25 submit additional information and, if the entity chooses, to  
 16-26 interview for final selection.

16-27                   Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The  
 16-28 governmental entity shall select a design-build firm using a  
 16-29 combination of technical and cost proposals as provided by Section  
 16-30 2267.361.

16-31                   Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND  
 16-32 COST PROPOSALS. (a) A governmental entity shall request proposals  
 16-33 from design-build firms identified under Section 2267.359(c). A  
 16-34 firm must submit a proposal not later than the 180th day after the  
 16-35 date the governmental entity makes a public request for the  
 16-36 proposals from the selected firms. The request for proposals must  
 16-37 include:

16-38                   (1) a design criteria package;  
 16-39                   (2) if the project site is identified, a geotechnical  
 16-40 baseline report or other information that provides the design-build  
 16-41 firm minimum geotechnical design parameters to submit a proposal;  
 16-42                   (3) detailed instructions for preparing the technical  
 16-43 proposal and the items to be included, including a description of  
 16-44 the form and level of completeness of drawings expected; and  
 16-45                   (4) the relative weighting of the technical and price  
 16-46 proposals and the formula by which the proposals will be evaluated  
 16-47 and ranked.

16-48                   (b) The technical proposal is a component of the proposal  
 16-49 under this section.

16-50                   (c) Each proposal must include a sealed technical proposal  
 16-51 and a separate sealed cost proposal.

16-52                   (d) The technical proposal must address:

16-53                   (1) project approach;  
 16-54                   (2) anticipated problems;  
 16-55                   (3) proposed solutions to anticipated problems;  
 16-56                   (4) ability to meet schedules;  
 16-57                   (5) conceptual engineering design; and  
 16-58                   (6) other information requested by the governmental  
 16-59 entity.

16-60                   (e) The governmental entity shall first open, evaluate, and  
 16-61 score each responsive technical proposal submitted on the basis of  
 16-62 the criteria described in the request for proposals and assign  
 16-63 points on the basis of the weighting specified in the request for  
 16-64 proposals. The governmental entity may reject as nonresponsive any  
 16-65 firm that makes a significant change to the composition of its firm  
 16-66 as initially submitted. The governmental entity shall subsequently  
 16-67 open, evaluate, and score the cost proposals from firms that  
 16-68 submitted a responsive technical proposal and assign points on the  
 16-69 basis of the weighting specified in the request for proposals. The



17-1 governmental entity shall select the design-build firm in  
 17-2 accordance with the formula provided in the request for proposals.

17-3 Sec. 2267.362. NEGOTIATION. After selecting the  
 17-4 highest-ranked design-build firm under Section 2267.361, the  
 17-5 governmental entity shall first attempt to negotiate a contract  
 17-6 with the selected firm. If the governmental entity is unable to  
 17-7 negotiate a satisfactory contract with the selected firm, the  
 17-8 entity shall, formally and in writing, end all negotiations with  
 17-9 that firm and proceed to negotiate with the next firm in the order  
 17-10 of the selection ranking until a contract is reached or  
 17-11 negotiations with all ranked firms end.

17-12 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental  
 17-13 entity shall assume:

17-14 (1) all risks and costs associated with:

17-15 (A) scope changes and modifications, as  
 17-16 requested by the governmental entity;

17-17 (B) unknown or differing site conditions unless  
 17-18 otherwise provided by the governmental entity in the request for  
 17-19 proposals and final contract;

17-20 (C) regulatory permitting, if the governmental  
 17-21 entity is responsible for those risks and costs by law or contract;  
 17-22 and

17-23 (D) natural disasters and other force majeure  
 17-24 events unless otherwise provided by the governmental entity in the  
 17-25 request for proposals and final contract; and

17-26 (2) all costs associated with property acquisition,  
 17-27 excluding costs associated with acquiring a temporary easement or  
 17-28 work area associated with staging or construction for the project.

17-29 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

17-30 (a) Unless a stipend is paid under Subsection (c), the  
 17-31 design-build firm retains all rights to the work product submitted  
 17-32 in a proposal. The governmental entity may not release or disclose  
 17-33 to any person, including the successful offeror, the work product  
 17-34 contained in an unsuccessful proposal. The governmental entity  
 17-35 shall return all copies of the proposal and other information  
 17-36 submitted to an unsuccessful offeror. The governmental entity or  
 17-37 its agents may not make use of any unique or nonordinary design  
 17-38 element, technique, method, or process contained in the  
 17-39 unsuccessful proposal that was not also contained in the successful  
 17-40 proposal at the time of the original submittal, unless the entity  
 17-41 acquires a license from the unsuccessful offeror.

17-42 (b) A violation of this section voids the contract for the  
 17-43 project entered into by the governmental entity. The governmental  
 17-44 entity is liable to any unsuccessful offeror, or any member of the  
 17-45 design-build team or its assignee, for one-half of the cost savings  
 17-46 associated with the unauthorized use of the work product of the  
 17-47 unsuccessful offeror. Any interested party may bring an action for  
 17-48 an injunction, declaratory relief, or damages for a violation of  
 17-49 this section. A party who prevails in an action under this  
 17-50 subsection is entitled to reasonable attorney's fees as approved by  
 17-51 the court.

17-52 (c) The governmental entity may offer an unsuccessful  
 17-53 design-build firm that submits a response to the entity's request  
 17-54 for additional information under Section 2267.361 a stipend for  
 17-55 preliminary engineering costs associated with the development of  
 17-56 the proposal. The stipend must be one-half of one percent of the  
 17-57 contract amount and must be specified in the initial request for  
 17-58 proposals. If the offer is accepted and paid, the governmental  
 17-59 entity may make use of any work product contained in the proposal,  
 17-60 including the techniques, methods, processes, and information  
 17-61 contained in the proposal. The use by the governmental entity of  
 17-62 any design element contained in an unsuccessful proposal is at the  
 17-63 sole risk and discretion of the entity and does not confer liability  
 17-64 on the recipient of the stipend under this subsection.

17-65 (d) Notwithstanding other law, including Chapter 552, work  
 17-66 product contained in an unsuccessful proposal submitted and  
 17-67 rejected under this subchapter is confidential and may not be  
 17-68 released unless a stipend offer has been accepted and paid as  
 17-69 provided by Subsection (c).

18-1 Sec. 2267.365. COMPLETION OF DESIGN. (a) Following  
 18-2 selection of a design-build firm under this subchapter, the firm's  
 18-3 engineers shall submit all design elements for review and  
 18-4 determination of scope compliance to the governmental entity before  
 18-5 or concurrently with construction.

18-6 (b) An appropriately licensed design professional shall  
 18-7 sign and seal construction documents before the documents are  
 18-8 released for construction.

18-9 Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the  
 18-10 conclusion of construction, the design-build firm shall supply to  
 18-11 the governmental entity a record set of construction documents for  
 18-12 the project prepared as provided by Chapter 1001, Occupations Code.

18-13 Sec. 2267.367. PERFORMANCE OR PAYMENT BOND. (a) A  
 18-14 performance or payment bond is not required for the portion of a  
 18-15 design-build contract under this section that includes design  
 18-16 services only.

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

18-23 (c) If the governmental entity awards a design-build  
 18-24 contract under Section 2267.362, the design-build firm shall  
 18-25 deliver the bonds not later than the 10th day after the date the  
 18-26 design-build firm executes the contract unless the design-build  
 18-27 firm furnishes a bid bond or other financial security acceptable to  
 18-28 the governmental entity to ensure that the design-build firm will  
 18-29 furnish the required performance and payment bonds before the  
 18-30 commencement of construction.

18-31 [Sections 2267.368-2267.400 reserved for expansion]

18-32 SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

18-33 Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,  
 18-34 "job order contracting" is a procurement method used for  
 18-35 maintenance, repair, alteration, renovation, remediation, or minor  
 18-36 construction of a facility when the work is of a recurring nature  
 18-37 but the delivery times, type, and quantities of work required are  
 18-38 indefinite.

18-39 Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
 18-40 EXCEPTIONS. This subchapter applies only to a facility that is a  
 18-41 building, the design and construction of which is governed by  
 18-42 accepted building codes, or a structure or land, whether improved  
 18-43 or unimproved, that is associated with a building. This subchapter  
 18-44 does not apply to:

18-45 (1) a highway, road, street, bridge, utility, water  
 18-46 supply project, water plant, wastewater plant, water and wastewater  
 18-47 distribution or conveyance facility, wharf, dock, airport runway or  
 18-48 taxiway, drainage project, or related type of project associated  
 18-49 with civil engineering construction; or

18-50 (2) a building or structure that is incidental to a  
 18-51 project that is primarily a civil engineering construction project.

18-52 Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR  
 18-53 FACILITIES. (a) A governmental entity may award job order  
 18-54 contracts for the maintenance, repair, alteration, renovation,  
 18-55 remediation, or minor construction of a facility if:

18-56 (1) the work is of a recurring nature but the delivery  
 18-57 times are indefinite; and

18-58 (2) indefinite quantities and orders are awarded  
 18-59 substantially on the basis of predescribed and prepriced tasks.

18-60 (b) The governmental entity shall establish the maximum  
 18-61 aggregate contract price when it advertises the proposal.

18-62 (c) The governing body of a governmental entity shall  
 18-63 approve each job order that exceeds:

18-64 (1) \$500,000 under the contract; or

18-65 (2) a lesser amount as established by the governing  
 18-66 body.

18-67 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental  
 18-68 entity may establish contractual unit prices for a job order  
 18-69 contract by:

19-1 (1) specifying one or more published construction unit  
 19-2 price books and the applicable divisions or line items; or

19-3 (2) providing a list of work items and requiring the  
 19-4 offerors to propose one or more coefficients or multipliers to be  
 19-5 applied to the price book or prepriced work items as the price  
 19-6 proposal.

19-7 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
 19-8 governmental entity may use the competitive sealed proposal method  
 19-9 under Subchapter D for job order contracts.

19-10 (b) The governmental entity shall advertise for, receive,  
 19-11 and publicly open sealed proposals for job order contracts.

19-12 (c) The governmental entity may require offerors to submit  
 19-13 information in addition to rates, including experience, past  
 19-14 performance, and proposed personnel and methodology.

19-15 Sec. 2267.406. AWARDING OF JOB ORDER CONTRACTS. The  
 19-16 governmental entity may award job order contracts to one or more job  
 19-17 order contractors in connection with each solicitation of  
 19-18 proposals.

19-19 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order  
 19-20 contract may be used to accomplish work only for the governmental  
 19-21 entity that awards the contract unless:

19-22 (1) the solicitation for the job order contract and  
 19-23 the contract specifically provide for use by other persons; or

19-24 (2) the governmental entity enters into an interlocal  
 19-25 agreement that provides otherwise.

19-26 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order  
 19-27 contract or an order issued under the contract requires  
 19-28 architectural or engineering services that constitute the practice  
 19-29 of architecture within the meaning of Chapter 1051, Occupations  
 19-30 Code, or the practice of engineering within the meaning of Chapter  
 19-31 1001, Occupations Code, the governmental entity shall select or  
 19-32 designate an architect or engineer to prepare the construction  
 19-33 documents for the project.

19-34 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a  
 19-35 job order contract may not exceed two years. The governmental  
 19-36 entity may renew the contract annually for not more than three  
 19-37 additional years.

19-38 Sec. 2267.410. JOB ORDERS. (a) An order for a job or  
 19-39 project under a job order contract must be signed by the  
 19-40 governmental entity's representative and the contractor.

19-41 (b) The order may be:

19-42 (1) a fixed price, lump-sum contract based  
 19-43 substantially on contractual unit pricing applied to estimated  
 19-44 quantities; or

19-45 (2) a unit price order based on the quantities and line  
 19-46 items delivered.

19-47 Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The  
 19-48 contractor shall provide payment and performance bonds, if required  
 19-49 by law, based on the amount or estimated amount of any order.

19-50 [Sections 2267.412-2267.450 reserved for expansion]

#### 19-51 SUBCHAPTER J. ENFORCEMENT

19-52 Sec. 2267.451. VOID CONTRACT. (a) A contract, including a  
 19-53 job order, entered into in violation of this chapter and any bonds  
 19-54 issued in connection with the contract are voidable as against  
 19-55 public policy.

19-56 (b) An action to void a contract under this section does not  
 19-57 excuse the obligation of the governmental entity to pay for any  
 19-58 service performed or material delivered in good faith by a  
 19-59 contractor, architect, engineer, design-builder, or construction  
 19-60 manager before the date on which the contract is determined to be  
 19-61 void.

19-62 Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
 19-63 chapter may be enforced through an action for declaratory or  
 19-64 injunctive relief filed not later than the 10th day after the date  
 19-65 on which the contract is awarded.

19-66 (b) This section does not apply to enforcement of a contract  
 19-67 entered into by a state agency. In this subsection, "state agency"  
 19-68 has the meaning assigned by Section 2151.002. The term includes the  
 19-69 Texas Facilities Commission.

20-1 SECTION 2.10. Section 252.048, Local Government Code, is  
20-2 amended by adding Subsection (c-1) to read as follows:

20-3 (c-1) If a change order for a public works contract in a  
20-4 municipality with a population of 500,000 or more involves a  
20-5 decrease or an increase of \$100,000 or less, or a lesser amount as  
20-6 provided by ordinance, the governing body of the municipality may  
20-7 grant general authority to an administrative official of the  
20-8 municipality to approve the change order.

20-9 SECTION 2.11. Section 271.054, Local Government Code, is  
20-10 amended to read as follows:

20-11 Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the  
20-12 governing body of an issuer may enter into a contract requiring an  
20-13 expenditure by or imposing an obligation or liability on the  
20-14 issuer, or on a subdivision of the issuer if the issuer is a county,  
20-15 of more than \$25,000, the governing body must:

20-16 (1) submit the proposed contract to competitive  
20-17 bidding; or

20-18 (2) use an alternate method of project delivery  
20-19 authorized by Chapter 2267, Government Code.

20-20 SECTION 2.12. Section 271.060, Local Government Code, is  
20-21 amended by amending Subsection (b) and adding Subsection (c) to  
20-22 read as follows:

20-23 (b) The total price of a contract may not be increased by a  
20-24 change order unless provision has been made for the payment of the  
20-25 added cost by the appropriation of current funds or bond funds for  
20-26 that purpose, by the authorization of the issuance of certificates,  
20-27 or by a combination of those procedures.

20-28 (c) A contract with an [The] original contract price of \$1  
20-29 million or more may not be increased by more than 25 percent. If a  
20-30 change order for a contract with an original contract price of less  
20-31 than \$1 million increases the contract amount to \$1 million or more,  
20-32 subsequent change orders may not increase the revised contract  
20-33 amount by more than 25 percent [The original price may not be  
20-34 decreased by more than 25 percent without the consent of the  
20-35 contractor].

ARTICLE 3. ADDITIONAL EXEMPTIONS

20-37 SECTION 3.01. Section 44.901, Education Code, is amended by  
20-38 adding Subsection (j) to read as follows:

20-39 (j) Chapter 2267, Government Code, does not apply to this  
20-40 section.

20-41 SECTION 3.02. Section 51.927, Education Code, is amended by  
20-42 adding Subsection (k) to read as follows:

20-43 (k) Chapter 2267, Government Code, does not apply to this  
20-44 section.

20-45 SECTION 3.03. Section 2166.406, Government Code, is amended  
20-46 by adding Subsection (k) to read as follows:

20-47 (k) Chapter 2267 does not apply to this section.

20-48 SECTION 3.04. Chapter 302, Local Government Code, is  
20-49 amended by adding Section 302.007 to read as follows:

20-50 Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW.  
20-51 Chapter 2267, Government Code, does not apply to this chapter.

20-52 SECTION 3.05. Subchapter E, Chapter 335, Local Government  
20-53 Code, is amended by adding Section 335.077 to read as follows:

20-54 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.  
20-55 Chapter 2267, Government Code, does not apply to this chapter.

20-56 SECTION 3.06. Section 22.084, Transportation Code, is  
20-57 amended by adding Subsection (c) to read as follows:

20-58 (c) Chapter 2267, Government Code, does not apply to an  
20-59 agreement entered into under this section.

20-60 SECTION 3.07. Section 370.305, Transportation Code, is  
20-61 amended by adding Subsection (c-1) to read as follows:

20-62 (c-1) Chapter 2267, Government Code, does not apply to  
20-63 agreements entered into pursuant to this section.

20-64 SECTION 3.08. Subchapter Q, Chapter 451, Transportation  
20-65 Code, is amended by adding Section 451.8025 to read as follows:

20-66 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.  
20-67 Chapter 2267, Government Code, does not apply to this subchapter.

20-68 SECTION 3.09. Subchapter C, Chapter 452, Transportation  
20-69 Code, is amended by adding Section 452.1095 to read as follows:

21-1 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR  
21-2 CERTAIN AUTHORITIES. Chapter 2267, Government Code, does not apply  
21-3 to an authority consisting of one subregion governed by a  
21-4 subregional board created under Subchapter O.

21-5 SECTION 3.10. Section 60.401, Water Code, is amended by  
21-6 adding Subsection (d) to read as follows:

21-7 (d) Chapter 2267, Government Code, does not apply to this  
21-8 subchapter.

21-9 SECTION 3.11. Section 60.452, Water Code, is amended by  
21-10 adding Subsection (d) to read as follows:

21-11 (d) Chapter 2267, Government Code, does not apply to this  
21-12 subchapter.

21-13 ARTICLE 4. CONFORMING AMENDMENT

21-14 SECTION 4.01. Subsection (a), Section 252.021, Local  
21-15 Government Code, is amended to read as follows:

21-16 (a) Before a municipality may enter into a contract that  
21-17 requires an expenditure of more than \$50,000 from one or more  
21-18 municipal funds, the municipality must:

21-19 (1) comply with the procedure prescribed by this  
21-20 subchapter and Subchapter C for competitive sealed bidding or  
21-21 competitive sealed proposals;

21-22 (2) use the reverse auction procedure, as defined by  
21-23 Section 2155.062(d), Government Code, for purchasing; or

21-24 (3) comply with a method described by Chapter 2267,  
21-25 Government Code [Subchapter H or J, Chapter 271].

21-26 SECTION 4.02. Subsection (d), Section 252.022, Local  
21-27 Government Code, is amended to read as follows:

21-28 (d) This chapter does not apply to an expenditure described  
21-29 by Section 252.021(a) if the governing body of a municipality  
21-30 determines that a method described by Chapter 2267, Government Code  
21-31 [Subchapter H, Chapter 271], provides a better value for the  
21-32 municipality with respect to that expenditure than the procedures  
21-33 described in this chapter and the municipality adopts and uses a  
21-34 method described in that subchapter with respect to that  
21-35 expenditure.

21-36 ARTICLE 5. REPEALER

21-37 SECTION 5.01. The following are repealed:

21-38 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,  
21-39 44.039, 44.040, and 44.041, Education Code;

21-40 (2) Sections 2166.2511, 2166.2526, 2166.2531,  
21-41 2166.2532, 2166.2533, and 2166.2535, Government Code;

21-42 (3) Subsection (d-1), Section 252.043, Local  
21-43 Government Code;

21-44 (4) Subchapters H and J, Chapter 271, Local Government  
21-45 Code; and

21-46 (5) Subsection (e), Section 431.101, Transportation  
21-47 Code.

21-48 ARTICLE 6. TRANSITION; EFFECTIVE DATE

21-49 SECTION 6.01. (a) The changes in law made by this Act apply  
21-50 only to a contract or construction project for which a governmental  
21-51 entity first advertises or otherwise requests bids, proposals,  
21-52 offers, or qualifications, or makes a similar solicitation, on or  
21-53 after the effective date of this Act.

21-54 (b) A contract or construction project for which a  
21-55 governmental entity first advertises or otherwise requests bids,  
21-56 proposals, offers, or qualifications, or makes a similar  
21-57 solicitation, before the effective date of this Act is governed by  
21-58 the law as it existed immediately before the effective date of this  
21-59 Act, and that law is continued in effect for that purpose.

21-60 SECTION 6.02. This Act takes effect September 1, 2009.

21-61 \* \* \* \* \*