

Amend CSSB 1138 (senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 370.305, Transportation Code, is amended to read as follows:

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

(a) ~~[An authority may use a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project.]~~

~~[(b)]~~ A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction of a transportation project, that ~~[and]~~ may ~~[also]~~ provide for the financing, acquisition, maintenance, or operation of a transportation project, and that entitles the private entity to:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(b) ~~[(c)]~~ An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(c) ~~[(d)]~~ Except as provided by this chapter, the ~~[Subsections (e) and (f), the authority to enter into comprehensive development agreements under this section expires on August 31, 2009.]~~

~~[(c) Subsection (d) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or a comprehensive development agreement in connection with a project:~~

~~[(1) that includes one or more managed lane facilities to be added to an existing controlled-access highway,~~

~~[(2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency, and~~

~~[(3) for which the department has issued a request for qualifications before the effective date of this subsection.]~~

~~[(f) The]~~ authority to enter into a comprehensive

development agreement [~~for a project exempted from Subsection (d) or Section 223.210(b)~~] expires August 31, 2011.

SECTION 2. Chapter 370, Transportation Code, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. DESIGN-BUILD CONTRACTS

Sec. 370.318. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 370.319. SCOPE OF AND LIMITATIONS ON CONTRACTS. (a) Notwithstanding the requirements of Chapter 2254, Government Code, an authority may use the design-build method for the design, construction, financing, expansion, extension, related capital, maintenance, rehabilitation, alteration, or repair of a transportation project.

(b) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) An authority may enter into not more than two design-build contracts for transportation projects in any fiscal year.

Sec. 370.320. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as an authority's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a transportation project, an authority shall select or

designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, that is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by an authority and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Sec. 370.321. OTHER PROFESSIONAL SERVICES. (a) An authority shall provide or contract for, independently of the design-build contractor, the following services as necessary for the acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing;

and

(3) verification testing services.

(b) An authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude the design-build contractor from providing construction quality assurance and quality control services under a design-build contract.

Sec. 370.322. REQUEST FOR QUALIFICATIONS. (a) For any transportation project to be delivered through the design-build method, an authority must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria;  
and

(5) the deadline by which proposals must be received  
by the authority.

(b) An authority shall publish notice advertising the  
issuance of a request for qualifications in the Texas Register and  
on an Internet website maintained by the authority.

(c) An authority shall evaluate each qualifications  
statement received in response to a request for qualifications  
based on the criteria identified in the request. An authority may  
interview responding proposers. Based on the authority's  
evaluation of qualifications statements and interviews, if any, an  
authority shall qualify or short-list proposers to submit detailed  
proposals.

(d) An authority shall qualify or short-list at least two  
but not more than five firms to submit detailed proposals under  
Section 370.323. If an authority receives only one responsive  
proposal to a request for qualifications, the authority shall  
terminate the procurement.

(e) An authority may withdraw a request for qualifications  
or request for detailed proposals at any time.

Sec. 370.323. REQUEST FOR DETAILED PROPOSALS. (a) An  
authority shall issue a request for detailed proposals to proposers  
short-listed under Section 370.322. A request for detailed  
proposals must include:

- (1) information on the overall project goals;
- (2) the authority's cost estimates for the  
design-build portion of the project work;
- (3) materials specifications;
- (4) special material requirements;
- (5) a schematic design approximately 30 percent  
complete;
- (6) known utilities, provided that an authority is not  
required to undertake an effort to locate utilities;
- (7) quality assurance and quality control  
requirements;
- (8) the location of relevant structures;

(9) notice of any rules or goals adopted by the authority in accordance with Section 370.183 relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (c), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (c) and a formula by which the proposals will be evaluated and ranked that allocates at least 70 percent weight to the cost proposal; and

(14) the criteria and weighting for each aspect of the technical proposal.

(b) A request for detailed proposals shall also include a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution.

(c) Each response to a request for detailed proposals must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, not including any information submitted and evaluated under Section 370.322(a)(3);

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(e) An authority may provide for the submission of alternative technical concepts by a proposer. If an authority provides for the submission of alternative technical concepts, the

authority must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(f) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

(g) A response to a request for detailed proposals shall be due not later than the 180th day after the final request for detailed proposals is issued by the authority. This subsection does not preclude the release by the authority of a draft request for detailed proposals for purposes of receiving input from short-listed proposers.

(h) An authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for detailed proposals and assign points on the basis of the weighting specified in the request for detailed proposals. The authority may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the authority for the purpose of the request for detailed proposals. The authority shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

Sec. 370.324. NEGOTIATION. (a) After ranking the proposers under Section 370.323(h), an authority shall first attempt to negotiate a contract with the highest ranked proposer. If an authority has committed to paying a stipend to unsuccessful proposers in accordance with Section 370.326, an authority may include in the negotiations alternative technical concepts proposed by other proposers.

(b) If an authority is unable to negotiate a satisfactory

contract with the highest ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Sec. 370.325. ASSUMPTION OF RISKS. (a) Unless otherwise provided in a final request for detailed proposals or an addendum or supplement included in the final request, the authority shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the authority;

(B) unknown or differing site conditions;

(C) environmental clearance and other regulatory permitting for the project; and

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

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

(b) Notwithstanding Subsection (a), an authority and contracting parties may agree that a design-build contractor should assume some or all of the risks or costs of a project described in Subsection (a) if the agreement is reflected in the final request for detailed proposals or an addendum or supplement to the final request.

Sec. 370.326. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS.

(a) In accordance with the request for detailed proposals, an authority shall pay an unsuccessful proposer that submits a responsive proposal to the request for detailed proposals a stipend for work product contained in the proposal. The stipend must be specified in the initial request for detailed proposals in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. If the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of

the valuation, including the methodology and assumptions used in the valuation. After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this subsection.

(b) In a request for detailed proposals, an authority may provide for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

Sec. 370.327. PERFORMANCE OR PAYMENT BOND. (a) Notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a design-build contractor to provide a performance or payment bond or an alternative form of security or combination of forms of security.

(b) A performance or payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) A performance or payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(d) In addition to performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit drawn from any Texas or federally chartered bank; or

(4) any other form of security determined suitable by the authority.

SECTION 3. Section 370.314, Transportation Code, is repealed.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.