

By: Morrison

H.B. No. 4288

A BILL TO BE ENTITLED

AN ACT

relating to use of a program manager for certain public works projects.

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

SECTION 1. Chapter 2269, Government Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. PROGRAM MANAGER METHOD

Sec. 2269.421. DEFINITIONS. In this subchapter:

(1) "Program manager" means a sole proprietorship, partnership, corporation, or other legal entity that serves as the primary agent for a governmental entity by providing construction administration and management services for the construction, rehabilitation, alteration, or repair of a facility or other public works project.

(2) "Program manager method" means a delivery method by which a governmental entity contracts with a program manager to provide consultation or administrative services during the design and construction phase of a facility or other public works project and to manage multiple contracts with various construction prime contractors.

Sec. 2269.422. PROGRAM MANAGER. A governmental entity may retain a program manager for assistance in the construction, rehabilitation, alteration, or repair of a facility or other public works project only as provided by this subchapter.

1 Sec. 2269.423. CONTRACT PROVISIONS FOR PROGRAM MANAGER. A
2 contract between a governmental entity and a program manager may
3 require the program manager to:

4 (1) provide administrative personnel;

5 (2) provide equipment necessary to perform duties
6 under this subchapter;

7 (3) provide on-site management;

8 (4) assist in securing financing for the project;

9 (5) develop design standards;

10 (6) develop uniform standards for all aspects of
11 project delivery;

12 (7) establish reporting and control system
13 requirements;

14 (8) provide public relations and legislative
15 initiative support;

16 (9) communicate with other consultants, contractors,
17 and subcontractors;

18 (10) manage land acquisition and environmental
19 service providers;

20 (11) manage master-planning, programming, and design
21 service providers;

22 (12) develop communication and management strategies
23 for multiple, concurrent projects;

24 (13) establish and document compliance with quality
25 and performance standards and specifications;

26 (14) develop contract and procurement strategies;

27 (15) assist with reporting to governing boards; and

1 (16) provide other services specified in the contract.

2 Sec. 2269.424. LIMITS ON PROGRAM MANAGER. A program
3 manager may not:

4 (1) perform any aspect of the construction,
5 rehabilitation, alteration, or repair of a facility or other public
6 works project;

7 (2) be a party to a construction subcontract for the
8 construction, rehabilitation, alteration, or repair of a facility
9 or other public works project; or

10 (3) provide or be required to provide performance and
11 payment bonds for the construction, rehabilitation, alteration, or
12 repair of a facility or other public works project.

13 Sec. 2269.425. FIDUCIARY CAPACITY OF PROGRAM MANAGER. A
14 program manager represents the governmental entity in a fiduciary
15 capacity.

16 Sec. 2269.426. USE OF ENGINEER OR ARCHITECT. (a) On or
17 before the date a governmental entity selects a program manager,
18 the governmental entity must select or designate an engineer or
19 architect in accordance with Chapter 1001 or 1051, Occupations
20 Code, as applicable, to prepare the construction documents for the
21 project.

22 (b) The governmental entity's engineer or architect may not
23 serve, alone or in combination with another person, as the program
24 manager unless the engineer or architect is hired to serve as the
25 program manager under a separate or concurrent selection process
26 conducted in accordance with this subchapter. This subsection does
27 not prohibit the governmental entity's engineer or architect from

1 providing customary construction phase services under the
2 engineer's or architect's original professional service agreement
3 in accordance with applicable licensing laws.

4 (c) To the extent that the program manager's services are
5 defined as part of the practice of engineering or architecture
6 under Chapter 1001 or 1051, Occupations Code, as applicable, those
7 services shall be conducted by a person licensed under the
8 applicable chapter.

9 Sec. 2269.427. SELECTION OF CONTRACTORS. A governmental
10 entity using the program manager method shall procure, in
11 accordance with applicable law and in any manner authorized by this
12 chapter, a general contractor or trade contractors who will serve
13 as the prime contractors for their specific portions of the work and
14 provide performance and payment bonds to the governmental entity in
15 accordance with applicable laws.

16 Sec. 2269.428. SELECTION OF PROGRAM MANAGER. A
17 governmental entity shall select a program manager on the basis of
18 demonstrated competence and qualifications in the same manner that
19 an engineer or architect is selected under Section 2254.004.

20 Sec. 2269.429. INSURANCE. A program manager selected under
21 this subchapter shall maintain professional liability or errors and
22 omissions insurance in the amount of at least \$1 million for each
23 occurrence.

24 SECTION 2. (a) The changes in law made by this Act apply
25 only to a contract or construction project for which a governmental
26 entity first advertises or otherwise requests bids, proposals,
27 offers, or qualifications, or makes a similar solicitation, on or

1 after the effective date of this Act.

2 (b) A contract or construction project for which a
3 governmental entity first advertises or otherwise requests bids,
4 proposals, offers, or qualifications, or makes a similar
5 solicitation, before the effective date of this Act is governed by
6 the law as it existed immediately before the effective date of this
7 Act, and that law is continued in effect for that purpose.

8 SECTION 3. This Act takes effect September 1, 2019.