

By: Callegari

H.B. No. 1050

A BILL TO BE ENTITLED

AN ACT

relating to purchasing and other contracts by certain governmental entities.

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

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:

(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 2252.002, Government Code, is amended to read as follows:

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a

1 nonresident bidder unless the nonresident underbids the lowest bid  
2 submitted by a responsible resident bidder by an amount that is not  
3 less than the amount by which a resident bidder would be required to  
4 underbid the nonresident bidder to obtain a comparable contract in:

5           (1) the state in which the nonresident's principal  
6 place of business is located; or

7           (2) a state in which the nonresident is a resident  
8 manufacturer.

9           SECTION 3. Section 2267.354, Government Code, as added by  
10 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular  
11 Session, 2011, is amended to read as follows:

12           Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a)  
13 [~~Before September 1, 2013:~~

14           [~~(1) a governmental entity with a population of~~  
15 ~~500,000 or more within the entity's geographic boundary or service~~  
16 ~~area may, under this subchapter, enter into contracts for not more~~  
17 ~~than three projects in any fiscal year, and~~

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

21           [~~(A) independently enter into a contract for not~~  
22 ~~more than one civil works project in any fiscal year, and~~

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

27           [~~(i) the additional contracts for the civil~~

1 ~~works projects entered into by the utility under this paragraph are~~  
2 ~~allocated to the number of contracts the municipality that appoints~~  
3 ~~the utility's governing board may enter under Subdivision (1); and~~  
4 ~~(ii) the governing body of the~~  
5 ~~municipality must approve the contracts.~~

6 ~~(b) Before September 1, 2015, a governmental entity that~~  
7 ~~has a population of 100,000 or more but less than 500,000 or is a~~  
8 ~~board of trustees governed by Chapter 54, Transportation Code, may~~  
9 ~~enter into contracts under this subchapter for not more than two~~  
10 ~~projects in any fiscal year.~~

11 ~~(c) After August 31, 2013 [the period described by~~  
12 ~~Subsection (a) or (b)]:~~

13           (1) a governmental entity with a population of 500,000  
14 or more within the entity's geographic boundary or service area  
15 may, under this subchapter, enter into contracts for not more than  
16 six projects in any fiscal year;

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

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

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

26                           (i) the additional contracts for the civil  
27 works projects entered into by the utility under this paragraph are

1 allocated to the number of contracts the municipality that appoints  
2 the utility's governing board may enter under Subdivision (1); and

3 (ii) the governing body of the municipality  
4 must approve the contracts; and

5 (3) a governmental entity that has a population of  
6 100,000 or more but less than 500,000 or is a board of trustees  
7 governed by Chapter 54, Transportation Code, may enter into  
8 contracts under this subchapter for not more than four projects in  
9 any fiscal year.

10 (b) [~~(a)~~] For purposes of determining the number of  
11 eligible projects under this section, a municipally owned water  
12 utility with a separate governing board appointed by the governing  
13 body of the municipality is considered part of the municipality.

14 SECTION 4. (a) This section takes effect only if the Act of  
15 the 83rd Legislature, Regular Session, 2013, relating to  
16 nonsubstantive additions to and corrections in enacted codes  
17 becomes law.

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

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

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

26 (2) serve as key task leaders for geotechnical,  
27 hydraulics and hydrology, structural, environmental, utility, and

1 right-of-way issues.

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

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

9 (2) voluntarily removes itself from the team;

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

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

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

19 SECTION 5. (a) This section takes effect only if the Act of  
20 the 83rd Legislature, Regular Session, 2013, relating to  
21 nonsubstantive additions to and corrections in enacted codes does  
22 not become law.

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

27 Sec. 2267.3615. IDENTIFICATION OF PROJECT TEAM. (a) A

1 governmental entity may require a design-build firm responding to a  
2 request for detailed proposals to identify companies that will:

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

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

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

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

16 (2) voluntarily removes itself from the team;

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

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

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

26 SECTION 6. Section 252.048(c-1), Local Government Code, is  
27 amended to read as follows:

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

7 SECTION 7. Section 49.273(i), Water Code, is amended to  
8 read as follows:

9 (i) If changes in plans or specifications are necessary  
10 after the performance of the contract is begun, or if it is  
11 necessary to decrease or increase the quantity of the work to be  
12 performed or of the materials, equipment, or supplies to be  
13 furnished, the board may approve change orders making the changes.  
14 The board may grant authority to an official or employee  
15 responsible for purchasing or for administering a contract to  
16 approve a change order that involves an increase or decrease of  
17 \$50,000 or less. The aggregate of the change orders may not  
18 increase the original contract price by more than 25 [~~10~~]  
19 percent. Additional change orders may be issued only as a result  
20 of unanticipated conditions encountered during construction,  
21 repair, or renovation or changes in regulatory criteria or to  
22 facilitate project coordination with other political entities.

23 SECTION 8. The changes in law made by this Act to Section  
24 791.011, Government Code, and Section 49.273(i), Water Code, apply  
25 only to a contract made on or after the effective date of this Act.

26 SECTION 9. The changes in law made by this Act to Sections  
27 2267.3615 and 2269.3615, Government Code, as added by this Act,

1 apply only to a contract or construction project for which a  
2 governmental entity first advertises or otherwise requests bids,  
3 proposals, offers, or qualifications, or makes a similar  
4 solicitation, on or after the effective date of this Act.

5 SECTION 10. Section 2267.353(d), Government Code, is  
6 repealed.

7 SECTION 11. This Act takes effect September 1, 2013.