

By: Creighton

H.B. No. 3203

A BILL TO BE ENTITLED

AN ACT

1
2 relating to design-build procedures for certain civil works
3 projects.

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

5 SECTION 1. Section 2267.353, Government Code, as added by
6 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular
7 Session, 2011, is amended to read as follows:

8 Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:
9 DESIGN-BUILD. ~~[(a)]~~ A governmental entity may use the
10 design-build method for the construction, rehabilitation,
11 alteration, or repair of a civil works project. In using this
12 method and in entering into a contract for the services of a
13 design-build firm, the contracting governmental entity and the
14 design-build firm shall follow the procedures provided by this
15 subchapter.

16 ~~[(b) A contract for a project under this subchapter may~~
17 ~~cover only a single integrated project. A governmental entity may~~
18 ~~not enter into a contract for aggregated projects at multiple~~
19 ~~locations. For purposes of this subsection.~~

20 ~~[(1) if a metropolitan transit authority created under~~
21 ~~Chapter 451, Transportation Code, enters into a contract for a~~
22 ~~project involving a bus rapid transit system created under Chapter~~
23 ~~451, Transportation Code, the bus rapid transit system is a single~~
24 ~~integrated project, and~~

1 ~~[(2) a water treatment plant, including a desalination~~
2 ~~plant, that includes treatment facilities, well fields, and~~
3 ~~pipelines is a single integrated project.]~~

4 ~~[(c) A governmental entity shall use the following criteria~~
5 ~~as a minimum basis for determining the circumstances under which~~
6 ~~the design-build method is appropriate for a project.]~~

7 ~~[(1) the extent to which the entity can adequately~~
8 ~~define the project requirements;~~

9 ~~[(2) the time constraints for the delivery of the~~
10 ~~project;~~

11 ~~[(3) the ability to ensure that a competitive~~
12 ~~procurement can be held; and~~

13 ~~[(4) the capability of the entity to manage and~~
14 ~~oversee the project, including the availability of experienced~~
15 ~~personnel or outside consultants who are familiar with the~~
16 ~~design-build method of project delivery.]~~

17 ~~[(d) A governmental entity shall make a formal finding on~~
18 ~~the criteria described by Subsection (c) before preparing a request~~
19 ~~for qualifications under Section 2267.357.]~~

20 SECTION 2. Section 2267.357, Government Code, as added by
21 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular
22 Session, 2011, is amended to read as follows:

23 Sec. 2267.357. REQUEST FOR PROPOSALS OR QUALIFICATIONS.

24 (a) The governmental entity shall select the design-build firm in a
25 one-step or two-step process. The governmental entity shall
26 prepare a single request for proposals, in the case of a one-step
27 process, or an initial request for qualifications, in the case of a

1 two-step process, that includes a statement of whether the
2 selection process is a one-step or two-step process and:

- 3 (1) information on the civil works project site;
- 4 (2) project scope;
- 5 (3) project budget;
- 6 (4) project schedule;
- 7 (5) criteria for selection under Section 2267.359 and
8 the weighting of the criteria; and
- 9 (6) other information that may assist potential
10 design-build firms in submitting proposals for the project.

11 (b) The governmental entity shall also prepare a design
12 criteria package as described by Section 2267.358.

13 (c) If a one-step process is used, the governmental entity
14 shall include the design criteria package in the request for
15 proposals. If a two-step process is used, the governmental entity
16 may not request, as part of the offeror's response to the request
17 for qualifications, the offeror's technical proposal or cost
18 proposal.

19 SECTION 3. Section 2267.359, Government Code, as added by
20 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular
21 Session, 2011, is amended by amending Subsections (a) and (c) to
22 read as follows:

23 (a) The governmental entity shall receive proposals, in the
24 case of a one-step process, or responses to a request for
25 qualifications, in the case of a two-step process, and shall
26 evaluate each offeror's experience, technical competence, and
27 capability to perform, the past performance of the offeror's team

1 and members of the team, project approach, cost methodology, and
2 other appropriate factors submitted by the team or firm in response
3 to the request for proposals or qualifications, except that the
4 governmental entity may not evaluate any cost-related or
5 price-related ~~[evaluation]~~ factors, other than the offeror's cost
6 methodology ~~[are not permitted at this stage]~~. If a one-step
7 process is used, the governmental entity shall also evaluate, for
8 each offeror, the results of each offeror's interview, if the
9 governmental entity included the results of an interview process in
10 the selection criteria.

11 (c) If a two-step process is used, the ~~[The]~~ governmental
12 entity shall, in accordance with the applicable evaluation criteria
13 established in Subsection (a), qualify five or fewer offerors to:

14 (1) submit additional information, including the
15 offeror's cost proposal and technical proposal as required by
16 Section 2267.361; and

17 (2) submit to an interview, if the governmental entity
18 included the results of an interview process in the selection
19 criteria ~~[entity chooses, to interview for final selection]~~.

20 SECTION 4. Section 2267.360, Government Code, as added by
21 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular
22 Session, 2011, is amended to read as follows:

23 Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. If a
24 one-step process is used, the governmental entity shall select the
25 design-build firm after evaluating the offeror's responses to the
26 request for proposals, in accordance with Section 2267.359(a) and
27 the governmental entity's selection criteria, as stated in the

1 request for proposals. If a two-step process is used, the [The]
2 governmental entity shall select a design-build firm using a
3 combination of technical and cost proposals as provided by Section
4 2267.361.

5 SECTION 5. The heading of Section 2267.361, Government
6 Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd
7 Legislature, Regular Session, 2011, is amended to read as follows:

8 Sec. 2267.361. PROCEDURES FOR SELECTION OF DESIGN-BUILD
9 FIRM UNDER TWO-STEP PROCESS [~~COMBINATION OF TECHNICAL AND COST~~
10 ~~PROPOSALS~~].

11 SECTION 6. Section 2267.361, Government Code, as added by
12 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular
13 Session, 2011, is amended by amending Subsections (a) and (e) to
14 read as follows:

15 (a) A governmental entity shall request proposals from
16 design-build firms identified under Section 2267.359(c). A firm
17 must submit a proposal not later than the 180th day after the date
18 the governmental entity makes a public request for the proposals
19 from the selected firms. The request for proposals must include:

20 (1) a design criteria package;
21 (2) if the project site is identified, a geotechnical
22 baseline report or other information that provides the design-build
23 firm minimum geotechnical design parameters to submit a proposal;

24 (3) detailed instructions for preparing both a cost
25 proposal and a [the] technical proposal and the items to be
26 included, including a description of the form and level of
27 completeness of drawings expected; and

1 (4) the [~~relative weighting of the technical and price~~
2 ~~proposals and the~~] formula by which the proposals will be evaluated
3 and ranked.

4 (e) The governmental entity shall first open, evaluate, and
5 score each responsive technical proposal submitted on the basis of
6 the criteria described in the request for proposals and assign
7 points on the basis of the formula [~~weighting~~] specified in the
8 request for proposals. The governmental entity may reject as
9 nonresponsive any firm that makes a significant change to the
10 composition of its firm as initially submitted. The governmental
11 entity shall subsequently open, evaluate, and score the cost
12 proposals from firms that submitted a responsive technical proposal
13 and assign points on the basis of the formula [~~weighting~~] specified
14 in the request for proposals. The governmental entity shall select
15 the design-build firm in accordance with the formula provided in
16 the request for proposals.

17 SECTION 7. Section 2267.362, Government Code, as added by
18 Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular
19 Session, 2011, is amended to read as follows:

20 Sec. 2267.362. NEGOTIATION. After selecting the
21 highest-ranked design-build firm under Section 2267.360, for a
22 one-step process, or Section 2267.361, for a two-step process, the
23 governmental entity shall first attempt to negotiate a contract
24 with the selected firm. If the governmental entity is unable to
25 negotiate a satisfactory contract with the selected firm, the
26 entity shall, formally and in writing, end all negotiations with
27 that firm and proceed to negotiate with the next firm in the order

1 of the selection ranking until a contract is reached or
2 negotiations with all ranked firms end.

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

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

19 SECTION 9. Sections 2267.352 and and 2267.354, Government
20 Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd
21 Legislature, Regular Session, 2011, are repealed.

22 SECTION 10. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2013.