

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

1 improvement of the state highway at the contracted price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 223.306. SELECTION OF CONSTRUCTION MANAGER-AT-RISK.

1 (a) The department shall rank the offerors in accordance with the
2 selection criteria and formula provided in the request for
3 proposals, and shall select the offeror that submits the proposal
4 that offers the best value for the department.

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

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

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

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

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

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

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

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

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

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

27 Sec. 223.310. PERFORMANCE OR PAYMENT BOND. (a) If a fixed

1 contract amount or guaranteed maximum price has not been determined
2 at the time the contract is awarded to a contractor selected under
3 Section 223.308, the penal sum of the performance bond and the
4 payment bond that are delivered to the department must each be in an
5 amount equal to the construction cost estimate, as specified in the
6 request for proposals.

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

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

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