

BILL ANALYSIS

H.B. 3607
By: Kuempel
Urban Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, Section 271.118 of the Texas Government Code requires a governmental entity to conduct two separate procurements for a construction project which includes selecting an engineer or architect to prepare and manage design under one contract, and a construction manager at risk to manage and perform construction services under a separate contract. If the engineer or architect is not an employee of the governmental entity, the selection is based on qualifications set out in Section 2254 of the Government Code, and the selected engineer, architect, or construction manager-agent may also serve as the construction-manager-at-risk if a separate procurement is conducted.

The current law allows the governmental entity's engineer, architect, or construction manager-agent to influence selection criteria in favor of related entities as construction-manager-at-risk which may constitute a conflict of interest and create competitive disadvantages for companies that are not so affiliated.

H.B.3607 would prohibit the selection of the governmental entity's engineer, architect, or construction manager-agent or certain companies affiliated to the selected engineer, architect, or construction manager-agent to perform construction-manager-at-risk duties in order to preserve competition and avoid conflicts of interest.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Prohibits a governmental entity's engineer, architect, or construction manager-agent for a project from serving as the construction manager-at-risk.

SECTION 2. Prohibits a construction manager-at-risk contract from being awarded to a governmental entity's engineer, architect construction manager-agent, or program director, or a sole proprietor, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, partner or has relationship in which the governmental entity's engineer, architect, construction manager-agent or program director has ownership interest, is subject to common ownership or control, or is a party to an agreement by which it will receive proceeds of the construction manager-at-risk's payments from the governmental entity. Exempts a public corporation that has three percent or less of its stock owned by a governmental entity's architect or engineer. Exempts a person who enters into a joint venture for a project or contract unrelated to the current project for which a construction manager-at-risk is being selected.

SECTION 3. Applies only to contracts entered into on or after September 1, 2011

EFFECTIVE DATE

September 1, 2011