

By: Callegari

H.B. No. 1050

A BILL TO BE ENTITLED

AN ACT

relating to construction-related contracts by 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) 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 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 to read as follows:

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

~~[(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service~~

1 ~~area may, under this subchapter, enter into contracts for not more~~
2 ~~than three projects in any fiscal year; and~~

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

6 ~~[(A) independently enter into a contract for not~~
7 ~~more than one civil works project in any fiscal year; and~~

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

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

16 ~~[(ii) the governing body of the~~
17 ~~municipality must approve the contracts.~~

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

23 ~~[(c)] After August 31, 2013 ~~[the period described by~~~~

24 ~~Subsection (a) or (b)]:~~
25 ~~(1) a governmental entity with a population of 500,000~~
26 ~~or more within the entity's geographic boundary or service area~~
27 ~~may, under this subchapter, enter into contracts for not more than~~

1 six projects in any fiscal year;

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

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

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

11 (i) the additional contracts for the civil
12 works projects entered into by the utility under this paragraph are
13 allocated to the number of contracts the municipality that appoints
14 the utility's governing board may enter under Subdivision (1); and

15 (ii) the governing body of the municipality
16 must approve the contracts; and

17 (3) a governmental entity that has a population of
18 100,000 or more but less than 500,000 or is a board of trustees
19 governed by Chapter 54, Transportation Code, may enter into
20 contracts under this subchapter for not more than four projects in
21 any fiscal year.

22 (b) [~~(d)~~] For purposes of determining the number of
23 eligible projects under this section, a municipally owned water
24 utility with a separate governing board appointed by the governing
25 body of the municipality is considered part of the municipality.

26 SECTION 3. (a) This section takes effect only if the Act of
27 the 83rd Legislature, Regular Session, 2013, relating to

1 nonsubstantive additions to and corrections in enacted codes
2 becomes law.

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

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

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

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

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

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

21 (2) voluntarily removes itself from the team;

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

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

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

4 (c) Section 2267.364, Government Code, as added by Chapter
5 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session,
6 2011, is redesignated as Section 2269.364, Government Code, and
7 amended to read as follows:

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

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

1 ~~this section. A party who prevails in an action under this~~
2 ~~subsection is entitled to reasonable attorney's fees as approved by~~
3 ~~the court.~~

4 ~~[(c) The]~~ governmental entity shall pay ~~[may offer]~~ an
5 unsuccessful design-build firm that submits a response to the
6 governmental entity's request for additional information under
7 Section 2269.361 ~~[2267.361]~~ a stipend for preliminary engineering
8 costs associated with the development of the proposal. The stipend
9 must be an amount equal to at least one-quarter ~~[one-half]~~ of one
10 percent of the contract amount and ~~[must]~~ be specified in the
11 initial request for proposals. Following payment of the stipend
12 ~~[If the offer is accepted and paid]~~, the governmental entity may
13 make use of any work product contained in the proposal, including
14 the techniques, methods, processes, and information contained in
15 the proposal. The use by the governmental entity of any design
16 element contained in an unsuccessful proposal is at the sole risk
17 and discretion of the entity and does not confer liability on the
18 recipient of the stipend under this subsection.

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

26 SECTION 4. (a) This section takes effect only if the Act of
27 the 83rd Legislature, Regular Session, 2013, relating to

1 nonsubstantive additions to and corrections in enacted codes does
2 not become law.

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

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

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

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

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

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

23 (2) voluntarily removes itself from the team;

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

27 (4) fails to negotiate in good faith in a timely manner

1 in accordance with provisions established in the teaming agreement
2 proposed for the project.

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

6 (c) Section 2267.364, Government Code, as added by Chapter
7 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session,
8 2011, is amended to read as follows:

9 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

10 (a) ~~A [Unless a stipend is paid under Subsection (c), the~~
11 ~~design-build firm retains all rights to the work product submitted~~
12 ~~in a proposal. The governmental entity may not release or disclose~~
13 ~~to any person, including the successful offeror, the work product~~
14 ~~contained in an unsuccessful proposal. The governmental entity~~
15 ~~shall return all copies of the proposal and other information~~
16 ~~submitted to an unsuccessful offeror. The governmental entity or~~
17 ~~its agents may not make use of any unique or nonordinary design~~
18 ~~element, technique, method, or process contained in the~~
19 ~~unsuccessful proposal that was not also contained in the successful~~
20 ~~proposal at the time of the original submittal, unless the entity~~
21 ~~acquires a license from the unsuccessful offeror.~~

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

1 ~~an injunction, declaratory relief, or damages for a violation of~~
2 ~~this section. A party who prevails in an action under this~~
3 ~~subsection is entitled to reasonable attorney's fees as approved by~~
4 ~~the court.~~

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

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

27 SECTION 5. The change in law made by this Act to Section

1 791.011, Government Code, applies only to a contract made on or
2 after the effective date of this Act.

3 SECTION 6. The changes in law made by this Act to Section
4 2267.364, Government Code, as amended by this Act, and Sections
5 2267.3615 and 2269.3615, Government Code, as added by this Act,
6 apply only to a contract or construction project for which a
7 governmental entity first advertises or otherwise requests bids,
8 proposals, offers, or qualifications, or makes a similar
9 solicitation, on or after the effective date of this Act.

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

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