

By: Geren

H.B. No. 2475

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the establishment of the center for alternative finance
3 and procurement within the Texas Facilities Commission and to
4 public and private partnerships; authorizing a fee.

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

6 SECTION 1. Subchapter C, Chapter 2152, Government Code, is
7 amended by adding Section 2152.110 to read as follows:

8 Sec. 2152.110. CENTER FOR ALTERNATIVE FINANCE AND
9 PROCUREMENT. The commission shall establish the center for
10 alternative finance and procurement to consult with governmental
11 entities regarding best practices for procurement and the financing
12 of qualifying projects and to assist governmental entities in the
13 receipt of proposals, negotiation of interim and comprehensive
14 agreements, and management of qualifying projects under Chapters
15 2267 and 2268.

16 SECTION 2. Section 2267.001, Government Code, is amended by
17 amending Subdivision (1-a) and adding Subdivision (1-b) to read as
18 follows:

19 (1-a) "Center" means the center for alternative
20 finance and procurement established under Section 2152.110 by the
21 Texas Facilities Commission.

22 (1-b) "Commission" means the Partnership Advisory
23 Commission established under Chapter 2268.

24 SECTION 3. Sections 2267.052(a), (b), (c), and (c-1),

1 Government Code, are amended to read as follows:

2 (a) Before requesting or considering a proposal for a
3 qualifying project, a responsible governmental entity must, with
4 the assistance of the center, adopt and make publicly available
5 guidelines that enable the governmental entity to comply with this
6 chapter. The guidelines must be reasonable, encourage
7 competition, and guide the selection of projects under the purview
8 of the responsible governmental entity.

9 (b) The guidelines for a responsible governmental entity
10 described by Section 2267.001(5)(A) must:

11 (1) require the responsible governmental entity to:

12 (A) make a representative of the entity available
13 to meet with persons who are considering submitting a proposal; and

14 (B) provide notice of the representative's
15 availability;

16 (2) provide reasonable criteria for choosing among
17 competing proposals;

18 (3) contain suggested timelines for selecting
19 proposals and negotiating an interim or comprehensive agreement;

20 (4) allow the responsible governmental entity to
21 accelerate the selection, review, and documentation timelines for
22 proposals involving a qualifying project considered a priority by
23 the entity;

24 (5) include financial review and analysis procedures
25 that at a minimum consist of:

26 (A) a cost-benefit analysis;

27 (B) an assessment of opportunity cost;

1 (C) consideration of the degree to which
2 functionality and services similar to the functionality and
3 services to be provided by the proposed project are already
4 available in the private market; and

5 (D) consideration of the results of all studies
6 and analyses related to the proposed qualifying project;

7 (6) allow the responsible governmental entity to
8 consider the nonfinancial benefits of a proposed qualifying
9 project;

10 (7) ensure that the governmental entity, for a
11 proposed project to improve real property, evaluates design
12 quality, life-cycle costs, and the proposed project's relationship
13 to any relevant comprehensive planning or zoning requirements;

14 (8) include criteria for:

15 (A) the qualifying project, including the scope,
16 costs, and duration of the project and the involvement or impact of
17 the project on multiple public entities;

18 (B) the creation of and the responsibilities of
19 an oversight committee, with members representing the responsible
20 governmental entity, that acts as an advisory committee to review
21 the terms of any proposed interim or comprehensive agreement; and

22 (C) the center's involvement in the procurement
23 and delivery of the qualifying project [~~compliance with the~~
24 ~~requirements of Chapter 2268~~];

25 (9) require the responsible governmental entity to
26 analyze the adequacy of the information to be released by the entity
27 when seeking competing proposals and require that the entity

1 provide more detailed information, if the entity determines
2 necessary, to encourage competition, subject to Section
3 [2267.053](#)(g);

4 (10) establish criteria, key decision points, and
5 approvals required to ensure that the responsible governmental
6 entity considers the extent of competition before selecting
7 proposals and negotiating an interim or comprehensive agreement;
8 and

9 (11) require the posting and publishing of public
10 notice of a proposal requesting approval of a qualifying project,
11 including:

12 (A) specific information and documentation
13 regarding the nature, timing, and scope of the qualifying project,
14 as required under Section [2267.053](#)(a);

15 (B) a reasonable period, as determined by the
16 responsible governmental entity, of not less than 45 days or more
17 than 180 days, or a longer period specified by the governing body of
18 the responsible governmental entity to accommodate a large-scale
19 project, to encourage competition and partnerships with private
20 entities and other persons in accordance with the goals of this
21 chapter, during which the responsible governmental entity must
22 accept submission of competing proposals for the qualifying
23 project; and

24 (C) a requirement for advertising the notice on
25 the governmental entity's Internet website and on TexasOnline or
26 the state's official Internet website.

27 (c) The guidelines of a responsible governmental entity

1 described by Section 2267.001(5)(B) must include:

- 2 (1) the provisions required under Subsection (b); and
- 3 (2) a requirement that the governmental entity engage
- 4 the services of the center [~~qualified professionals, including an~~
- 5 ~~architect, professional engineer, or certified public accountant,~~
- 6 ~~not otherwise employed by the governmental entity,~~] to provide
- 7 independent analyses regarding the specifics, advantages,
- 8 disadvantages, and long-term and short-term costs of [~~any proposal~~
- 9 ~~requesting approval of~~] a qualifying project unless the governing
- 10 body of the governmental entity determines that the analysis [~~of~~
- 11 ~~the proposal~~] is to be performed by similarly qualified employees
- 12 of the governmental entity.

13 (c-1) For a proposal with an estimated cost of \$5 million or

14 more for [~~the~~] construction or renovation under [~~of~~] a qualifying

15 [~~structure or~~] project, the analysis conducted under Subsection

16 (c)(2) must include review [~~of the proposal~~] by an architect, a

17 professional engineer, and a certified public accountant not

18 otherwise employed by the governmental entity.

19 SECTION 4. Section 2267.053(d), Government Code, is amended

20 to read as follows:

21 (d) The responsible governmental entity may charge a

22 reasonable fee to cover the costs of processing, reviewing, and

23 evaluating the proposal, including reasonable legal fees and fees

24 for the center's review and consultation and for other financial

25 and [~~7~~] technical [~~7 and other necessary~~] advisors or consultants.

26 SECTION 5. Section 2267.058(g), Government Code, is amended

27 to read as follows:

1 (g) The comprehensive agreement must provide that a
2 security document or other instrument purporting to mortgage,
3 pledge, encumber, or create a lien, charge, or security interest on
4 or against the contracting party's interest may not extend to or
5 affect the fee simple interest of the state in the qualifying
6 project or the state's rights or interests under the comprehensive
7 agreement. Any holder of debt shall acknowledge that the mortgage,
8 pledge, or encumbrance or a lien, charge, or security interest on or
9 against the contracting party's interest is subordinate to the fee
10 simple interest of the state in the qualifying project [~~and the~~
11 ~~state's rights or interests under the comprehensive agreement~~].

12 SECTION 6. Section [2267.065](#)(b), Government Code, is amended
13 to read as follows:

14 (b) A responsible governmental entity may enter into a
15 comprehensive agreement only in accordance with guidelines that
16 require the contracting person to design and construct the
17 qualifying project in accordance with procedures that do not
18 materially conflict with those specified in:

19 (1) Subchapter G, Chapter 2269, for facilities
20 projects [~~Section 2166.2531~~]; or

21 (2) Subchapter H, Chapter 2269 [~~Section 44.036,~~
22 ~~Education Code,~~

23 [~~(3) Section [51.780](#), Education Code,~~

24 [~~(4) Section 271.119, Local Government Code, or~~

25 [~~(5) Subchapter J, Chapter 271, Local Government~~

26 ~~Code], for civil works projects [as defined by Section [271.181](#)(2),~~

27 ~~Local Government Code].~~

1 SECTION 7. Section 2268.001, Government Code, is amended by
2 amending Subdivision (1) and adding Subdivision (1-a) to read as
3 follows:

4 (1) "Center" means the center for alternative finance
5 and procurement established under Section 2152.110 by the Texas
6 Facilities Commission.

7 (1-a) "Commission" means the Partnership Advisory
8 Commission.

9 SECTION 8. Section 2268.056(d), Government Code, is amended
10 to read as follows:

11 (d) The center [~~Texas Facilities Commission~~], using the
12 qualifying project fees authorized under Section 2165.353, shall
13 provide, on a cost recovery basis, professional services [~~of its~~
14 ~~architectural, engineering, and real estate staff and the~~
15 ~~expertise~~] of financial, technical, and other necessary advisors
16 and consultants, authorized under Section 2267.053(d), as
17 necessary to support the Partnership Advisory Commission in its
18 review and evaluation of proposals, including financial and risk
19 allocation analysis and ongoing contract performance monitoring of
20 qualifying projects. The center [~~Texas Facilities Commission~~]
21 shall assign staff and contracted advisors and consultants
22 necessary to perform the duties required by this subsection.

23 SECTION 9. Section 2268.059, Government Code, is amended to
24 read as follows:

25 Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS
26 SUBMITTED TO COMMISSION. Records and information afforded
27 protection under Section 552.153 that are provided by a responsible

1 governmental entity to the commission and the presiding officer of
2 the House Appropriations Committee and of the Senate Finance
3 Committee, or their designees, shall continue to be protected from
4 disclosure when in the possession of the commission and the
5 presiding officers or their designees.

6 SECTION 10. Section 2267.002(e), Government Code, is
7 repealed.

8 SECTION 11. As soon as practicable after the effective date
9 of this Act, the Texas Facilities Commission shall adopt the rules
10 necessary to establish the center for alternative finance and
11 procurement in accordance with Section 2152.110, Government Code,
12 as added by this Act.

13 SECTION 12. This Act takes effect September 1, 2015.