By:  Thompson of Brazoria H.B. No. 2579

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Texas Department of Transportation to use the construction manager-at-risk project delivery method for state highway improvement projects.

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

SECTION 1.  Chapter 223, Transportation Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 223.301.  DEFINITION; FORM OF CONSTRUCTION MANAGER-AT-RISK. (a) In this subchapter, "construction manager-at-risk method" means a delivery method by which the department selects or designates an engineer for design and construction phase services and separately contracts with a construction manager to serve as the general contractor and provide consultation during the design and construction of a state highway.

(b)  A construction manager may be a sole proprietorship, partnership, corporation, or other legal entity.

Sec. 223.302.  USE OF CONSTRUCTION MANAGER-AT-RISK METHOD. The department may use the construction manager-at-risk method in selecting a general contractor for the construction of a state highway project as provided by this subchapter.

Sec. 223.303.  FUNCTIONS OF CONSTRUCTION MANAGER-AT-RISK. (a)  A construction manager serves as the general contractor for a state highway project and assumes the risk for the construction or improvement of the state highway at the contracted price.

(b)  A construction manager provides consultation to the department regarding the construction of a state highway project during and after the design of the project, including providing input regarding scheduling, pricing, phasing, and other issues that will enable the department to design a more constructible project.

(c)  The contracted price may be a guaranteed maximum price.

Sec. 223.304.  USE OF ENGINEER. (a) On or before the selection of a construction manager, the department shall select or designate an engineer to prepare the construction documents for the project.

(b)  The engineer selected or designated for a project may not serve, alone or in combination with another person, as the construction manager for that project.

(c)  Subsection (b) does not prohibit the engineer from providing customary construction phase services under the engineer's agreement with the department in accordance with applicable licensing laws.

Sec. 223.305.  PROCUREMENT PROCESS FOR CONSTRUCTION MANAGER-AT-RISK. (a) The department may select the construction manager in a one-step or two-step process.

(b)  The department shall prepare a single request for proposals, in the case of a one-step process, or an initial request for qualifications, to be followed by a request for proposals, in the case of a two-step process, that includes:

(1)  a statement as to whether the selection process is a one-step or two-step process;

(2)  information regarding the project's location, scope, and limits;

(3)  publicly available cost estimates for the project and information regarding funding that may be available for the project;

(4)  selection criteria and the relative weight to be given to the criteria;

(5)  the time and place for receipt of qualifications statements or proposals; and

(6)  any other information that may assist the department in its selection of a construction manager.

(c)  A request for proposals shall include any materials specifications, special material requirements, quality assurance and quality control requirements, and available geotechnical or other information related to the project, and the status of any environmental review of the project.

(d)  If a one-step process is used, the department may request, as part of the offeror's proposal, the offeror's proposed fees and prices for performing the work.

(e)  If a two-step process is used, the department may not request proposed fees or prices in step one. In step two, the department may request that five or fewer offerors, selected on the basis of qualifications, experience, technical competence, and ability to develop the project, provide additional information, including the offeror's proposed fees and prices for performing the work.

Sec. 223.306.  SELECTION OF CONSTRUCTION MANAGER-AT-RISK. (a)  The department shall rank the offerors in accordance with the selection criteria and formula provided in the request for proposals, and shall select the offeror that submits the proposal that offers the best value for the department.

(b)  The department shall attempt to negotiate a contract with the selected offeror.

(c)  If the department is unable to negotiate a satisfactory contract with the selected offeror, the department, formally and in writing, shall end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(d)  Not later than the seventh day after the date the contract is awarded, the department shall make public the selection rankings.

Sec. 223.307.  PERFORMANCE OF WORK. (a) A construction manager shall publicly advertise for bids or proposals and receive bids or proposals from contractors for the performance of the construction work.

(b)  A construction manager may perform portions of the work itself if:

(1)  the construction manager submits its bid or proposal for those portions of the work in the same manner as all other contractors; and

(2)  the department determines that the construction manager's bid or proposal provides the best value for the department.

Sec. 223.308.  REVIEW AND EVALUATION OF BIDS OR PROPOSALS; SELECTION. (a) The construction manager shall review all contractor bids or proposals in a manner that does not disclose to a person that is not employed by the construction manager, the engineer that prepared the construction documents for the project, or the department the contents of the bid or proposal during the selection process. The construction manager shall make all bids or proposals available to the department on request, and shall make bids or proposals available to the public after the final contract is entered into.

(b)  The construction manager shall evaluate the bids or proposals received from contractors, and shall select a bid or proposal for award. If the construction manager recommends to the department a bid or proposal but the department requires another bid or proposal to be selected, the department, through a change in the contracted price, time, or guaranteed maximum price under the contract with the construction manager, shall compensate the construction manager for any additional cost and risk that the construction manager incurs because of the department's requirement.

Sec. 223.309.  DEFAULT; PERFORMANCE OF WORK. If a contractor selected under Section 223.308 defaults in the performance of its work or fails to execute a subcontract, the construction manager may itself fulfill, without advertising, the contract requirements or select a replacement contractor to fulfill the contract requirements.

Sec. 223.310.  PERFORMANCE OR PAYMENT BOND. (a) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded to a contractor selected under Section 223.308, the penal sum of the performance bond and the payment bond that are delivered to the department must each be in an amount equal to the construction cost estimate, as specified in the request for proposals.

(b)  The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the department to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 223.311.  RULES GOVERNING SELECTION PROCESS. (a) The commission shall adopt rules governing the selection of a construction manager, including criteria relating to the qualifications of the offerors and the award of contracts.

SECTION 2.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.