

## **BILL ANALYSIS**

C.S.H.B. 1050  
By: Callegari  
Government Efficiency & Reform  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation authorized certain governmental entities to use alternative project delivery methods for delivering projects instead of relying on traditional design-bid-build processes. Depending on the specific project, an alternative delivery method may offer cost savings, an expedited project completion date, best value, or a combination of these benefits.

During the interim, the House Committee on Government Efficiency and Reform asked the research staff of the Texas Legislative Council, in collaboration with committee staff, to survey local governmental entities about their use of the competitive sealed proposal, construction manager-at-risk, and design-build methods for delivering civil works projects during a specified period of time that covered the early stages of the implementation of that legislation.

That survey and the interim testimony before the committee indicated that the alternative delivery method law is being used and that the experience of those governmental entities using such methods has been instructive. Interested parties note that, in many instances, the law has worked to keep project costs down, and they point out that projects have been completed in a more efficient manner. The parties assert, however, that such a major change in law may require minor adjustments to correct inconsistencies or to apply lessons of experience learned over time as local governmental entities and the contracting community become more familiar with alternative delivery methods. C.S.H.B. 1050 seeks to make these adjustments.

### **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**

C.S.H.B. 1050 amends the Government Code to prohibit a local government from entering into a contract to purchase construction-related goods or services through a purchasing cooperative under the Interlocal Cooperation Act in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that the project for which the goods or services are being procured does not require the preparation of plans and specifications under The Texas Engineering Practice Act or Occupations Code provisions governing the Texas Board of Architectural Examiners or certifies in writing that the required plans and specifications have been prepared. The bill defines "purchasing cooperative" for the purposes of this provision.

C.S.H.B. 1050 amends Section 2267.354, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, to remove statutory provisions that set a limit on the number of certain civil works projects into which certain governmental entities or certain municipally owned water utilities may enter.

C.S.H.B. 1050 amends Subchapter H, Chapter 2267, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, to authorize a governmental entity to require a design-build firm responding to a request for detailed proposals

to identify companies that will fill key project roles and serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues. The bill prohibits such a design-build firm selected for a design-build agreement from making changes to the identified companies unless an identified company is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm; voluntarily removes itself from the team; fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project. The bill specifies that any cost savings resulting from such a team change made in violation of the prohibition accrue to the governmental entity and not to the design-build firm.

C.S.H.B. 1050 repeals a provision relating to a requirement that a governmental entity make a formal finding on certain criteria before preparing a request for qualifications as part of the design-build procedures.

C.S.H.B. 1050 amends the Local Government Code to decrease from 500,000 to 300,000 the minimum population of a municipality whose governing body is authorized to grant general authority to an administrative official of the municipality to approve certain change orders for a public works contract.

C.S.H.B. 1050 amends the Water Code to prohibit the aggregate dollar amount of approved change orders for a contract relating to the construction, repair, and renovation of water district facilities from increasing the original contract price by more than 25 percent, rather than by more than 10 percent.

C.S.H.B. 1050 repeals Section 2267.353(d), Government Code.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1050 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Section 791.011, Government Code, is amended by adding Subsection (j) to read as follows:

(j)

A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under this chapter in an amount greater than \$50,000 unless a design professional, as the term is defined by Section 2166.001(6), certifies in writing

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 791.011, Government Code, is amended by adding Subsection (j) to read as follows:

(j) For the purposes of this subsection, the term "purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors. A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under this chapter in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that:

that:

- (1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
- (2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

SECTION 2. Section 2267.354, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended.

SECTION 3. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Subchapter H, Chapter 2269, Government Code, is amended by adding Section 2269.3615 to read as follows:

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) A design-build firm responding to a request for detailed proposals issued under Section 2269.361 must identify:

(1) companies that will fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) entities that will serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) A design-build firm selected for a design-build agreement may not make changes to the companies or entities identified under Subsection (a) unless the original company or entity:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming

(1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or

(2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

SECTION 2. Same as introduced version.

SECTION 3. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Subchapter H, Chapter 2269, Government Code, is amended by adding Section 2269.3615 to read as follows:

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming

agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

(c) Section 2267.364, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is redesignated as Section 2269.364, Government Code, and amended to read as follows:

Sec. 2269.364 [~~2267.364~~]. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) ~~A [Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.~~

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

~~[(c) The] governmental entity shall pay [may offer] an unsuccessful design-build firm that submits a response to the governmental entity's request for additional information under Section 2269.361 [~~2267.361~~] a stipend for preliminary engineering costs associated with the development of the proposal. The stipend~~

agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

No equivalent provision.

must be an amount equal to at least one-quarter [~~one-half~~] of one percent of the contract amount and [~~must~~] be specified in the initial request for proposals. Following payment of the stipend [~~If the offer is accepted and paid~~], the governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.

(b) A violation of this section voids the contract for the project entered into by the governmental entity. [~~(d) Notwithstanding other law, including Chapter 552, work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).]~~]

SECTION 4. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Subchapter H, Chapter 2267, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Section 2267.3615 to read as follows:

Sec. 2267.3615. IDENTIFICATION OF PROJECT TEAM. (a) A design-build firm responding to a request for detailed proposals issued under Section 2267.361 must identify:

(1) companies that will fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) entities that will serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) A design-build firm selected for a design-build agreement may not make changes to the companies or entities identified under Subsection (a) unless the

SECTION 4. (a) This section takes effect only if the Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Subchapter H, Chapter 2267, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Section 2267.3615 to read as follows:

Sec. 2267.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified

original company or entity:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

(c) Section 2267.364, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) ~~A~~ A ~~[Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.~~

~~[(b) A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who~~

companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

No equivalent provision.

~~prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.~~

~~[(c) The] governmental entity shall pay [may offer] an unsuccessful design-build firm that submits a response to the governmental entity's request for additional information under Section 2267.361 a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be an amount equal to at least one-quarter [one-half] of one percent of the contract amount and ~~[must]~~ be specified in the initial request for proposals. Following payment of the stipend ~~[If the offer is accepted and paid]~~, the governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.~~

(b) A violation of this section voids the contract for the project entered into by the governmental entity. ~~[(d) Notwithstanding other law, including Chapter 552, work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).]~~

SECTION 5. The change in law made by this Act to Section 791.011, Government Code, applies only to a contract made on or after the effective date of this Act.

SECTION 6. The changes in law made by this Act to Section 2267.364, Government Code, as amended by this Act, and Sections 2267.3615 and 2269.3615, Government Code, as added by this Act, apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

SECTION 7. The changes in law made by this Act to Section 791.011, Government Code, and Section 49.273(i), Water Code, apply only to a contract made on or after the effective date of this Act.

SECTION 8. The changes in law made by this Act to Sections 2267.3615 and 2269.3615, Government Code, as added by this Act, apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

No equivalent provision.

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

(c-1) If a change order for a public works contract in a municipality with a population of 300,000 [~~500,000~~] or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

No equivalent provision.

SECTION 6. Section 49.273(i), Water Code, is amended to read as follows:

(i) If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less. The aggregate of the change orders may not increase the original contract price by more than 25 [~~40~~] percent. Additional change orders may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

SECTION 7. Section 2267.353(d), Government Code, is repealed.

SECTION 9. Same as introduced version.

SECTION 8. This Act takes effect September 1, 2013.

SECTION 10. Same as introduced version.