

By: Frank

H.B. No. 3687

A BILL TO BE ENTITLED

AN ACT

relating to design-build procedures for civil works projects.

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

SECTION 1. Section 2269.353(a), Government Code, is amended to read as follows:

(a) A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project. In using this method and in entering into a contract for the services of a design-build firm, the contracting governmental entity and the design-build firm shall follow the procedures provided by this subchapter. The governmental entity shall select the design-build firm in a one-step or two-step process.

SECTION 2. The heading to Section 2269.357, Government Code, is amended to read as follows:

Sec. 2269.357. REQUEST FOR PROPOSALS OR QUALIFICATIONS.

SECTION 3. Section 2269.357, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, or an initial request for qualifications, in the case of a two-step process, that includes a statement that the selection process is a one-step or two-step process and:

- 1 (1) information on the civil works project site;
2 (2) project scope;
3 (3) project budget;
4 (4) project schedule;
5 (5) criteria for selection under Section 2269.359 and
6 the formula for evaluating proposals [~~weighting of the criteria~~];
7 and
8 (6) other information that may assist potential
9 design-build firms in submitting proposals or responses to a
10 request for qualifications for the project.

11 (c) If a one-step process is used, in addition to the
12 information required by Subsection (a), the request for proposals
13 shall include the design criteria package.

14 (d) If a two-step process is used, the governmental entity
15 may not request, as part of the offeror's response to the request
16 for qualifications, the offeror's cost proposal or technical
17 proposal.

18 SECTION 4. Section 2269.359, Government Code, is amended by
19 amending Subsections (a) and (c) and adding Subsection (a-1) to
20 read as follows:

21 (a) The governmental entity shall receive proposals, in the
22 case of a one-step process, or responses to a request for
23 qualifications, in the case of a two-step process, and shall
24 evaluate each offeror's experience, technical competence, project
25 approach, cost methodology, and capability to perform, the past
26 performance of the offeror's team and members of the team, and other
27 appropriate factors submitted by the team or firm in response to the

1 request for proposals or qualifications. The governmental entity
2 may not evaluate any cost-related or price-related factors, other
3 than the offeror's cost methodology~~[, except that cost-related or~~
4 ~~price-related evaluation factors are not permitted at this stage].~~

5 (a-1) If a one-step process is used, the governmental entity
6 shall also evaluate, for each offeror, the results of each
7 offeror's interview, if the governmental entity included the
8 results of an interview process in the selection criteria.

9 (c) If a two-step process is used, the [The] governmental
10 entity shall, in accordance with the evaluation criteria described
11 by Subsection (a), qualify five or fewer offerors to:

12 (1) submit additional information, including the
13 offeror's cost proposal and technical proposal under Section
14 2269.361; and

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

18 SECTION 5. Section 2269.360, Government Code, is amended to
19 read as follows:

20 Sec. 2269.360. SELECTION OF DESIGN-BUILD FIRM. (a) If a
21 one-step process is used to select a design-build firm, the
22 governmental entity shall select the firm after evaluating the
23 proposals received in accordance with Section 2269.359 and the
24 governmental entity's selection criteria, as stated in the request
25 for proposals.

26 (b) If a two-step process is used to select a design-build
27 firm, the [The] governmental entity shall select the [a

1 ~~design-build~~] firm using a combination of technical and cost
2 proposals as provided by Section 2269.361.

3 SECTION 6. The heading to Section 2269.361, Government
4 Code, is amended to read as follows:

5 Sec. 2269.361. PROCEDURES FOR SELECTION OF DESIGN-BUILD
6 FIRM UNDER TWO-STEP PROCESS [~~COMBINATION OF TECHNICAL AND COST~~
7 ~~PROPOSALS~~].

8 SECTION 7. Sections 2269.361(a) and (e), Government Code,
9 are amended to read as follows:

10 (a) A governmental entity shall request proposals from
11 design-build firms identified under Section 2269.359(c). A firm
12 must submit a proposal not later than the 180th day after the date
13 the governmental entity makes a public request for the proposals
14 from the selected firms. The request for proposals must include:

15 (1) a design criteria package;

16 (2) if the project site is identified, a geotechnical
17 baseline report or other information that provides the design-build
18 firm minimum geotechnical design parameters to submit a proposal;

19 (3) detailed instructions for preparing both a cost
20 proposal and a [~~the~~] technical proposal, and the items to be
21 included in the technical proposal, including a description of the
22 form and level of completeness of drawings expected; and

23 (4) the [~~relative weighting of the technical and price~~
24 ~~proposals and the~~] formula by which the proposals will be evaluated
25 and ranked.

26 (e) The governmental entity shall first open, evaluate, and
27 score each responsive technical proposal submitted on the basis of

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

12 SECTION 8. Section [2269.362](#), Government Code, is amended to
13 read as follows:

14 Sec. 2269.362. NEGOTIATION. After selecting the
15 highest-ranked design-build firm under Section [2269.360](#) for a
16 one-step process, or Section [2269.361](#) for a two-step process, the
17 governmental entity shall first attempt to negotiate a contract
18 with the selected firm. If the governmental entity is unable to
19 negotiate a satisfactory contract with the selected firm, the
20 entity shall, formally and in writing, end all negotiations with
21 that firm and proceed to negotiate with the next firm in the order
22 of the selection ranking until a contract is reached or
23 negotiations with all ranked firms end.

24 SECTION 9. Section [2269.364](#)(c), Government Code, is amended
25 to read as follows:

26 (c) The governmental entity may offer an unsuccessful
27 design-build firm that submits a proposal in response to the

1 entity's request for proposals in a one-step process under Section
2 2269.357, or the entity's request for proposals in a two-step
3 process [~~additional information~~] under Section 2269.361, a stipend
4 for preliminary engineering costs associated with the development
5 of the proposal. The stipend must be [~~one-half of one percent of~~
6 ~~the contract amount and must be~~] specified in the initial request
7 for proposals or qualifications. If the offer is accepted and paid,
8 the governmental entity may make use of any work product contained
9 in the proposal, including the techniques, methods, processes, and
10 information contained in the proposal. The use by the governmental
11 entity of any design element contained in an unsuccessful proposal
12 is at the sole risk and discretion of the entity and does not confer
13 liability on the recipient of the stipend under this subsection.

14 SECTION 10. The following provisions of the Government Code
15 are repealed.

- 16 (1) Section 2269.352;
- 17 (2) Sections 2269.353(b) and (c); and
- 18 (3) Section 2269.354.

19 SECTION 11. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2015.