

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 27, 2011

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

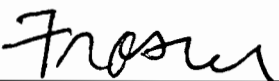
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 628 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



JACKSON - CHAIR

DUNCAN



FRASER

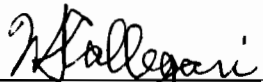


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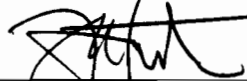


On the part of the Senate

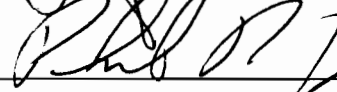
Van de Putte



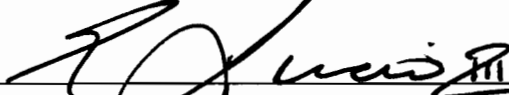
Rep. Bill Callegari



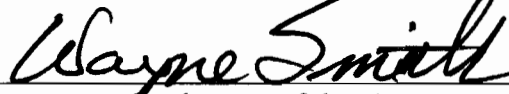
Rep. Todd Hunter



Rep. Phil King



Rep. Eddie Lucio III



On the part of the House

Rep. Wayne Smith

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 628

A BILL TO BE ENTITLED

1 AN ACT

2 relating to contracts by governmental entities and related
3 professional services and to public works performance and payment
4 bonds.

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

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended
8 by adding Subsection (h) to read as follows:

9 (h) A reverse auction procedure may not be used to obtain
10 services related to a public work contract for which a bond is
11 required under this section. In this subsection, "reverse auction
12 procedure" has the meaning assigned by Section 2155.062 or a
13 procedure similar to that described by Section 2155.062.

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

15 SECTION 2.01. Section 11.168, Education Code, is amended to
16 read as follows:

17 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR
18 CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection
19 (b) or Section 45.109(a-1) or [~~and~~] (a-2), the board of trustees of
20 a school district may not enter into an agreement authorizing the
21 use of school district employees, property, or resources for the
22 provision of materials or labor for the design, construction, or
23 renovation of improvements to real property not owned or leased by
24 the district.

1 (b) This section does not prohibit the board of trustees of
2 a school district from entering into an agreement for the design,
3 construction, or renovation of improvements to real property not
4 owned or leased by the district if the improvements benefit real
5 property owned or leased by the district. Benefits to real property
6 owned or leased by the district include the design, construction,
7 or renovation of highways, roads, streets, sidewalks, crosswalks,
8 utilities, and drainage improvements that serve or benefit the real
9 property owned or leased by the district.

10 SECTION 2.02. Sections 44.031(a), (b), and (f), Education
11 Code, are amended to read as follows:

12 (a) Except as provided by this subchapter, all school
13 district contracts for the purchase of goods and services, except
14 contracts for the purchase of produce or vehicle fuel, valued at
15 \$50,000 or more in the aggregate for each 12-month period shall be
16 made by the method, of the following methods, that provides the best
17 value for the district:

18 (1) competitive bidding for services other than
19 construction services;

20 (2) competitive sealed proposals for services other
21 than construction services;

22 (3) a request for proposals, for services other than
23 construction services;

24 (4) an interlocal contract;

25 (5) a method provided by Chapter 2267, Government
26 Code, for construction services [~~a design/build contract,~~

27 [~~(6) a contract to construct, rehabilitate, alter, or~~

1 ~~repair facilities that involves using a construction manager,~~
2 ~~[(7) a job order contract for the minor construction,~~
3 ~~repair, rehabilitation, or alteration of a facility];~~

4 (6) ~~[(8)]~~ the reverse auction procedure as defined by
5 Section 2155.062(d), Government Code; or

6 (7) ~~[(9)]~~ the formation of a political subdivision
7 corporation under Section 304.001, Local Government Code.

8 (b) Except as provided by this subchapter, in determining to
9 whom to award a contract, the district shall consider:

10 (1) the purchase price;

11 (2) the reputation of the vendor and of the vendor's
12 goods or services;

13 (3) the quality of the vendor's goods or services;

14 (4) the extent to which the goods or services meet the
15 district's needs;

16 (5) the vendor's past relationship with the district;

17 (6) the impact on the ability of the district to comply
18 with laws and rules relating to historically underutilized
19 businesses;

20 (7) the total long-term cost to the district to
21 acquire the vendor's goods or services; ~~and~~

22 (8) for a contract for goods and services, other than
23 goods and services related to telecommunications and information
24 services, building construction and maintenance, or instructional
25 materials, whether the vendor or the vendor's ultimate parent
26 company or majority owner:

27 (A) has its principal place of business in this

1 state; or

2 (B) employs at least 500 persons in this state;

3 and

4 (9) any other relevant factor specifically listed in
5 the request for bids or proposals.

6 (f) This section does not apply to a contract for
7 professional services rendered, including services of an
8 architect, attorney, certified public accountant, engineer, or
9 fiscal agent. A school district may, at its option, contract for
10 professional services rendered by a financial consultant or a
11 technology consultant in the manner provided by Section 2254.003,
12 Government Code, in lieu of the methods provided by this section.

13 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is
14 amended by adding Sections 44.0351 and 44.0352 to read as follows:

15 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the
16 extent prohibited by other law and to the extent consistent with
17 this subchapter, a school district may use competitive bidding to
18 select a vendor as authorized by Section 44.031(a)(1).

19 (b) Except as provided by this subsection, Subchapter B,
20 Chapter 271, Local Government Code, does not apply to a competitive
21 bidding process under this subchapter. Sections 271.026,
22 271.027(a), and 271.0275, Local Government Code, apply to a
23 competitive bidding process under this subchapter.

24 (c) A school district shall award a competitively bid
25 contract at the bid amount to the bidder offering the best value for
26 the district. In determining the best value for the district, the
27 district is not restricted to considering price alone but may

1 consider any other factors stated in the selection criteria. The
2 selection criteria may include the factors listed in Section
3 44.031(b).

4 Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In
5 selecting a vendor through competitive sealed proposals as
6 authorized by Section 44.031(a)(2), a school district shall follow
7 the procedures prescribed by this section.

8 (b) The district shall prepare a request for competitive
9 sealed proposals that includes information that vendors may require
10 to respond to the request. The district shall state in the request
11 for proposals the selection criteria that will be used in selecting
12 the successful offeror.

13 (c) The district shall receive, publicly open, and read
14 aloud the names of the offerors and, if any are required to be
15 stated, all prices stated in each proposal. Not later than the 45th
16 day after the date on which the proposals are opened, the district
17 shall evaluate and rank each proposal submitted in relation to the
18 published selection criteria.

19 (d) The district shall select the offeror that offers the
20 best value for the district based on the published selection
21 criteria and on its ranking evaluation. The district shall first
22 attempt to negotiate a contract with the selected offeror. The
23 district may discuss with the selected offeror options for a scope
24 or time modification and any price change associated with the
25 modification. If the district is unable to negotiate a
26 satisfactory contract with the selected offeror, the district
27 shall, formally and in writing, end negotiations with that offeror

1 and proceed to the next offeror in the order of the selection
2 ranking until a contract is reached or all proposals are rejected.

3 (e) In determining the best value for the district, the
4 district is not restricted to considering price alone but may
5 consider any other factors stated in the selection criteria.

6 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is
7 amended by adding Section 44.0411 to read as follows:

8 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or
9 specifications is necessary after the performance of a contract is
10 begun or if it is necessary to decrease or increase the quantity of
11 work to be performed or of materials, equipment, or supplies to be
12 furnished, the district may approve change orders making the
13 changes.

14 (b) The total contract price may not be increased because of
15 the changes unless additional money for increased costs is approved
16 for that purpose from available money or is provided for by the
17 authorization of the issuance of time warrants.

18 (c) The district may grant general authority to an
19 administrative official to approve the change orders.

20 (d) A contract with an original contract price of \$1 million
21 or more may not be increased under this section by more than 25
22 percent. If a change order for a contract with an original contract
23 price of less than \$1 million increases the contract amount to \$1
24 million or more, the total of the subsequent change orders may not
25 increase the revised contract amount by more than 25 percent of the
26 original contract price.

27 SECTION 2.05. Subchapter A, Chapter 46, Education Code, is

1 amended by adding Section 46.0111 to read as follows:

2 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,
3 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL
4 FACILITY. (a) In this section:

5 (1) "Net proceeds" means the difference between the
6 amount recovered by or on behalf of a school district in an action,
7 by settlement or otherwise, and the legal fees and litigation costs
8 incurred by the district in prosecuting the action.

9 (2) "State's share" means an amount equal to the
10 district's net proceeds from the recovery multiplied by a
11 percentage determined by dividing the amount of state assistance
12 under this subchapter used to pay the principal of and interest on
13 bonds issued in connection with the instructional facility that is
14 the subject of the action by the total amount of principal and
15 interest paid on the bonds as of the date of the judgment or
16 settlement.

17 (b) A school district that brings an action for recovery of
18 damages for the defective design, construction, renovation, or
19 improvement of an instructional facility financed by bonds
20 for which the district receives state assistance under this
21 subchapter shall provide the commissioner with written notice of
22 the action.

23 (c) The commissioner may join in the action on behalf of the
24 state to protect the state's share in the action.

25 (d) A school district shall use the net proceeds from an
26 action brought by the district for the defective design,
27 construction, renovation, or improvement of an instructional

1 facility financed by bonds for which the district receives state
2 assistance under this subchapter to repair the defective design,
3 construction, renovation, or improvement of the instructional
4 facility on which the action is brought or to replace the facility.
5 Section 46.008 applies to the repair.

6 (e) The state's share is state property. The school
7 district shall send to the comptroller any portion of the state's
8 share not used by the school district to repair the defective
9 design, construction, renovation, or improvement of the
10 instructional facility on which the action is brought or to replace
11 the facility. Section 42.258 applies to the state's share under
12 this subsection.

13 SECTION 2.06. Section 2155.502(c), Government Code, is
14 amended to read as follows:

15 (c) The commission may not list a multiple award contract on
16 a schedule developed under Subsection (a) if the goods or services
17 provided by that contract:

18 (1) are available from only one vendor;

19 (2) are telecommunications services, facilities, or
20 equipment; [~~or~~]

21 (3) are commodity items as defined by Section
22 2157.068(a); or

23 (4) are engineering services as described by Section
24 1001.003, Occupations Code, or architectural services as described
25 by Section 1051.001, Occupations Code.

26 SECTION 2.07. Section 2166.2525, Government Code, is
27 amended to read as follows:

1 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The
2 ~~[commission shall adopt rules that determine the circumstances for~~
3 ~~use of each]~~ method of contracting allowed under this subchapter
4 for design and construction services is any method provided by
5 Chapter 2267. ~~[In developing the rules, the commission shall~~
6 ~~solicit advice and comment from design and construction~~
7 ~~professionals regarding the criteria the commission will use in~~
8 ~~determining which contracting method is best suited for a project.]~~

9 SECTION 2.08. Subtitle F, Title 10, Government Code, is
10 amended by adding Chapter 2267 to read as follows:

11 CHAPTER 2267. CONTRACTING AND DELIVERY PROCEDURES FOR
12 CONSTRUCTION PROJECTS
13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 2267.001. DEFINITIONS. In this chapter:

15 (1) "Architect" means an individual registered as an
16 architect under Chapter 1051, Occupations Code.

17 (2) "Engineer" means an individual licensed as an
18 engineer under Chapter 1001, Occupations Code.

19 (3) "Facility" means, unless otherwise specifically
20 provided, an improvement to real property.

21 (4) "General conditions" in the context of a contract
22 for the construction, rehabilitation, alteration, or repair of a
23 facility means on-site management, administrative personnel,
24 insurance, bonds, equipment, utilities, and incidental work,
25 including minor field labor and materials.

26 (5) "General contractor" means a sole proprietorship,
27 partnership, corporation, or other legal entity that assumes the

1 risk for constructing, rehabilitating, altering, or repairing all
2 or part of a facility at the contracted price.

3 (6) "Public work contract" means a contract for
4 constructing, altering, or repairing a public building or carrying
5 out or completing any public work.

6 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
7 ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public
8 work contract made by a governmental entity authorized by state law
9 to make a public work contract, including:

10 (1) a state agency as defined by Section 2151.002,
11 including the Texas Facilities Commission;

12 (2) a local government, including:

13 (A) a county;

14 (B) a municipality;

15 (C) a school district;

16 (D) any other special district or authority,
17 including a hospital district, a defense base development authority
18 established under Chapter 379B, Local Government Code, and a
19 conservation and reclamation district, including a river authority
20 or any other type of water district; and

21 (E) any other political subdivision of this
22 state;

23 (3) a public junior college as defined by Section
24 61.003, Education Code; and

25 (4) a board of trustees governed by Chapter 54,
26 Transportation Code.

27 Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW

1 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this
2 section, this chapter prevails over any other law relating to a
3 public work contract.

4 (b) This chapter does not prevail over a conflicting
5 provision in a law relating to contracting with a historically
6 underutilized business.

7 (c) This chapter does not prevail over a conflicting
8 provision in an ordinance or resolution passed by the governing
9 body of a municipally owned electric utility in a procedure
10 described by Section 252.022(c), Local Government Code, that:

11 (1) requires the use of competitive bidding or
12 competitive sealed proposals; or

13 (2) prescribes a design-build procurement procedure
14 that conflicts with this chapter.

15 (d) This chapter does not prevail over any law, rule, or
16 regulation relating to competitive bidding or competitive sealed
17 proposals for construction services, or to procurement of
18 construction services pursuant to Section 49.273, Water Code, that
19 applies to a river authority or to a conservation and reclamation
20 district created under Section 59, Article XVI, Texas Constitution,
21 unless the governing body of the river authority or conservation
22 and reclamation district elects to permit this chapter to supersede
23 the law, rule, or regulation.

24 (e) This chapter does not prevail over a conflicting
25 provision in a regulation that prescribes procurement procedures
26 for construction services that is adopted by the governing board of
27 a river authority or of a conservation and reclamation district

1 created pursuant to Section 59, Article XVI, Texas Constitution,
2 that owns electric generation capacity in excess of 2,500
3 megawatts, except with respect to Subchapter H.

4 Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF
5 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

6 (1) a contract entered into by the Texas Department of
7 Transportation; or

8 (2) a project that receives money from a state or
9 federal highway fund.

10 Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER
11 EDUCATION. (a) In this section, "institution of higher
12 education," "public junior college," and "university system" have
13 the meanings assigned by Section 61.003, Education Code.

14 (b) This chapter applies to a public junior college but does
15 not apply to:

16 (1) any other institution of higher education; or

17 (2) a university system.

18 Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.
19 This chapter does not apply to a regional tollway authority under
20 Chapter 366, Transportation Code.

21 Sec. 2267.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT
22 CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to
23 an improvement project undertaken by or through a local government
24 corporation exempt from competitive bidding requirements or
25 restrictions under Section 431.110, Transportation Code.

26 Sec. 2267.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES.
27 This chapter does not apply to a regional mobility authority under

1 Chapter 370, Transportation Code.

2 Sec. 2267.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This
3 chapter does not apply to a project of a county under Chapter 284,
4 Transportation Code, unless the county adopts an order electing to
5 be governed by this chapter for a project to be developed by the
6 county under Chapter 284.

7 Sec. 2267.010. EXEMPTION: COORDINATED COUNTY
8 TRANSPORTATION AUTHORITY. This chapter does not apply to a
9 coordinated county transportation authority under Chapter 460,
10 Transportation Code.

11 [Sections 2267.011-2267.050 reserved for expansion]

12 SUBCHAPTER B. GENERAL POWERS AND DUTIES

13 Sec. 2267.051. RULES. A governmental entity may adopt
14 rules as necessary to implement this chapter.

15 Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental
16 entity shall advertise or publish notice of requests for bids,
17 proposals, or qualifications in a manner prescribed by law.

18 (b) For a contract entered into by a governmental entity
19 under a method provided by this chapter, the governmental entity
20 shall publish notice of the time and place the bid or proposal or
21 request for qualifications will be received and opened in a manner
22 prescribed by law.

23 (c) For a contract entered into by a municipality, river
24 authority, conservation and reclamation district created pursuant
25 to Section 59, Article XVI, Texas Constitution, and located in a
26 county with a population of more than 250,000, or defense base
27 development authority under any of the methods provided by this

1 chapter, the municipality, river authority, conservation and
2 reclamation district created pursuant to Section 59, Article XVI,
3 Texas Constitution, and located in a county with a population of
4 more than 250,000, or defense base development authority shall
5 publish notice of the time and place the bids or proposals, or the
6 responses to a request for qualifications, will be received and
7 opened. The notice must be published in a newspaper of general
8 circulation in the county in which the defense base development
9 authority's or municipality's central administrative office is
10 located or the county in which the greatest amount of the river
11 authority's or such conservation and reclamation district's
12 territory is located once each week for at least two weeks before
13 the deadline for receiving bids, proposals, or responses. If there
14 is not a newspaper of general circulation in that county, the notice
15 shall be published in a newspaper of general circulation in the
16 county nearest the county seat of the county in which the defense
17 base development authority's or municipality's central
18 administrative office is located or the county in which the
19 greatest amount of the river authority's or such conservation and
20 reclamation district's territory is located. In a two-step
21 procurement process, the time and place the second step bids,
22 proposals, or responses will be received are not required to be
23 published separately.

24 (d) For a contract entered into by a county under any of the
25 methods provided by this chapter, the county shall publish notice
26 of the time and place the bids or proposals, or the responses to a
27 request for qualifications, will be received and opened. The

1 notice must be published in a newspaper of general circulation in
2 the county once each week for at least two weeks before the deadline
3 for receiving bids, proposals, or responses. If there is not a
4 newspaper of general circulation in the county, the notice shall
5 be:

- 6 (1) posted at the courthouse door of the county; and
- 7 (2) published in a newspaper of general circulation in
8 the nearest county.

9 Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing
10 body of a governmental entity may delegate its authority under this
11 chapter regarding an action authorized or required by this chapter
12 to a designated representative, committee, or other person.

13 (b) The governmental entity shall provide notice of the
14 delegation, the limits of the delegation, and the name or title of
15 each person designated under Subsection (a) by rule or in the
16 request for bids, proposals, or qualifications or in an addendum to
17 the request.

18 Sec. 2267.054. RIGHT TO WORK. (a) This section applies to
19 a governmental entity when the governmental entity is engaged in:

- 20 (1) procuring goods or services under this chapter;
- 21 (2) awarding a contract under this chapter; or
- 22 (3) overseeing procurement or construction for a
23 public work or public improvement under this chapter.

24 (b) In engaging in an activity to which this section
25 applies, a governmental entity:

- 26 (1) may not consider whether a person is a member of or
27 has another relationship with any organization; and

1 (2) shall ensure that its bid specifications and any
2 subsequent contract or other agreement do not deny or diminish the
3 right of a person to work because of the person's membership or
4 other relationship status with respect to an organization.

5 Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining
6 the award of a contract under this chapter, the governmental entity
7 may consider:

8 (1) the price;

9 (2) the offeror's experience and reputation;

10 (3) the quality of the offeror's goods or services;

11 (4) the impact on the ability of the governmental
12 entity to comply with rules relating to historically underutilized
13 businesses;

14 (5) the offeror's safety record;

15 (6) the offeror's proposed personnel;

16 (7) whether the offeror's financial capability is
17 appropriate to the size and scope of the project; and

18 (8) any other relevant factor specifically listed in
19 the request for bids, proposals, or qualifications.

20 (b) In determining the award of a contract under this
21 chapter, the governmental entity shall:

22 (1) consider and apply any existing laws, including
23 any criteria, related to historically underutilized businesses;
24 and

25 (2) consider and apply any existing laws, rules, or
26 applicable municipal charters, including laws applicable to local
27 governments, related to the use of women, minority, small, or

1 disadvantaged businesses.

2 Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING
3 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

4 (a) The governing body of a governmental entity that considers a
5 construction contract using a method authorized by this chapter
6 other than competitive bidding must, before advertising, determine
7 which method provides the best value for the governmental entity.

8 (b) The governmental entity shall base its selection among
9 offerors on applicable criteria listed for the particular method
10 used. The governmental entity shall publish in the request for
11 proposals or qualifications the criteria that will be used to
12 evaluate the offerors, and the applicable weighted value for each
13 criterion.

14 (c) The governmental entity shall document the basis of its
15 selection and shall make the evaluations public not later than the
16 seventh day after the date the contract is awarded.

17 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An
18 architect or engineer required to be selected or designated under
19 this chapter has full responsibility for complying with Chapter
20 1051 or 1001, Occupations Code, as applicable.

21 (b) If the selected or designated architect or engineer is
22 not a full-time employee of the governmental entity, the
23 governmental entity shall select the architect or engineer on the
24 basis of demonstrated competence and qualifications as provided by
25 Section 2254.004.

26 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.

27 (a) Independently of the contractor, construction

1 manager-at-risk, or design-build firm, the governmental entity
2 shall provide or contract for the construction materials
3 engineering, testing, and inspection services and the verification
4 testing services necessary for acceptance of the facility by the
5 governmental entity.

6 (b) The governmental entity shall select the services for
7 which it contracts under this section in accordance with Section
8 2254.004.

9 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS
10 REQUIRED. A person who submits a bid, proposal, or qualification to
11 a governmental entity shall seal it before delivery.

12 [Sections 2267.060-2267.100 reserved for expansion]

13 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

14 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE
15 BIDDING. (a) In this chapter, "competitive bidding" is a
16 procurement method by which a governmental entity contracts with a
17 contractor for the construction, alteration, rehabilitation, or
18 repair of a facility by awarding the contract to the lowest
19 responsible bidder.

20 (b) Except as otherwise provided by this chapter or other
21 law, a governmental entity may contract for the construction,
22 alteration, rehabilitation, or repair of a facility only after the
23 entity advertises for bids for the contract in a manner prescribed
24 by law, receives competitive bids, and awards the contract to the
25 lowest responsible bidder.

26 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The
27 governmental entity shall select or designate an architect or

1 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
2 as applicable, to prepare the construction documents required for a
3 project to be awarded by competitive bidding.

4 Sec. 2267.103. PREPARATION OF REQUEST. The governmental
5 entity shall prepare a request for competitive bids that includes
6 construction documents, estimated budget, project scope, estimated
7 project completion date, and other information that a contractor
8 may require to submit a bid.

9 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental
10 entity shall receive, publicly open, and read aloud the names of the
11 offerors and their bids.

12 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the
13 seventh day after the date the contract is awarded, the
14 governmental entity shall document the basis of its selection and
15 shall make the evaluations public.

16 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
17 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
18 specifically provided by this section, Subchapter B, Chapter 271,
19 Local Government Code, does not apply to a competitive bidding
20 process conducted under this chapter. Sections 271.026,
21 271.027(a), and 271.0275, Local Government Code, apply to a
22 competitive bidding process conducted under this chapter by a
23 governmental entity as defined by Section 271.021, Local Government
24 Code.

25 [Sections 2267.107-2267.150 reserved for expansion]

26 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

27 Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE

1 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
2 proposals" is a procurement method by which a governmental entity
3 requests proposals, ranks the offerors, negotiates as prescribed,
4 and then contracts with a general contractor for the construction,
5 rehabilitation, alteration, or repair of a facility.

6 (b) In selecting a contractor through competitive sealed
7 proposals, a governmental entity shall follow the procedures
8 provided by this subchapter.

9 Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The
10 governmental entity shall select or designate an architect or
11 engineer to prepare construction documents for the project.

12 Sec. 2267.153. PREPARATION OF REQUEST. The governmental
13 entity shall prepare a request for competitive sealed proposals
14 that includes construction documents, selection criteria and the
15 weighted value for each criterion, estimated budget, project scope,
16 estimated project completion date, and other information that a
17 contractor may require to respond to the request.

18 Sec. 2267.154. EVALUATION OF OFFERORS. (a) The
19 governmental entity shall receive, publicly open, and read aloud
20 the names of the offerors and any monetary proposals made by the
21 offerors.

22 (b) Not later than the 45th day after the date on which the
23 proposals are opened, the governmental entity shall evaluate and
24 rank each proposal submitted in relation to the published selection
25 criteria.

26 Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental
27 entity shall select the offeror that submits the proposal that

1 offers the best value for the governmental entity based on:

2 (1) the selection criteria in the request for proposal
3 and the weighted value for those criteria in the request for
4 proposal; and

5 (2) its ranking evaluation.

6 (b) The governmental entity shall first attempt to
7 negotiate a contract with the selected offeror. The governmental
8 entity and its architect or engineer may discuss with the selected
9 offeror options for a scope or time modification and any price
10 change associated with the modification.

11 (c) If the governmental entity is unable to negotiate a
12 satisfactory contract with the selected offeror, the governmental
13 entity shall, formally and in writing, end negotiations with that
14 offeror and proceed to the next offeror in the order of the
15 selection ranking until a contract is reached or all proposals are
16 rejected.

17 [Sections 2267.156-2267.200 reserved for expansion]

18 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

19 Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
20 MANAGER-AGENT. (a) In this chapter, the "construction
21 manager-agent method" is a delivery method by which a governmental
22 entity contracts with a construction manager-agent to provide
23 consultation or administrative services during the design and
24 construction phase and to manage multiple contracts with various
25 construction prime contractors.

26 (b) A construction manager-agent is a sole proprietorship,
27 partnership, corporation, or other legal entity that serves as the

1 agent for the governmental entity by providing construction
2 administration and management services described by Subsection (a)
3 for the construction, rehabilitation, alteration, or repair of a
4 facility.

5 (c) A governmental entity may retain a construction
6 manager-agent for assistance in the construction, rehabilitation,
7 alteration, or repair of a facility only as provided by this
8 subchapter.

9 Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION
10 MANAGER-AGENT. The contract between the governmental entity and
11 the construction manager-agent may require the construction
12 manager-agent to provide:

- 13 (1) administrative personnel;
14 (2) equipment necessary to perform duties under this
15 subchapter;
16 (3) on-site management; and
17 (4) other services specified in the contract.

18 Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A
19 construction manager-agent may not:

- 20 (1) self-perform any aspect of the construction,
21 rehabilitation, alteration, or repair of the facility;
22 (2) be a party to a construction subcontract for the
23 construction, rehabilitation, alteration, or repair of the
24 facility; or
25 (3) provide or be required to provide performance and
26 payment bonds for the construction, rehabilitation, alteration, or
27 repair of the facility.

1 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION
2 MANAGER-AGENT. A construction manager-agent represents the
3 governmental entity in a fiduciary capacity.

4 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or
5 before the selection of a construction manager-agent, the
6 governmental entity shall select or designate an architect or
7 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
8 as applicable, to prepare the construction documents for the
9 project.

10 (b) The governmental entity's architect or engineer may not
11 serve, alone or in combination with another person, as the
12 construction manager-agent unless the architect or engineer is
13 hired to serve as the construction manager-agent under a separate
14 or concurrent selection process conducted in accordance with this
15 subchapter. This subsection does not prohibit the governmental
16 entity's architect or engineer from providing customary
17 construction phase services under the architect's or engineer's
18 original professional service agreement in accordance with
19 applicable licensing laws.

20 (c) To the extent that the construction manager-agent's
21 services are defined as part of the practice of architecture or
22 engineering under Chapter 1051 or 1001, Occupations Code, those
23 services must be conducted by a person licensed under the
24 applicable chapter.

25 Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental
26 entity using the construction manager-agent method shall procure,
27 in accordance with applicable law and in any manner authorized by

1 this chapter, a general contractor or trade contractors who will
2 serve as the prime contractor for their specific portion of the work
3 and provide performance and payment bonds to the governmental
4 entity in accordance with applicable laws.

5 Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
6 governmental entity shall select a construction manager-agent on
7 the basis of demonstrated competence and qualifications in the same
8 manner that an architect or engineer is selected under Section
9 2254.004.

10 Sec. 2267.208. INSURANCE. A construction manager-agent
11 selected under this subchapter shall maintain professional
12 liability or errors and omissions insurance in the amount of at
13 least \$1 million for each occurrence.

14 [Sections 2267.209-2267.250 reserved for expansion]

15 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

16 Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
17 MANAGER-AT-RISK. (a) In this chapter, the "construction
18 manager-at-risk method" is a delivery method by which a
19 governmental entity contracts with an architect or engineer for
20 design and construction phase services and contracts separately
21 with a construction manager-at-risk to serve as the general
22 contractor and to provide consultation during the design and
23 construction, rehabilitation, alteration, or repair of a facility.

24 (b) A construction manager-at-risk is a sole
25 proprietorship, partnership, corporation, or other legal entity
26 that assumes the risk for construction, rehabilitation,
27 alteration, or repair of a facility at the contracted price as a

1 general contractor and provides consultation to the governmental
2 entity regarding construction during and after the design of the
3 facility. The contracted price may be a guaranteed maximum price.

4 (c) A governmental entity may use the construction
5 manager-at-risk method in selecting a general contractor for the
6 construction, rehabilitation, alteration, or repair of a facility
7 only as provided by this subchapter.

8 Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or
9 before the selection of a construction manager-at-risk, the
10 governmental entity shall select or designate an architect or
11 engineer to prepare the construction documents for the project.

12 (b) The governmental entity's architect or engineer for a
13 project may not serve, alone or in combination with another person,
14 as the construction manager-at-risk unless the architect or
15 engineer is hired to serve as the construction manager-at-risk
16 under a separate or concurrent selection process conducted in
17 accordance with this subchapter. This subsection does not prohibit
18 the governmental entity's architect or engineer from providing
19 customary construction phase services under the architect's or
20 engineer's original professional service agreement in accordance
21 with applicable licensing laws.

22 Sec. 2267.253. SELECTION PROCESS. (a) The governmental
23 entity shall select the construction manager-at-risk in a one-step
24 or two-step process.

25 (b) The governmental entity shall prepare a single request
26 for proposals, in the case of a one-step process, and an initial
27 request for qualifications, in the case of a two-step process, that

1 includes:

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

4 (2) general information on the project site, project
5 scope, schedule, selection criteria and the weighted value for each
6 criterion, and estimated budget and the time and place for receipt
7 of the proposals or qualifications; and

8 (3) other information that may assist the governmental
9 entity in its selection of a construction manager-at-risk.

10 (c) The governmental entity shall state the selection
11 criteria in the request for proposals or qualifications.

12 (d) If a one-step process is used, the governmental entity
13 may request, as part of the offeror's proposal, proposed fees and
14 prices for fulfilling the general conditions.

15 (e) If a two-step process is used, the governmental entity
16 may not request fees or prices in step one. In step two, the
17 governmental entity may request that five or fewer offerors,
18 selected solely on the basis of qualifications, provide additional
19 information, including the construction manager-at-risk's proposed
20 fee and prices for fulfilling the general conditions.

21 (f) At each step, the governmental entity shall receive,
22 publicly open, and read aloud the names of the offerors. At the
23 appropriate step, the governmental entity shall also read aloud the
24 fees and prices, if any, stated in each proposal as the proposal is
25 opened.

26 (g) Not later than the 45th day after the date on which the
27 final proposals are opened, the governmental entity shall evaluate

1 and rank each proposal submitted in relation to the criteria set
2 forth in the request for proposals.

3 Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental
4 entity shall select the offeror that submits the proposal that
5 offers the best value for the governmental entity based on the
6 published selection criteria and on its ranking evaluation.

7 (b) The governmental entity shall first attempt to
8 negotiate a contract with the selected offeror.

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

15 (d) Not later than the seventh day after the date the
16 contract is awarded, the governmental entity shall make the
17 rankings determined under Section 2267.253(g) public.

18 Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction
19 manager-at-risk shall publicly advertise for bids or proposals and
20 receive bids or proposals from trade contractors or subcontractors
21 for the performance of all major elements of the work other than the
22 minor work that may be included in the general conditions.

23 (b) A construction manager-at-risk may seek to perform
24 portions of the work itself if:

25 (1) the construction manager-at-risk submits its bid
26 or proposal for those portions of the work in the same manner as all
27 other trade contractors or subcontractors; and

1 (2) the governmental entity determines that the
2 construction manager-at-risk's bid or proposal provides the best
3 value for the governmental entity.

4 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The
5 construction manager-at-risk shall review all trade contractor or
6 subcontractor bids or proposals in a manner that does not disclose
7 the contents of the bid or proposal during the selection process to
8 a person not employed by the construction manager-at-risk,
9 architect, engineer, or governmental entity. All bids or proposals
10 shall be made available to the governmental entity on request and to
11 the public after the later of the award of the contract or the
12 seventh day after the date of final selection of bids or proposals.

13 (b) If the construction manager-at-risk reviews, evaluates,
14 and recommends to the governmental entity a bid or proposal from a
15 trade contractor or subcontractor but the governmental entity
16 requires another bid or proposal to be accepted, the governmental
17 entity shall compensate the construction manager-at-risk by a
18 change in price, time, or guaranteed maximum cost for any
19 additional cost and risk that the construction manager-at-risk
20 incurs because of the governmental entity's requirement that
21 another bid or proposal be accepted.

22 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected
23 trade contractor or subcontractor defaults in the performance of
24 its work or fails to execute a subcontract after being selected in
25 accordance with this subchapter, the construction manager-at-risk
26 may itself fulfill, without advertising, the contract requirements
27 or select a replacement trade contractor or subcontractor to

1 fulfill the contract requirements.

2 Sec. 2267.258. PERFORMANCE OR PAYMENT BOND. (a) If a
3 fixed contract amount or guaranteed maximum price has not been
4 determined at the time the contract is awarded, the penal sums of
5 the performance and payment bonds delivered to the governmental
6 entity must each be in an amount equal to the construction budget,
7 as specified in the request for proposals or qualifications.

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

15 [Sections 2267.259-2267.300 reserved for expansion]

16 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

17 Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
18 this chapter, "design-build" is a project delivery method by which
19 a governmental entity contracts with a single entity to provide
20 both design and construction services for the construction,
21 rehabilitation, alteration, or repair of a facility.

22 Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
23 EXCEPTIONS. This subchapter applies only to a facility that is a
24 building or an associated structure, including an electric utility
25 structure. This subchapter does not apply to:

26 (1) a highway, road, street, bridge, underground
27 utility, water supply project, water plant, wastewater plant, water

1 and wastewater distribution or conveyance facility, wharf, dock,
2 airport runway or taxiway, drainage project, or related type of
3 project associated with civil engineering construction; or

4 (2) a building or structure that is incidental to a
5 project that is primarily a civil engineering construction project.

6 Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
7 governmental entity may use the design-build method for the
8 construction, rehabilitation, alteration, or repair of a building
9 or associated structure only as provided by this subchapter. In
10 using that method, the governmental entity shall enter into a
11 single contract with a design-build firm for the design and
12 construction of the building or associated structure.

13 Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm
14 under this subchapter must be a sole proprietorship, partnership,
15 corporation, or other legal entity or team that includes an
16 architect or engineer and a construction contractor.

17 Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
18 REPRESENTATIVE. The governmental entity shall select or designate
19 an architect or engineer independent of the design-build firm to
20 act as the governmental entity's representative for the duration of
21 the project.

22 Sec. 2267.306. PREPARATION OF REQUEST. (a) The
23 governmental entity shall prepare a request for qualifications that
24 includes general information on the project site, project scope,
25 budget, special systems, selection criteria and the weighted value
26 for each criterion, and other information that may assist potential
27 design-build firms in submitting proposals for the project.

1 (b) The governmental entity shall also prepare the design
2 criteria package that includes more detailed information on the
3 project. If the preparation of the design criteria package
4 requires architectural or engineering services that constitute the
5 practice of architecture within the meaning of Chapter 1051,
6 Occupations Code, or the practice of engineering within the meaning
7 of Chapter 1001, Occupations Code, those services shall be provided
8 in accordance with the applicable law.

9 (c) The design criteria package must include a set of
10 documents that provides sufficient information, including criteria
11 for selection, to permit a design-build firm to prepare a response
12 to the governmental entity's request for qualifications and to
13 provide any additional information requested. The design criteria
14 package must specify criteria the governmental entity considers
15 necessary to describe the project and may include, as appropriate,
16 the legal description of the site, survey information concerning
17 the site, interior space requirements, special material
18 requirements, material quality standards, conceptual criteria for
19 the project, special equipment requirements, cost or budget
20 estimates, time schedules, quality assurance and quality control
21 requirements, site development requirements, applicable codes and
22 ordinances, provisions for utilities, parking requirements, and
23 any other requirement.

24 (d) The governmental entity may not require offerors to
25 submit architectural or engineering designs as part of a proposal
26 or a response to a request for qualifications.

27 Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For

1 each design-build firm that responded to the request for
2 qualifications, the governmental entity shall evaluate the firm's
3 experience, technical competence, and capability to perform, the
4 past performance of the firm and members of the firm, and other
5 appropriate factors submitted by the firm in response to the
6 request for qualifications, except that cost-related or
7 price-related evaluation factors are not permitted.

8 (b) Each firm must certify to the governmental entity that
9 each architect or engineer that is a member of the firm was selected
10 based on demonstrated competence and qualifications, in the manner
11 provided by Section 2254.004.

12 (c) The governmental entity shall qualify a maximum of five
13 responders to submit proposals that contain additional information
14 and, if the governmental entity chooses, to interview for final
15 selection.

16 (d) The governmental entity shall evaluate the additional
17 information submitted by the offerors on the basis of the selection
18 criteria stated in the request for qualifications and the results
19 of any interview.

20 (e) The governmental entity may request additional
21 information regarding demonstrated competence and qualifications,
22 considerations of the safety and long-term durability of the
23 project, the feasibility of implementing the project as proposed,
24 the ability of the offeror to meet schedules, or costing
25 methodology. As used in this subsection, "costing methodology"
26 means an offeror's policies on subcontractor markup, definition of
27 general conditions, range of cost for general conditions, policies

1 on retainage, policies on contingencies, discount for prompt
2 payment, and expected staffing for administrative duties. The term
3 does not include a guaranteed maximum price or bid for overall
4 design or construction.

5 (f) The governmental entity shall rank each proposal
6 submitted on the basis of the criteria set forth in the request for
7 qualifications.

8 Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
9 governmental entity shall select the design-build firm that submits
10 the proposal offering the best value for the governmental entity on
11 the basis of the published selection criteria and on its ranking
12 evaluations.

13 (b) The governmental entity shall first attempt to
14 negotiate a contract with the selected firm.

15 (c) If the governmental entity is unable to negotiate a
16 satisfactory contract with the selected firm, the governmental
17 entity shall, formally and in writing, end all negotiations with
18 that firm and proceed to negotiate with the next firm in the order
19 of the selection ranking until a contract is reached or
20 negotiations with all ranked firms end.

21 (d) Not later than the seventh day after the date the
22 contract is awarded, the governmental entity shall make the
23 rankings determined under Section 2267.307(f) public.

24 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After
25 selection of the design-build firm, that firm's architects or
26 engineers shall submit all design elements for review and
27 determination of scope compliance to the governmental entity or the

1 governmental entity's architect or engineer before or concurrently
2 with construction.

3 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The
4 design-build firm shall supply a set of construction documents for
5 the completed project to the governmental entity at the conclusion
6 of construction. The documents must note any changes made during
7 construction.

8 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
9 or performance bond is not required and may not provide coverage for
10 the design portion of the design-build contract with the
11 design-build firm under this subchapter.

12 (b) If a fixed contract amount or guaranteed maximum price
13 has not been determined at the time the design-build contract is
14 awarded, the penal sums of the performance and payment bonds
15 delivered to the governmental entity must each be in an amount equal
16 to the construction budget, as specified in the design criteria
17 package.

18 (c) The design-build firm shall deliver the bonds not later
19 than the 10th day after the date the design-build firm executes the
20 contract unless the design-build firm furnishes a bid bond or other
21 financial security acceptable to the governmental entity to ensure
22 that the design-build firm will furnish the required performance
23 and payment bonds before construction begins.

24 [Sections 2267.312-2267.350 reserved for expansion]

25 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS

26 PROJECTS

27 Sec. 2267.351. DEFINITIONS. In this subchapter:

1 (1) "Civil works project" means:

2 (A) roads, streets, bridges, utilities, water
3 supply projects, water plants, wastewater plants, water
4 distribution and wastewater conveyance facilities, desalination
5 projects, wharves, docks, airport runways and taxiways, storm
6 drainage and flood control projects, or transit projects;

7 (B) types of projects or facilities related to
8 those described by Paragraph (A) and associated with civil
9 engineering construction; and

10 (C) buildings or structures that are incidental
11 to projects or facilities that are described by Paragraphs (A) and
12 (B) and that are primarily civil engineering construction projects.

13 (2) "Design-build firm" means a partnership,
14 corporation, or other legal entity or team that includes an
15 engineer and a construction contractor qualified to engage in civil
16 works construction in Texas.

17 (3) "Design criteria package" means a set of documents
18 that:

19 (A) provides sufficient information to convey
20 the intent, goals, criteria, and objectives of the civil works
21 project; and

22 (B) permits a design-build firm to:

23 (i) assess the scope of work and the risk
24 involved; and

25 (ii) submit a proposal on the project.

26 Sec. 2267.352. APPLICABILITY. This subchapter applies to a
27 governmental entity that:

1 (1) has a population of more than 100,000 within the
2 entity's geographic boundary or service area; or

3 (2) is a board of trustees governed by Chapter 54,
4 Transportation Code.

5 Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:
6 DESIGN-BUILD. (a) A governmental entity may use the design-build
7 method for the construction, rehabilitation, alteration, or repair
8 of a civil works project. In using this method and in entering into
9 a contract for the services of a design-build firm, the contracting
10 governmental entity and the design-build firm shall follow the
11 procedures provided by this subchapter.

12 (b) A contract for a project under this subchapter may cover
13 only a single integrated project. A governmental entity may not
14 enter into a contract for aggregated projects at multiple
15 locations. For purposes of this subsection:

16 (1) if a metropolitan transit authority created under
17 Chapter 451, Transportation Code, enters into a contract for a
18 project involving a bus rapid transit system created under Chapter
19 451, Transportation Code, the bus rapid transit system is a single
20 integrated project; and

21 (2) a water treatment plant, including a desalination
22 plant, that includes treatment facilities, well fields, and
23 pipelines is a single integrated project.

24 (c) A governmental entity shall use the following criteria
25 as a minimum basis for determining the circumstances under which
26 the design-build method is appropriate for a project:

27 (1) the extent to which the entity can adequately

1 define the project requirements;

2 (2) the time constraints for the delivery of the
3 project;

4 (3) the ability to ensure that a competitive
5 procurement can be held; and

6 (4) the capability of the entity to manage and oversee
7 the project, including the availability of experienced personnel or
8 outside consultants who are familiar with the design-build method
9 of project delivery.

10 (d) A governmental entity shall make a formal finding on the
11 criteria described by Subsection (c) before preparing a request for
12 qualifications under Section 2267.357.

13 Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a)
14 Before September 1, 2013:

15 (1) a governmental entity with a population of 500,000
16 or more within the entity's geographic boundary or service area
17 may, under this subchapter, enter into contracts for not more than
18 three projects in any fiscal year; and

19 (2) a municipally owned water utility with a separate
20 governing board appointed by the governing body of a municipality
21 with a population of 500,000 or more may:

22 (A) independently enter into a contract for not
23 more than one civil works project in any fiscal year; and

24 (B) enter into contracts for additional civil
25 works projects in any fiscal year, but not more than the number of
26 civil works projects prescribed by the limit in Subdivision (1) for
27 the municipality, provided that:

1 (i) the additional contracts for the civil
2 works projects entered into by the utility under this paragraph are
3 allocated to the number of contracts the municipality that appoints
4 the utility's governing board may enter under Subdivision (1); and

5 (ii) the governing body of the municipality
6 must approve the contracts.

7 (b) Before September 1, 2015, a governmental entity that has
8 a population of 100,000 or more but less than 500,000 or is a board
9 of trustees governed by Chapter 54, Transportation Code, may enter
10 into contracts under this subchapter for not more than two projects
11 in any fiscal year.

12 (c) After the period described by Subsection (a) or (b):

13 (1) a governmental entity with a population of 500,000
14 or more within the entity's geographic boundary or service area
15 may, under this subchapter, enter into contracts for not more than
16 six projects in any fiscal year;

17 (2) a municipally owned water utility with a separate
18 governing board appointed by the governing body of a municipality
19 with a population of 500,000 or more may:

20 (A) independently enter into contracts for not
21 more than two civil works projects in any fiscal year; and

22 (B) enter into contracts for additional civil
23 works projects in any fiscal year, but not more than the number of
24 civil works projects prescribed by the limit in Subdivision (1) for
25 the municipality, provided that:

26 (i) the additional contracts for the civil
27 works projects entered into by the utility under this paragraph are

1 allocated to the number of contracts the municipality that appoints
2 the utility's governing board may enter under Subdivision (1); and

3 (ii) the governing body of the municipality
4 must approve the contracts; and

5 (3) a governmental entity that has a population of
6 100,000 or more but less than 500,000 or is a board of trustees
7 governed by Chapter 54, Transportation Code, may enter into
8 contracts under this subchapter for not more than four projects in
9 any fiscal year.

10 (d) For purposes of determining the number of eligible
11 projects under this section, a municipally owned water utility with
12 a separate governing board appointed by the governing body of the
13 municipality is considered part of the municipality.

14 Sec. 2267.355. USE OF ENGINEER. (a) The governmental
15 entity shall select or designate an engineer who is independent of
16 the design-build firm to act as its representative for the
17 procurement process and for the duration of the work on the civil
18 works project. The selected or designated engineer has full
19 responsibility for complying with Chapter 1001, Occupations Code.

20 (b) If the engineer is not a full-time employee of the
21 governmental entity, the governmental entity shall select the
22 engineer on the basis of demonstrated competence and qualifications
23 as provided by Section 2254.004.

24 Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.
25 (a) The governmental entity shall provide or contract for,
26 independently of the design-build firm, the following services as
27 necessary for the acceptance of the civil works project by the

1 entity:

- 2 (1) inspection services;
- 3 (2) construction materials engineering and testing;
- 4 and
- 5 (3) verification testing services.

6 (b) The governmental entity shall select the services for
7 which it contracts under this section in accordance with Section
8 2254.004.

9 Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The
10 governmental entity shall prepare a request for qualifications that
11 includes:

- 12 (1) information on the civil works project site;
- 13 (2) project scope;
- 14 (3) project budget;
- 15 (4) project schedule;
- 16 (5) criteria for selection under Section 2267.359 and
17 the weighting of the criteria; and
- 18 (6) other information that may assist potential
19 design-build firms in submitting proposals for the project.

20 (b) The governmental entity shall also prepare a design
21 criteria package as described by Section 2267.358.

22 Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A
23 design criteria package may include, as appropriate:

- 24 (1) budget or cost estimates;
- 25 (2) information on the site;
- 26 (3) performance criteria;
- 27 (4) special material requirements;

- 1 (5) initial design calculations;
- 2 (6) known utilities;
- 3 (7) capacity requirements;
- 4 (8) quality assurance and quality control
- 5 requirements;
- 6 (9) the type, size, and location of structures; and
- 7 (10) notice of any ordinances, rules, or goals adopted
- 8 by the governmental entity relating to awarding contracts to
- 9 historically underutilized businesses.

10 Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The

11 governmental entity shall receive proposals and shall evaluate each

12 offeror's experience, technical competence, and capability to

13 perform, the past performance of the offeror's team and members of

14 the team, and other appropriate factors submitted by the team or

15 firm in response to the request for qualifications, except that

16 cost-related or price-related evaluation factors are not permitted

17 at this stage.

18 (b) Each offeror must:

19 (1) select or designate each engineer that is a member

20 of its team based on demonstrated competence and qualifications, in

21 the manner provided by Section 2254.004; and

22 (2) certify to the governmental entity that each

23 selection or designation was based on demonstrated competence and

24 qualifications, in the manner provided by Section 2254.004.

25 (c) The governmental entity shall qualify offerors to

26 submit additional information and, if the entity chooses, to

27 interview for final selection.

1 Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The
2 governmental entity shall select a design-build firm using a
3 combination of technical and cost proposals as provided by Section
4 2267.361.

5 Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND
6 COST PROPOSALS. (a) A governmental entity shall request proposals
7 from design-build firms identified under Section 2267.359(c). A
8 firm must submit a proposal not later than the 180th day after the
9 date the governmental entity makes a public request for the
10 proposals from the selected firms. The request for proposals must
11 include:

12 (1) a design criteria package;

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

16 (3) detailed instructions for preparing the technical
17 proposal and the items to be included, including a description of
18 the form and level of completeness of drawings expected; and

19 (4) the relative weighting of the technical and price
20 proposals and the formula by which the proposals will be evaluated
21 and ranked.

22 (b) The technical proposal is a component of the proposal
23 under this section.

24 (c) Each proposal must include a sealed technical proposal
25 and a separate sealed cost proposal.

26 (d) The technical proposal must address:

27 (1) project approach;

- 1 (2) anticipated problems;
- 2 (3) proposed solutions to anticipated problems;
- 3 (4) ability to meet schedules;
- 4 (5) conceptual engineering design; and
- 5 (6) other information requested by the governmental
- 6 entity.

7 (e) The governmental entity shall first open, evaluate, and
8 score each responsive technical proposal submitted on the basis of
9 the criteria described in the request for proposals and assign
10 points on the basis of the weighting specified in the request for
11 proposals. The governmental entity may reject as nonresponsive any
12 firm that makes a significant change to the composition of its firm
13 as initially submitted. The governmental entity shall subsequently
14 open, evaluate, and score the cost proposals from firms that
15 submitted a responsive technical proposal and assign points on the
16 basis of the weighting specified in the request for proposals. The
17 governmental entity shall select the design-build firm in
18 accordance with the formula provided in the request for proposals.

19 Sec. 2267.362. NEGOTIATION. After selecting the
20 highest-ranked design-build firm under Section 2267.361, the
21 governmental entity shall first attempt to negotiate a contract
22 with the selected firm. If the governmental entity is unable to
23 negotiate a satisfactory contract with the selected firm, the
24 entity shall, formally and in writing, end all negotiations with
25 that firm and proceed to negotiate with the next firm in the order
26 of the selection ranking until a contract is reached or
27 negotiations with all ranked firms end.

1 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental
2 entity shall assume:

3 (1) all risks and costs associated with:

4 (A) scope changes and modifications, as
5 requested by the governmental entity;

6 (B) unknown or differing site conditions unless
7 otherwise provided by the governmental entity in the request for
8 proposals and final contract;

9 (C) regulatory permitting, if the governmental
10 entity is responsible for those risks and costs by law or contract;
11 and

12 (D) natural disasters and other force majeure
13 events unless otherwise provided by the governmental entity in the
14 request for proposals and final contract; and

15 (2) all costs associated with property acquisition,
16 excluding costs associated with acquiring a temporary easement or
17 work area associated with staging or construction for the project.

18 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

19 (a) Unless a stipend is paid under Subsection (c), the
20 design-build firm retains all rights to the work product submitted
21 in a proposal. The governmental entity may not release or disclose
22 to any person, including the successful offeror, the work product
23 contained in an unsuccessful proposal. The governmental entity
24 shall return all copies of the proposal and other information
25 submitted to an unsuccessful offeror. The governmental entity or
26 its agents may not make use of any unique or nonordinary design
27 element, technique, method, or process contained in the

1 unsuccessful proposal that was not also contained in the successful
2 proposal at the time of the original submittal, unless the entity
3 acquires a license from the unsuccessful offeror.

4 (b) A violation of this section voids the contract for the
5 project entered into by the governmental entity. The governmental
6 entity is liable to any unsuccessful offeror, or any member of the
7 design-build team or its assignee, for one-half of the cost savings
8 associated with the unauthorized use of the work product of the
9 unsuccessful offeror. Any interested party may bring an action for
10 an injunction, declaratory relief, or damages for a violation of
11 this section. A party who prevails in an action under this
12 subsection is entitled to reasonable attorney's fees as approved by
13 the court.

14 (c) The governmental entity may offer an unsuccessful
15 design-build firm that submits a response to the entity's request
16 for additional information under Section 2267.361 a stipend for
17 preliminary engineering costs associated with the development of
18 the proposal. The stipend must be one-half of one percent of the
19 contract amount and must be specified in the initial request for
20 proposals. If the offer is accepted and paid, the governmental
21 entity may make use of any work product contained in the proposal,
22 including the techniques, methods, processes, and information
23 contained in the proposal. The use by the governmental entity of
24 any design element contained in an unsuccessful proposal is at the
25 sole risk and discretion of the entity and does not confer liability
26 on the recipient of the stipend under this subsection.

27 (d) Notwithstanding other law, including Chapter 552, work

1 product contained in an unsuccessful proposal submitted and
2 rejected under this subchapter is confidential and may not be
3 released unless a stipend offer has been accepted and paid as
4 provided by Subsection (c).

5 Sec. 2267.365. COMPLETION OF DESIGN. (a) Following
6 selection of a design-build firm under this subchapter, the firm's
7 engineers shall submit all design elements for review and
8 determination of scope compliance to the governmental entity before
9 or concurrently with construction.

10 (b) An appropriately licensed design professional shall
11 sign and seal construction documents before the documents are
12 released for construction.

13 Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the
14 conclusion of construction, the design-build firm shall supply to
15 the governmental entity a record set of construction documents for
16 the project prepared as provided by Chapter 1001, Occupations Code.

17 Sec. 2267.367. PERFORMANCE OR PAYMENT BOND. (a) A
18 performance or payment bond is not required for the portion of a
19 design-build contract under this section that includes design
20 services only.

21 (b) If a fixed contract amount or guaranteed maximum price
22 has not been determined at the time a design-build contract is
23 awarded, the penal sums of the performance and payment bonds
24 delivered to the governmental entity must each be in an amount equal
25 to the construction budget, if commercially available and
26 practical, as specified in the design criteria package.

27 (c) If the governmental entity awards a design-build

1 contract under Section 2267.362, the design-build firm shall
2 deliver the bonds not later than the 10th day after the date the
3 design-build firm executes the contract unless the design-build
4 firm furnishes a bid bond or other financial security acceptable to
5 the governmental entity to ensure that the design-build firm will
6 furnish the required performance and payment bonds before the
7 commencement of construction.

8 [Sections 2267.368-2267.400 reserved for expansion]

9 SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

10 Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,
11 "job order contracting" is a procurement method used for
12 maintenance, repair, alteration, renovation, remediation, or minor
13 construction of a facility when the work is of a recurring nature
14 but the delivery times, type, and quantities of work required are
15 indefinite.

16 Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
17 EXCEPTIONS. This subchapter applies only to a facility that is a
18 building, the design and construction of which is governed by
19 accepted building codes, or a structure or land, whether improved
20 or unimproved, that is associated with a building. This subchapter
21 does not apply to:

22 (1) a highway, road, street, bridge, utility, water
23 supply project, water plant, wastewater plant, water and wastewater
24 distribution or conveyance facility, wharf, dock, airport runway or
25 taxiway, drainage project, or related type of project associated
26 with civil engineering construction; or

27 (2) a building or structure that is incidental to a

1 project that is primarily a civil engineering construction project.

2 Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
3 FACILITIES. (a) A governmental entity may award job order
4 contracts for the maintenance, repair, alteration, renovation,
5 remediation, or minor construction of a facility if:

6 (1) the work is of a recurring nature but the delivery
7 times are indefinite; and

8 (2) indefinite quantities and orders are awarded
9 substantially on the basis of predescribed and prepriced tasks.

10 (b) The governmental entity shall establish the maximum
11 aggregate contract price when it advertises the proposal.

12 (c) The governing body of a governmental entity shall
13 approve each job, task, or purchase order that exceeds \$500,000.

14 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental
15 entity may establish contractual unit prices for a job order
16 contract by:

17 (1) specifying one or more published construction unit
18 price books and the applicable divisions or line items; or

19 (2) providing a list of work items and requiring the
20 offerors to propose one or more coefficients or multipliers to be
21 applied to the price book or prepriced work items as the price
22 proposal.

23 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
24 governmental entity may use the competitive sealed proposal method
25 under Subchapter D for job order contracts.

26 (b) The governmental entity shall advertise for, receive,
27 and publicly open sealed proposals for job order contracts.

1 (c) The governmental entity may require offerors to submit
2 information in addition to rates, including experience, past
3 performance, and proposed personnel and methodology.

4 Sec. 2267.406. AWARDING OF JOB ORDER CONTRACTS. The
5 governmental entity may award job order contracts to one or more job
6 order contractors in connection with each solicitation of
7 proposals.

8 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order
9 contract may be used to accomplish work only for the governmental
10 entity that awards the contract unless:

11 (1) the solicitation for the job order contract and
12 the contract specifically provide for use by other persons; or

13 (2) the governmental entity enters into an interlocal
14 agreement that provides otherwise.

15 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. (a) If a job
16 order contract or an order issued under the contract requires
17 architectural or engineering services that constitute the practice
18 of architecture within the meaning of Chapter 1051, Occupations
19 Code, or the practice of engineering within the meaning of Chapter
20 1001, Occupations Code, the governmental entity shall select or
21 designate an architect or engineer to prepare the construction
22 documents for the project.

23 (b) Subsection (a) does not apply to a job order contract or
24 an order issued under the contract for industrialized housing,
25 industrialized buildings, or relocatable educational facilities
26 subject to and approved under Chapter 1202, Occupations Code, if
27 the contractor employs the services of an architect or engineer who

1 approves the documents for the project.

2 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a
3 job order contract may not exceed two years. The governmental
4 entity may renew the contract annually for not more than three
5 additional years.

6 Sec. 2267.410. JOB ORDERS. (a) An order for a job or
7 project under a job order contract must be signed by the
8 governmental entity's representative and the contractor.

9 (b) The order may be:

10 (1) a fixed price, lump-sum contract based
11 substantially on contractual unit pricing applied to estimated
12 quantities; or

13 (2) a unit price order based on the quantities and line
14 items delivered.

15 Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The
16 contractor shall provide payment and performance bonds, if required
17 by law, based on the amount or estimated amount of any order.

18 [Sections 2267.412-2267.450 reserved for expansion]

19 SUBCHAPTER J. ENFORCEMENT

20 Sec. 2267.451. VOID CONTRACT. A contract, including a job
21 order, entered into in violation of this chapter is voidable as
22 against public policy.

23 Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
24 chapter may be enforced through an action for declaratory or
25 injunctive relief filed not later than the 10th day after the date
26 on which the contract is awarded.

27 (b) This section does not apply to enforcement of a contract

1 entered into by a state agency. In this subsection, "state agency"
2 has the meaning assigned by Section 2151.002. The term includes the
3 Texas Facilities Commission.

4 SECTION 2.09. Section 252.048, Local Government Code, is
5 amended by adding Subsection (c-1) to read as follows:

6 (c-1) If a change order for a public works contract in a
7 municipality with a population of 500,000 or more involves a
8 decrease or an increase of \$100,000 or less, or a lesser amount as
9 provided by ordinance, the governing body of the municipality may
10 grant general authority to an administrative official of the
11 municipality to approve the change order.

12 SECTION 2.10. Section 271.054, Local Government Code, is
13 amended to read as follows:

14 Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before
15 the governing body of an issuer may enter into a contract requiring
16 an expenditure by or imposing an obligation or liability on the
17 issuer, or on a subdivision of the issuer if the issuer is a county,
18 of more than \$50,000, the governing body must:

19 (1) submit the proposed contract to competitive
20 procurement; or

21 (2) use an alternate method of project delivery
22 authorized by Chapter 2267, Government Code.

23 SECTION 2.11. Section 271.060, Local Government Code, is
24 amended by amending Subsection (b) and adding Subsection (c) to
25 read as follows:

26 (b) The total price of a contract may not be increased by a
27 change order unless provision has been made for the payment of the

1 added cost by the appropriation of current funds or bond funds for
2 that purpose, by the authorization of the issuance of certificates,
3 or by a combination of those procedures.

4 (c) A contract with an [The] original contract price of \$1
5 million or more may not be increased by more than 25 percent. If a
6 change order for a contract with an original contract price of less
7 than \$1 million increases the contract amount to \$1 million or more,
8 subsequent change orders may not increase the revised contract
9 amount by more than 25 percent. [The original price may not be
10 decreased by more than 25 percent without the consent of the
11 contractor.]

12 SECTION 2.12. Section 271.9051(b), Local Government Code,
13 is amended to read as follows:

14 (b) In purchasing under this title any real property,
15 personal property that is not affixed to real property, or
16 services, if a municipality receives one or more competitive sealed
17 bids from a bidder whose principal place of business is in the
18 municipality and whose bid is within five percent of the lowest bid
19 price received by the municipality from a bidder who is not a
20 resident of the municipality, the municipality may enter into a
21 contract for construction services in an amount [an expenditure] of
22 less than \$100,000 or a contract for other purchases in an amount of
23 less than \$500,000 with:

24 (1) the lowest bidder; or

25 (2) the bidder whose principal place of business is in
26 the municipality if the governing body of the municipality
27 determines, in writing, that the local bidder offers the

1 municipality the best combination of contract price and additional
2 economic development opportunities for the municipality created by
3 the contract award, including the employment of residents of the
4 municipality and increased tax revenues to the municipality.

5 SECTION 2.13. Subchapter B, Chapter 223, Transportation
6 Code, is amended by adding Section 223.049 to read as follows:

7 Sec. 223.049. CONTRACT WITH LAND OWNER FOR IMPROVING ACCESS
8 TO LAND. (a) The department may, without complying with the
9 competitive bidding procedures of Subchapter A, contract with an
10 owner of land, including a subdivision, adjacent to a highway that
11 is part of the state highway system to construct an improvement on
12 the highway right-of-way that is directly related to improving
13 access to or from the owner's land.

14 (b) An owner that enters into a contract with the department
15 under this section must:

16 (1) comply with applicable department design and
17 construction standards;

18 (2) comply with all laws, rules, regulations, and
19 ordinances, including environmental requirements, that would be
20 applicable if the department were performing the work;

21 (3) execute a performance and payment bond in
22 accordance with Chapter 2253, Government Code; and

23 (4) make available for inspection by the department
24 all books and other records in the possession of the owner that are
25 related to the project.

26 (c) State and federal funds may not be used for the design,
27 development, financing, or construction of a highway improvement

1 under a contract described by this section.

2 ARTICLE 3. ADDITIONAL EXEMPTIONS

3 SECTION 3.01. Section 44.901, Education Code, is amended by
4 adding Subsection (j) to read as follows:

5 (j) Chapter 2267, Government Code, does not apply to this
6 section.

7 SECTION 3.02. Section 51.927, Education Code, is amended by
8 adding Subsection (k) to read as follows:

9 (k) Chapter 2267, Government Code, does not apply to this
10 section.

11 SECTION 3.03. Section 2166.406, Government Code, is amended
12 by adding Subsection (k) to read as follows:

13 (k) Chapter 2267 does not apply to this section.

14 SECTION 3.04. Chapter 302, Local Government Code, is
15 amended by adding Section 302.007 to read as follows:

16 Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW.

17 Chapter 2267, Government Code, does not apply to this chapter.

18 SECTION 3.05. Subchapter E, Chapter 335, Local Government
19 Code, is amended by adding Section 335.077 to read as follows:

20 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.

21 Chapter 2267, Government Code, does not apply to this chapter.

22 SECTION 3.06. Subchapter Q, Chapter 451, Transportation
23 Code, is amended by adding Section 451.8025 to read as follows:

24 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.

25 Chapter 2267, Government Code, does not apply to this subchapter.

26 SECTION 3.07. Subchapter C, Chapter 452, Transportation
27 Code, is amended by adding Section 452.1095 to read as follows:

1 Government Code [~~Subchapter H or J, Chapter 271~~].

2 SECTION 4.02. Section 252.022(d), Local Government Code, is
3 amended to read as follows:

4 (d) This chapter does not apply to an expenditure described
5 by Section 252.021(a) if the governing body of a municipality
6 determines that a method described by Chapter 2267, Government Code
7 [~~Subchapter H, Chapter 271~~], provides a better value for the
8 municipality with respect to that expenditure than the procedures
9 described in this chapter and the municipality adopts and uses a
10 method described in that subchapter with respect to that
11 expenditure.

12 SECTION 4.03. Sections 252.043(d-1) and (e), Local
13 Government Code, are amended to read as follows:

14 (d-1) A contract for construction of a project described by
15 Subsection (d) that requires an expenditure of \$1.5 million or less
16 may be awarded using the competitive sealed proposal procedure
17 prescribed by Subchapter D, Chapter 2267, Government Code [~~Section~~
18 ~~271.116~~].

19 (e) If the competitive sealed bidding requirement applies
20 to the contract for construction of a facility, as that term is
21 defined by Section 2267.001, Government Code [~~Section 271.111~~], the
22 contract must be awarded to the lowest responsible bidder or
23 awarded under the method described by Chapter 2267, Government Code
24 [~~Subchapter H, Chapter 271~~].

25 SECTION 4.04. Sections 262.023(a) and (b-1), Local
26 Government Code, are amended to read as follows:

27 (a) Before a county may purchase one or more items under a

1 contract that will require an expenditure exceeding \$50,000, the
2 commissioners court of the county must:

3 (1) comply with the competitive bidding or competitive
4 proposal procedures prescribed by this subchapter;

5 (2) use the reverse auction procedure, as defined by
6 Section 2155.062(d), Government Code, for purchasing; or

7 (3) comply with a method described by Chapter 2267,
8 Government Code [~~Subchapter H, Chapter 271~~].

9 (b-1) A county that complies with a method described by
10 Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~], as
11 provided by Subsection (a)(3), to enter into a contract for which
12 payment will be made through anticipation notes authorized by
13 Chapter 1431, Government Code, may not issue anticipation notes for
14 the payment of that contract in an amount that exceeds the lesser
15 of:

16 (1) 20 percent of the county's budget for the fiscal
17 year in which the county enters into the contract; or

18 (2) \$10 million.

19 SECTION 4.05. Section 1002.110, Special District Local Laws
20 Code, is amended to read as follows:

21 Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the
22 construction of public works, the district has all of the powers and
23 duties conferred on a municipality under Chapter 2267, [~~Subchapter~~
24 ~~H, Chapter 271, Local~~] Government Code, with respect to the
25 construction of a facility. To the extent of any conflict, this
26 section prevails over any other law relating to the construction of
27 public works engaged in by the district.

1 SECTION 4.06. Section 1024.105(b), Special District Local
2 Laws Code, is amended to read as follows:

3 (b) The board may act as a governmental entity under Chapter
4 2267, [~~Subchapter H, Chapter 271, Local~~] Government Code, for
5 purposes of using the procurement procedures authorized by that
6 chapter. For purposes of this subsection, notice under Section
7 2267.052(c), [~~271.112(d), Local~~] Government Code, must be provided
8 by the district in the same manner as provided for a conservation
9 and reclamation district created under Section 59, Article XVI,
10 Texas Constitution.

11 SECTION 4.07. Section 366.185(d-1), Transportation Code,
12 is amended to read as follows:

13 (d-1) The rules adopted under Subsection (d) may not
14 materially conflict with the design-build procedures provided by
15 Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]
16 Government Code, and shall provide materially similar injunctive
17 and declaratory action enforcement rights regarding the improper
18 disclosure or use of unique or nonordinary information as provided
19 in that subchapter.

20 SECTION 4.08. Section 370.314(b), Transportation Code, is
21 amended to read as follows:

22 (b) Procedures adopted under Subsection (a) may not
23 materially conflict with the design-build procedures provided by
24 Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]
25 Government Code.

26 SECTION 4.09. Sections 460.406(c) and (d), Transportation
27 Code, are amended to read as follows:

1 (c) The board of directors may authorize the negotiation of
2 a contract without competitive sealed bids or proposals if:

3 (1) the aggregate amount involved in the contract is
4 \$25,000 or less;

5 (2) the contract is for construction for which not
6 more than one bid or proposal is received;

7 (3) the contract is for services or property for which
8 there is only one source or for which it is otherwise impracticable
9 to obtain competition;

10 (4) the contract is to respond to an emergency for
11 which the public exigency does not permit the delay incident to the
12 competitive process;

13 (5) the contract is for personal or professional
14 services or services for which competitive bidding is precluded by
15 law;

16 (6) the contract, without regard to form and which may
17 include bonds, notes, loan agreements, or other obligations, is for
18 the purpose of borrowing money or is a part of a transaction
19 relating to the borrowing of money, including:

20 (A) a credit support agreement, such as a line or
21 letter of credit or other debt guaranty;

22 (B) a bond, note, debt sale or purchase, trustee,
23 paying agent, remarketing agent, indexing agent, or similar
24 agreement;

25 (C) an agreement with a securities dealer,
26 broker, or underwriter; and

27 (D) any other contract or agreement considered by

1 the board of directors to be appropriate or necessary in support of
2 the authority's financing activities;

3 (7) the contract is for work that is performed and paid
4 for by the day as the work progresses;

5 (8) the contract is for the purchase of land or a
6 right-of-way;

7 (9) the contract is for the purchase of personal
8 property sold:

9 (A) at an auction by a state licensed auctioneer;

10 (B) at a going out of business sale held in
11 compliance with Subchapter F, Chapter 17, Business & Commerce Code;
12 or

13 (C) by a political subdivision of this state, a
14 state agency, or an entity of the federal government;

15 (10) the contract is for services performed by blind
16 or severely disabled persons;

17 (11) the contract is for the purchase of electricity;
18 or

19 (12) the contract is one awarded for alternate project
20 delivery under Subchapters E, F, and G, Chapter 2267, [Sections
21 271.117-271.119, Local] Government Code.

22 (d) For the purposes of entering into a contract authorized
23 by Subsection (c)(12), an authority is considered a "governmental
24 entity" as described [~~defined~~] by Section 2267.002, [271.111,
25 ~~Local]~~ Government Code.

26 ARTICLE 5. REPEALER

27 SECTION 5.01. The following are repealed:

- 1 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,
2 44.039, 44.040, and 44.041, Education Code;
- 3 (2) Sections 2166.2511, 2166.2526, 2166.2531,
4 2166.2532, 2166.2533, and 2166.2535, Government Code;
- 5 (3) Subchapters H and J, Chapter 271, Local Government
6 Code; and
- 7 (4) Section 431.101(e), Transportation Code.

8 ARTICLE 6. TRANSITION; EFFECTIVE DATE

9 SECTION 6.01. (a) The changes in law made by this Act apply
10 only to a contract or construction project for which a governmental
11 entity first advertises or otherwise requests bids, proposals,
12 offers, or qualifications, or makes a similar solicitation, on or
13 after the effective date of this Act.

14 (b) A contract or construction project for which a
15 governmental entity first advertises or otherwise requests bids,
16 proposals, offers, or qualifications, or makes a similar
17 solicitation, before the effective date of this Act is governed by
18 the law as it existed immediately before the effective date of this
19 Act, and that law is continued in effect for that purpose.

20 SECTION 6.02. This Act takes effect September 1, 2011.

House Bill 628
Senate Amendments
Section-by-Section Analysis
House Conferees: Callegari (Chair) | Hunter | King, Phil | Lucio III | Smith, Wayne
Senate Conferees: Jackson (Chair) | Duncan | Fraser | Seliger | Van de Putte

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS	ARTICLE 1. Same as House version.	ARTICLE 1. Same as House version.
SECTION 1.01. Section 2253.021, Government Code, is amended by adding Subsection (h) to read as follows: <u>(h) A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under this section. In this subsection, "reverse auction procedure" has the meaning assigned by Section 2155.062 or a procedure similar to that described by Section 2155.062.</u>	SECTION 1.01. Same as House version.	SECTION 1.01. Same as House version.
ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES	ARTICLE 2. Same as House version.	ARTICLE 2. Same as House version.
SECTION 2.01. Section 11.168, Education Code, is amended to read as follows: Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR CERTAIN PURPOSES; <u>EXCEPTION.</u> (a) Except as provided by <u>Subsection (b) or</u> Section 45.109(a-1) or (a-2), the board of trustees of a school district may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district. <u>(b) This section does not prohibit the board of trustees of a school district from entering into an agreement for the design.</u>	SECTION 2.01. Same as House version.	SECTION 2.01. Same as House version.

House Bill 628

Senate Amendments

Section-by-Section Analysis

House Conferees: Callegari (Chair) | Hunter | King, Phil | Lucio III | Smith, Wayne

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HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. Benefits to real property owned or leased by the district include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the real property owned or leased by the district.

SECTION 2.02. Sections 44.031(a), (b), and (f), Education Code, are amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract for services other than construction services;
- (5) a method provided by Chapter 2267, Government Code, for construction services ~~[a design/build contract;~~
- ~~[(6) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;~~
- ~~[(7) a job order contract for the minor construction, repair,~~

SECTION 2.02. Sections 44.031(a), (b), and (f), Education Code, are amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2267, Government Code, for construction services ~~[a design/build contract;~~
- ~~[(6) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;~~
- ~~[(7) a job order contract for the minor construction, repair,~~

SECTION 2.02. Same as Senate version.

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~~rehabilitation, or alteration of a facility];~~

(6) ~~[(8)]~~ the reverse auction procedure as defined by Section 2155.062(d), Government Code; or

(7) ~~[(9)]~~ the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district shall consider:

(1) the purchase price;

(2) the reputation of the vendor and of the vendor's goods or services;

(3) the quality of the vendor's goods or services;

(4) the extent to which the goods or services meet the district's needs;

(5) the vendor's past relationship with the district;

(6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;

(7) the total long-term cost to the district to acquire the vendor's goods or services; ~~[and]~~

(8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:

(A) has its principal place of business in this state; or

(B) employs at least 500 persons in this state; and

(9) any other relevant factor specifically listed in the request for bids or proposals.

(f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A school district may, at its option, contract for professional services

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~~rehabilitation, or alteration of a facility];~~

(6) ~~[(8)]~~ the reverse auction procedure as defined by Section 2155.062(d), Government Code; or

(7) ~~[(9)]~~ the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district shall consider:

(1) the purchase price;

(2) the reputation of the vendor and of the vendor's goods or services;

(3) the quality of the vendor's goods or services;

(4) the extent to which the goods or services meet the district's needs;

(5) the vendor's past relationship with the district;

(6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;

(7) the total long-term cost to the district to acquire the vendor's goods or services; ~~[and]~~

(8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:

(A) has its principal place of business in this state; or

(B) employs at least 500 persons in this state; and

(9) any other relevant factor specifically listed in the request for bids or proposals.

(f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A school district may, at its option, contract for professional services

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rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.
[FA1(1)]

SECTION 2.03. Subchapter B, Chapter 44, Education Code, is amended by adding Sections 44.0351 and 44.0352 to read as follows:

SECTION 2.03. Same as House version.

SECTION 2.03. Same as House version.

Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a vendor as authorized by Section 44.031(a)(1).

(b) Except as provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process under this subchapter.

(c) A school district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Section 44.031(b).

Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In selecting a vendor through competitive sealed proposals as authorized by Section 44.031(a)(2), a school district shall follow the procedures prescribed by this section.

(b) The district shall prepare a request for competitive sealed

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proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(c) The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(d) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(e) In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

SECTION 2.04. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.0411 to read as follows:

Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or specifications is necessary after the performance of a

SECTION 2.04. Same as House version.

SECTION 2.04. Same as House version.

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contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

(c) The district may grant general authority to an administrative official to approve the change orders.

(d) A contract with an original contract price of \$1 million or more may not be increased under this section by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

SECTION 2.05. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.0111 to read as follows:

Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL FACILITY. (a) In this section:

(1) "Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

(2) "State's share" means an amount equal to the district's net

SECTION 2.05. Same as House version.

SECTION 2.05. Same as House version.

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proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under this subchapter used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

(b) A school district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter shall provide the commissioner with written notice of the action.

(c) The commissioner may join in the action on behalf of the state to protect the state's share in the action.

(d) A school district shall use the net proceeds from an action brought by the district for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Section 46.008 applies to the repair.

(e) The state's share is state property. The school district shall send to the comptroller any portion of the state's share not used by the school district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Section 42.258 applies to the state's share under this subsection.

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SECTION 2.06. Section 2155.502(c), Government Code, is amended to read as follows:

(c) The commission may not list a multiple award contract on a schedule developed under Subsection (a) if the goods or services provided by that contract:

- (1) are available from only one vendor;
- (2) are telecommunications services, facilities, or equipment; [ø]
- (3) are commodity items as defined by Section 2157.068(a);
or
- (4) are engineering services as described by Section 1001.003, Occupations Code, or architectural services as described by Section 1051.001, Occupations Code.

SECTION 2.06. Same as House version.

SECTION 2.06. Same as House version.

SECTION 2.07. Section 2166.2525, Government Code, is amended to read as follows:

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The ~~[commission shall adopt rules that determine the circumstances for use of each]~~ method of contracting allowed under this subchapter for design and construction services is any method provided by Chapter 2267. ~~[In developing the rules, the commission shall solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.]~~

SECTION 2.07. Same as House version.

SECTION 2.07. Same as House version.

SECTION 2.08. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2267 to read as follows:

CHAPTER 2267. CONTRACTING AND DELIVERY

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CHAPTER 2267. CONTRACTING AND DELIVERY

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.

(2) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.

(3) "Facility" means, unless otherwise specifically provided, an improvement to real property.

(4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

(5) "General contractor" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a facility at the contracted price.

(6) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public work contract made by a governmental entity authorized by state law to make a public work contract, including:

(1) a state agency as defined by Section 2151.002, including the Texas Facilities Commission;

(2) a local government, including:

(A) a county;

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SUBCHAPTER A. GENERAL PROVISIONS

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(2) a local government, including:

(A) a county;

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SUBCHAPTER A. GENERAL PROVISIONS

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(4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

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(2) a local government, including:

(A) a county;

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(B) a municipality;
(C) a school district;
(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and
(E) any other political subdivision of this state;
(3) a public junior college as defined by Section 61.003, Education Code; and
(4) a board of trustees governed by Chapter 54, Transportation Code.
Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.
(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.
(c) This chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section 252.022(c), Local Government Code, that:
(1) requires the use of competitive bidding or competitive sealed proposals; or
(2) prescribes a design-build procurement procedure that conflicts with this chapter.
(d) This chapter does not prevail over any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services, or to procurement of construction services pursuant to Section 49.273, Water

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(B) a municipality;
(C) a school district;
(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and
(E) any other political subdivision of this state;
(3) a public junior college as defined by Section 61.003, Education Code; and
(4) a board of trustees governed by Chapter 54, Transportation Code.
Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.
(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.
(c) This chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section 252.022(c), Local Government Code, that:
(1) requires the use of competitive bidding or competitive sealed proposals; or
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(B) a municipality;
(C) a school district;
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Code, that applies to a river authority or to a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, unless the governing body of the river authority or conservation and reclamation district elects to permit this chapter to supersede the law, rule, or regulation.

(e) This chapter does not prevail over a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of a river authority or of a conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, that owns electric generation capacity in excess of 2,500 megawatts, except with respect to Subchapter H.

Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

- (1) a contract entered into by the Texas Department of Transportation; or
- (2) a project that receives money from a state or federal highway fund.

Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education," "public junior college," and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) This chapter applies to a public junior college but does not apply to:

- (1) any other institution of higher education; or
- (2) a university system.

Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES. This chapter does not apply to a regional tollway authority under Chapter 366, Transportation Code.

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Code, that applies to a river authority or to a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, unless the governing body of the river authority or conservation and reclamation district elects to permit this chapter to supersede the law, rule, or regulation.

(e) This chapter does not prevail over a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of a river authority or of a conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, that owns electric generation capacity in excess of 2,500 megawatts, except with respect to Subchapter H.

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Sec. 2267.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to an improvement project undertaken by or through a local government corporation exempt from competitive bidding requirements or restrictions under Section 431.110, Transportation Code.

Sec. 2267.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES. This chapter does not apply to a regional mobility authority under Chapter 370, Transportation Code.

Sec. 2267.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This chapter does not apply to a project of a county under Chapter 284, Transportation Code, unless the county adopts an order electing to be governed by this chapter for a project to be developed by the county under Chapter 284.

Sec. 2267.010. EXEMPTION: COORDINATED COUNTY TRANSPORTATION AUTHORITY. This chapter does not apply to a coordinated county transportation authority under Chapter 460, Transportation Code.

[Sections 2267.011-2267.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2267.051. RULES. A governmental entity may adopt rules as necessary to implement this chapter.

Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

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(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

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Sec. 2267.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to an improvement project undertaken by or through a local government corporation exempt from competitive bidding requirements or restrictions under Section 431.110, Transportation Code.

Sec. 2267.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES. This chapter does not apply to a regional mobility authority under Chapter 370, Transportation Code.

Sec. 2267.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This chapter does not apply to a project of a county under Chapter 284, Transportation Code, unless the county adopts an order electing to be governed by this chapter for a project to be developed by the county under Chapter 284.

Sec. 2267.010. EXEMPTION: COORDINATED COUNTY TRANSPORTATION AUTHORITY. This chapter does not apply to a coordinated county transportation authority under Chapter 460, Transportation Code.

[Sections 2267.011-2267.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2267.051. RULES. A governmental entity may adopt rules as necessary to implement this chapter.

Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

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(c) For a contract entered into by a municipality, river authority, conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority under any of the methods provided by this chapter, the municipality, river authority, conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located. In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

(d) For a contract entered into by a county under any of the methods provided by this chapter, the county shall publish

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- (1) posted at the courthouse door of the county; and
- (2) published in a newspaper of general circulation in the nearest county.

Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Sec. 2267.054. RIGHT TO WORK. (a) This section applies to a governmental entity when the governmental entity is engaged in:

- (1) procuring goods or services under this chapter;
- (2) awarding a contract under this chapter; or
- (3) overseeing procurement or construction for a public work or public improvement under this chapter.

(b) In engaging in an activity to which this section applies, a governmental entity:

- (1) may not consider whether a person is a member of or has another relationship with any organization; and

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notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

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(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining the award of a contract under this chapter, the governmental entity may consider:

- (1) the price;
- (2) the offeror's experience and reputation;
- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;
- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

(b) In determining the award of a contract under this chapter, the governmental entity shall:

- (1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and
- (2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

(a) The governing body of a governmental entity that

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(b) The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. The governmental entity shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors, and the applicable weighted value for each criterion.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES.

(a) An architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1051 or 1001, Occupations Code, as applicable.

(b) If the selected or designated architect or engineer is not a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

Sec. 2267.058. USE OF OTHER PROFESSIONAL

SERVICES. (a) Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for

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which it contracts under this section in accordance with Section 2254.004.

Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS REQUIRED. A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery.

[Sections 2267.060-2267.100 reserved for expansion]

SUBCHAPTER C. COMPETITIVE BIDDING METHOD

Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE BIDDING. (a) In this chapter, "competitive bidding" is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

(b) Except as otherwise provided by this chapter or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

Sec. 2267.103. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

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Sec. 2267.104. EVALUATION OF OFFERORS. The governmental entity shall receive, publicly open, and read aloud the names of the offerors and their bids.

Sec. 2267.105. SELECTION OF OFFEROR. Not later than the 10th business day after the date the contract is awarded, the governmental entity shall document the basis of its selection and shall make the evaluations public.

Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise specifically provided by this section, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process conducted under this chapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process conducted under this chapter by a governmental entity as defined by Section 271.021, Local Government Code.

[Sections 2267.107-2267.150 reserved for expansion]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE SEALED PROPOSALS. (a) In this chapter, "competitive sealed proposals" is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

(b) In selecting a contractor through competitive sealed proposals, a governmental entity shall follow the procedures provided by this subchapter.

Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The

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Sec. 2267.153. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

Sec. 2267.154. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

(b) Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on:

(1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and

(2) its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

(c) If the governmental entity is unable to negotiate a

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Sec. 2267.153. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

Sec. 2267.154. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

(b) Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on:

(1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and

(2) its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

(c) If the governmental entity is unable to negotiate a

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satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

[Sections 2267.156-2267.200 reserved for expansion]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) In this chapter, the "construction manager-agent method" is a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services described by Subsection (a) for the construction, rehabilitation, alteration, or repair of a facility.

(c) A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION MANAGER-AGENT. The contract between the governmental entity and the construction manager-agent may require the construction manager-agent to provide:

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- (1) administrative personnel;
- (2) equipment necessary to perform duties under this subchapter;
- (3) on-site management; and
- (4) other services specified in the contract.

Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A construction manager-agent may not:

- (1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;

- (2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility;

or

- (3) provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT. A construction manager-agent represents the governmental entity in a fiduciary capacity.

Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not

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prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) To the extent that the construction manager-agent's services are defined as part of the practice of architecture or engineering under Chapter 1051 or 1001, Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the governmental entity in accordance with applicable laws.

Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Section 2254.004.

Sec. 2267.208. INSURANCE. A construction manager-agent selected under this subchapter shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

[Sections 2267.209-2267.250 reserved for expansion]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this

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chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

(c) A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer for a project may not serve, alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction

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phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

Sec. 2267.253. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, 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) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and

(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.

(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive,

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publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

(g) Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, 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 governmental entity shall make the rankings determined under Section 2267.253(g) public.

Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

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(b) A construction manager-at-risk may seek to perform portions of the work itself if:

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

(2) the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after

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being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Sec. 2267.258. 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, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications.

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

[Sections 2267.259-2267.300 reserved for expansion]

SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only

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to a facility that is a building or an associated structure, including an electric utility structure. This subchapter does not apply to:

(1) a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm under this subchapter must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE. The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project.

Sec. 2267.306. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for qualifications

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that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, those services shall be provided in accordance with the applicable law.

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

(d) The governmental entity may not require offerors to submit architectural or engineering designs as part of a

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proposal or a response to a request for qualifications.

Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

(b) Each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection.

(d) The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

(e) The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage,

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policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

(f) The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM.

(a) The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

(b) The governmental entity shall first attempt to negotiate a contract with the selected firm.

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

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2267.307(f) public.

Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After selection of the design-build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer before or concurrently with construction.

Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS.

The design-build firm shall supply a set of construction

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documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction.

Sec. 2267.311. PERFORMANCE OR PAYMENT BOND.

(a) A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under this subchapter.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package.

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[Sections 2267.312-2267.350 reserved for expansion]

SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 2267.351. DEFINITIONS. In this subchapter:

(1) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

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(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil works construction in Texas.

(3) "Design criteria package" means a set of documents that:

(A) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and

(B) permits a design-build firm to:

(i) assess the scope of work and the risk involved; and

(ii) submit a proposal on the project.

Sec. 2267.352. APPLICABILITY. This subchapter applies to a governmental entity that:

(1) has a population of more than 100,000 within the entity's geographic boundary or service area; or

(2) is a board of trustees governed by Chapter 54, Transportation Code.

Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS: DESIGN-BUILD. (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.

(b) A contract for a project under this subchapter may cover

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only a single integrated project. A governmental entity may not enter into a contract for aggregated projects at multiple locations. For purposes of this subsection:

(1) if a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a bus rapid transit system created under Chapter 451, Transportation Code, the bus rapid transit system is a single integrated project; and

(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.

(c) A governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define the project requirements;

(2) the time constraints for the delivery of the project;

(3) the ability to ensure that a competitive procurement can be held; and

(4) the capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.

(d) A governmental entity shall make a formal finding on the criteria described by Subsection (c) before preparing a request for qualifications under Section 2267.357.

Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a) Before September 1, 2013:

(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more

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only a single integrated project. A governmental entity may not enter into a contract for aggregated projects at multiple locations. For purposes of this subsection:

(1) if a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a bus rapid transit system created under Chapter 451, Transportation Code, the bus rapid transit system is a single integrated project; and

(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.

(c) A governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define the project requirements;

(2) the time constraints for the delivery of the project;

(3) the ability to ensure that a competitive procurement can be held; and

(4) the capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.

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than three projects in any fiscal year; and
(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:
(A) independently enter into a contract for not more than one civil works project in any fiscal year; and
(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:
(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and
(ii) the governing body of the municipality must approve the contracts.
(b) Before September 1, 2015, a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than two projects in any fiscal year.
(c) After the period described by Subsection (a) or (b):
(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;
(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:
(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

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than three projects in any fiscal year; and
(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:
(A) independently enter into a contract for not more than one civil works project in any fiscal year; and
(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:
(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and
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(b) Before September 1, 2015, a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than two projects in any fiscal year.
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(c) After the period described by Subsection (a) or (b):
(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;
(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:
(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

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(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts; and

(3) a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than four projects in any fiscal year.

(d) For purposes of determining the number of eligible projects under this section, a municipally owned water utility with a separate governing board appointed by the governing body of the municipality is considered part of the municipality.

Sec. 2267.355. USE OF ENGINEER. (a) The governmental entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The selected or designated engineer has full responsibility for complying with Chapter 1001, Occupations Code.

(b) If the engineer is not a full-time employee of the governmental entity, the governmental entity shall select the engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

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(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

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Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the civil works project by the entity:

- (1) inspection services;
- (2) construction materials engineering and testing; and
- (3) verification testing services.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The governmental entity shall prepare a request for qualifications that includes:

- (1) information on the civil works project site;
- (2) project scope;
- (3) project budget;
- (4) project schedule;
- (5) criteria for selection under Section 2267.359 and the weighting of the criteria; and
- (6) other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare a design criteria package as described by Section 2267.358.

Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A design criteria package may include, as appropriate:

- (1) budget or cost estimates;
- (2) information on the site;
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(5) initial design calculations;
(6) known utilities;
(7) capacity requirements;
(8) quality assurance and quality control requirements;
(9) the type, size, and location of structures; and
(10) notice of any ordinances, rules, or goals adopted by the governmental entity relating to awarding contracts to historically underutilized businesses.
Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The governmental entity shall receive proposals and shall evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted at this stage.
(b) Each offeror must:
(1) select or designate each engineer that is a member of its team based on demonstrated competence and qualifications, in the manner provided by Section 2254.004; and
(2) certify to the governmental entity that each selection or designation was based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.
(c) The governmental entity shall qualify offerors to submit additional information and, if the entity chooses, to interview for final selection.
Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The governmental entity shall select a design-build firm using a combination of technical and cost proposals as provided by Section 2267.361.
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TECHNICAL AND COST PROPOSALS. (a) A governmental entity shall request proposals from design-build firms identified under Section 2267.359(c). A firm must submit a proposal not later than the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms. The request for proposals must include:

- (1) a design criteria package;
- (2) if the project site is identified, a geotechnical baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal;
- (3) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and
- (4) the relative weighting of the technical and price proposals and the formula by which the proposals will be evaluated and ranked.

(b) The technical proposal is a component of the proposal under this section.

(c) Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

- (1) project approach;
- (2) anticipated problems;
- (3) proposed solutions to anticipated problems;
- (4) ability to meet schedules;
- (5) conceptual engineering design; and
- (6) other information requested by the governmental entity.

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

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Sec. 2267.362. NEGOTIATION. After selecting the highest-ranked design-build firm under Section 2267.361, the governmental entity shall first attempt to negotiate a contract with the selected firm. If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Sec. 2267.363. ASSUMPTION OF RISKS. The governmental entity shall assume:

- (1) all risks and costs associated with:
- (A) scope changes and modifications, as requested by the governmental entity;
- (B) unknown or differing site conditions unless otherwise provided by the governmental entity in the request for proposals and final contract;
- (C) regulatory permitting, if the governmental entity is responsible for those risks and costs by law or contract; and

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(D) natural disasters and other force majeure events unless otherwise provided by the governmental entity in the request for proposals and final contract; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.

(b) A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

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(D) natural disasters and other force majeure events unless otherwise provided by the governmental entity in the request for proposals and final contract; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.

(b) A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

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(c) The governmental entity may offer an unsuccessful design-build firm that submits a response to the entity's request for additional information under Section 2267.361 a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.

(d) Notwithstanding other law, including Chapter 552, work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).

Sec. 2267.365. COMPLETION OF DESIGN. (a) Following selection of a design-build firm under this subchapter, the firm's engineers shall submit all design elements for review and determination of scope compliance to the governmental entity before or concurrently with construction.

(b) An appropriately licensed design professional shall sign and seal construction documents before the documents are released for construction.

Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the conclusion of construction, the design-build firm shall supply to the governmental entity a record set of construction documents for the project prepared as provided by Chapter

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1001, Occupations Code.

Sec. 2267.367. PERFORMANCE OR PAYMENT BOND.

(a) A performance or payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, if commercially available and practical, as specified in the design criteria package.

(c) If the governmental entity awards a design-build contract under Section 2267.362, the design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before the commencement of construction.

[Sections 2267.368-2267.400 reserved for expansion]

SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building, the design and construction of

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1001, Occupations Code.

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which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This subchapter does not apply to:

(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:

(1) the work is of a recurring nature but the delivery times are indefinite; and

(2) indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.

(c) The governing body of a governmental entity shall approve each job, task, or purchase order that exceeds \$500,000.

Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied

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to the price book or prepriced work items as the price proposal.

Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A governmental entity may use the competitive sealed proposal method under Subchapter D for job order contracts.

(b) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(c) The governmental entity may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

Sec. 2267.406. AWARDING OF JOB ORDER CONTRACTS. The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order contract may be used to accomplish work only for the governmental entity that awards the contract unless:

(1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or

(2) the governmental entity enters into an interlocal agreement that provides otherwise.

Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

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Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years.

Sec. 2267.410. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

- (1) a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or
- (2) a unit price order based on the quantities and line items delivered.

Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

[Sections 2267.412-2267.450 reserved for expansion]

SUBCHAPTER J. ENFORCEMENT

Sec. 2267.451. VOID CONTRACT. A contract, including a job order, entered into in violation of this chapter is voidable as against public policy.

Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th

(b) Subsection (a) does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings or relocatable educational facilities subject to and approved under Chapter 1202, Occupations Code, if the contractor employs the services of an architect or engineer of record who approves the documents for the project.

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day after the date on which the contract is awarded.
(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Facilities Commission.

SECTION 2.09. Section 252.048, Local Government Code, is amended by adding Subsection (c-1) to read as follows:
(c-1) If a change order for a public works contract in a municipality with a population of 500,000 or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

SECTION 2.10. Section 271.054, Local Government Code, is amended to read as follows:
Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before the governing body of an issuer may enter into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, of more than \$50,000, the governing body must:
(1) submit the proposed contract to competitive procurement;
or
(2) use an alternate method of project delivery authorized by Chapter 2267, Government Code.

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day after the date on which the contract is awarded.
(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Facilities Commission.
[FA1(2);FA3(1),(2)]

SECTION 2.09. Same as House version.

SECTION 2.10. Same as House version.

CONFERENCE

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(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Facilities Commission.
[FA1(2);FA3(1),(2)]

SECTION 2.09. Same as House version.

SECTION 2.10. Same as House version.

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SECTION 2.11. Section 271.060, Local Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) A contract with an [The] original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent. [The original price may not be decreased by more than 25 percent without the consent of the contractor.]

No equivalent provision.

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SECTION 2.11. Same as House version.

SECTION 2.12. Section 271.9051(b), Local Government Code, is amended to read as follows:

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount [an expenditure] of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with:

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SECTION 2.11. Same as House version.

Same as Senate version. [FA4]

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- (1) the lowest bidder; or
- (2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality. [FA4]

SECTION 2.12. Subchapter B, Chapter 223, Transportation Code, is amended by adding Section 223.049 to read as follows:

Sec. 223.049. CONTRACT WITH LAND OWNER FOR IMPROVING ACCESS TO LAND. (a) The department may, without complying with the competitive bidding procedures of Subchapter A, contract with an owner of land, including a subdivision, adjacent to a highway that is part of the state highway system to construct an improvement on the highway right-of-way that is directly related to improving access to or from the owner's land.

(b) An owner that enters into a contract with the department under this section must:

(1) comply with applicable department design and construction standards;

(2) comply with all laws, rules, regulations, and ordinances, including environmental requirements, that would be applicable if the department were performing the work;

(3) execute a performance and payment bond in accordance with Chapter 2253, Government Code; and

SECTION 2.13. Same as House version 2.12 but renumbered to 2.13.

SECTION 2.13. Same as House version 2.12 but renumbered to 2.13.

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(4) make available for inspection by the department all books and other records in the possession of the owner that are related to the project.

(c) State and federal funds may not be used for the design, development, financing, or construction of a highway improvement under a contract described by this section.

ARTICLE 3. ADDITIONAL EXEMPTIONS

ARTICLE 3. Same as House version.

ARTICLE 3. Same as House version.

SECTION 3.01. Section 44.901, Education Code, is amended by adding Subsection (j) to read as follows:

(j) Chapter 2267, Government Code, does not apply to this section.

SECTION 3.01. Same as House version.

SECTION 3.01. Same as House version.

SECTION 3.02. Section 51.927, Education Code, is amended by adding Subsection (k) to read as follows:

(k) Chapter 2267, Government Code, does not apply to this section.

SECTION 3.02. Same as House version.

SECTION 3.02. Same as House version.

SECTION 3.03. Section 2166.406, Government Code, is amended by adding Subsection (k) to read as follows:

(k) Chapter 2267 does not apply to this section.

SECTION 3.03. Same as House version.

SECTION 3.03. Same as House version.

SECTION 3.04. Chapter 302, Local Government Code, is

SECTION 3.04. Same as House version.

SECTION 3.04. Same as House version.

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amended by adding Section 302.007 to read as follows:

Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2267, Government Code, does not apply to this chapter.

SECTION 3.05. Subchapter E, Chapter 335, Local Government Code, is amended by adding Section 335.077 to read as follows:

Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW. Chapter 2267, Government Code, does not apply to this chapter.

SECTION 3.06. Subchapter Q, Chapter 451, Transportation Code, is amended by adding Section 451.8025 to read as follows:

Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2267, Government Code, does not apply to this subchapter.

SECTION 3.07. Subchapter C, Chapter 452, Transportation Code, is amended by adding Section 452.1095 to read as follows:

Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR CERTAIN AUTHORITIES.
(a) Chapter 2267, Government Code, does not apply to an authority consisting of one subregion governed by a subregional board created under Subchapter O.
(b) An authority to which this section applies may adopt

SECTION 3.05. Same as House version.

SECTION 3.05. Same as House version.

SECTION 3.06. Same as House version.

SECTION 3.06. Same as House version.

SECTION 3.07. Same as House version.

SECTION 3.07. Same as House version.

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design-build procedures that do not materially conflict with Subchapter H, Chapter 2267, Government Code.

SECTION 3.08. Section 60.401, Water Code, is amended by adding Subsection (d) to read as follows:
(d) Chapter 2267, Government Code, does not apply to this subchapter.

SECTION 3.08. Same as House version.

SECTION 3.08. Same as House version.

SECTION 3.09. Section 60.452(c), Water Code, is amended to read as follows:
(c) Chapter 2267, [Subchapter J, Chapter 271, Local] Government Code, does not apply to this subchapter.

SECTION 3.09. Same as House version.

SECTION 3.09. Same as House version.

ARTICLE 4. CONFORMING AMENDMENTS

ARTICLE 4. Same as House version.

ARTICLE 4. INDUSTRIALIZED HOUSING

SECTION 4.01. Section 252.021(a), Local Government Code, is amended to read as follows:
(a) Before a municipality may enter into a contract that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must:
(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;
(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
(3) comply with a method described by Chapter 2267.

SECTION 4.01. Same as House version.

SECTION 4.01. Same as House version.

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Government Code [~~Subchapter H or J, Chapter 271~~].

SECTION 4.02. Section 252.022(d), Local Government Code, is amended to read as follows:

(d) This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~], provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that subchapter with respect to that expenditure.

SECTION 4.03. Sections 252.043(d-1) and (e), Local Government Code, are amended to read as follows:

(d-1) A contract for construction of a project described by Subsection (d) that requires an expenditure of \$1.5 million or less may be awarded using the competitive sealed proposal procedure prescribed by Subchapter D, Chapter 2267, Government Code [~~Section 271.116~~].

(e) If the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section 2267.001, Government Code [~~Section 271.114~~], the contract must be awarded to the lowest responsible bidder or awarded under the method described by Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~].

SECTION 4.02. Same as House version.

SECTION 4.03. Same as House version.

SECTION 4.02. Same as House version

SECTION 4.03. Same as House version.

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SECTION 4.04. Sections 262.023(a) and (b-1), Local Government Code, are amended to read as follows:

(a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$50,000, the commissioners court of the county must:

- (1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;
- (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
- (3) comply with a method described by Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~].

(b-1) A county that complies with a method described by Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~], as provided by Subsection (a)(3), to enter into a contract for which payment will be made through anticipation notes authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of that contract in an amount that exceeds the lesser of:

- (1) 20 percent of the county's budget for the fiscal year in which the county enters into the contract; or
- (2) \$10 million.

SECTION 4.05. Section 1002.110, Special District Local Laws Code, is amended to read as follows:

Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the construction of public works, the district has all of the powers and duties conferred on a municipality under Chapter 2267, [Subchapter H, Chapter 271, Local] Government Code, with respect to the construction of a facility. To the extent of any conflict, this section prevails

SECTION 4.04. Same as House version.

SECTION 4.04. Same as House version.

SECTION 4.05. Same as House version.

SECTION 4.05. Same as House version.

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over any other law relating to the construction of public works engaged in by the district.

SECTION 4.06. Section 1024.105(b), Special District Local Laws Code, is amended to read as follows:

(b) The board may act as a governmental entity under Chapter 2267, [~~Subchapter H, Chapter 271, Local~~] Government Code, for purposes of using the procurement procedures authorized by that chapter. For purposes of this subsection, notice under Section 2267.052(c), [~~271.112(d), Local~~] Government Code, must be provided by the district in the same manner as provided for a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution.

SECTION 4.07. Section 366.185(d-1), Transportation Code, is amended to read as follows:

(d-1) The rules adopted under Subsection (d) may not materially conflict with the design-build procedures provided by Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~] Government Code, and shall provide materially similar injunctive and declaratory action enforcement rights regarding the improper disclosure or use of unique or nonordinary information as provided in that subchapter.

SECTION 4.08. Section 370.314(b), Transportation Code, is amended to read as follows:

(b) Procedures adopted under Subsection (a) may not

SECTION 4.06. Same as House version.

SECTION 4.07. Same as House version.

SECTION 4.08. Same as House version.

SECTION 4.06. Same as House version.

SECTION 4.07. Same as House version.

SECTION 4.08. Same as House version.

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materially conflict with the design-build procedures provided by Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~] Government Code.

SECTION 4.09. Sections 460.406(c) and (d), Transportation Code, are amended to read as follows:

(c) The board of directors may authorize the negotiation of a contract without competitive sealed bids or proposals if:

- (1) the aggregate amount involved in the contract is \$25,000 or less;
- (2) the contract is for construction for which not more than one bid or proposal is received;
- (3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;
- (4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;
- (5) the contract is for personal or professional services or services for which competitive bidding is precluded by law;
- (6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:
 - (A) a credit support agreement, such as a line or letter of credit or other debt guaranty;
 - (B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;
 - (C) an agreement with a securities dealer, broker, or underwriter; and

SECTION 4.09. Same as House version.

SECTION 4.09. Same as House version.

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(D) any other contract or agreement considered by the board of directors to be appropriate or necessary in support of the authority's financing activities;

(7) the contract is for work that is performed and paid for by the day as the work progresses;

(8) the contract is for the purchase of land or a right-of-way;

(9) the contract is for the purchase of personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency, or an entity of the federal government;

(10) the contract is for services performed by blind or severely disabled persons;

(11) the contract is for the purchase of electricity; or

(12) the contract is one awarded for alternate project delivery under Subchapters E, F, and G, Chapter 2267, [Sections 271.117-271.119, Local] Government Code.

(d) For the purposes of entering into a contract authorized by Subsection (c)(12), an authority is considered a "governmental entity" as described [defined] by Section 2267.002, [271.111, Local] Government Code.

ARTICLE 5. REPEALER

SECTION 5.01. The following are repealed:

(1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038, 44.039, 44.040, and 44.041, Education Code;

ARTICLE 5. Same as House version.

SECTION 5.01. Same as House version.

ARTICLE 5. Same as House version.

SECTION 5.01. Same as House version.

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<p>(2) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code;</p> <p>(3) Subchapters H and J, Chapter 271, Local Government Code; and</p> <p>(4) Section 431.101(e), Transportation Code.</p>		
ARTICLE 6. TRANSITION; EFFECTIVE DATE	ARTICLE 6. Same as House version.	ARTICLE 6. Same as House version.
<p>SECTION 6.01. (a) The changes in law made by this Act apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.</p> <p>(b) A contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.</p>	SECTION 6.01. Same as House version.	SECTION 6.01. Same as House version.
No equivalent provision.	SECTION 6.____. Not later than September 1, 2012, the Texas Industrialized Building Code Council shall complete the study required by Section 1202.1551, Occupations Code, as added by this Act. [FA5(2)]	Same as Senate version.
No equivalent provision.	ARTICLE ____. INDUSTRIALIZED HOUSING [FA5(1)]	No equivalent provision.

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No equivalent provision.

SECTION __.01. Section 1202.155, Occupations Code, is amended by adding Subsection (c) to read as follows:
(c) Notwithstanding Subsections (a) and (b), the commission by rule may adopt another method of indicating that the designs, plans, and specifications of industrialized housing and buildings satisfy the requirements of Subsection (a)(1) and are approved in accordance with Subsection (a)(2) if the study conducted under Section 1202.1551 recommends the method. [FA5(1)]

No equivalent provision.

No equivalent provision.

SECTION __.02. Subchapter D, Chapter 1202, Occupations Code, is amended by adding Section 1202.1551 to read as follows:
Sec. 1202.1551. STUDY CONCERNING APPROVAL OF DESIGNS, PLANS, AND SPECIFICATIONS. (a) The council shall conduct a study to:
(1) evaluate the current method of indicating approval of designs, plans, and specifications of industrialized housing and buildings under Sections 1202.155(a) and (b); and
(2) identify and evaluate methods of indicating approval of designs, plans, and specifications of industrialized housing and buildings that are alternatives to the method described by Subdivision (1).
(b) The study may recommend for adoption by the commission an alternative method identified under Subsection (a)(2) if the council determines that the method would:
(1) ensure that the designs, plans, and specifications of industrialized housing and buildings:

No equivalent provision.

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- (A) meet or exceed the code standards and requirements under council interpretations and instructions; and
- (B) are approved by the department or an approved design review agency; and
- (2) be more efficient and cost-effective for the department or approved design review agencies.
- (c) This section expires September 1, 2014. [FA5(1)]

No equivalent provision.

SECTION __.03. Subsection (a), Section 1202.252, Occupations Code, is amended to read as follows:

(a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

- (1) require and review, for compliance with mandatory building codes, a complete set of designs, plans, and specifications approved by the council ~~bearing the council's stamp of approval~~ for each installation of industrialized housing or buildings in the municipality;
- (2) require that all applicable local permits and licenses be obtained before construction begins on a building site;
- (3) require, in accordance with commission rules, that all modules or modular components bear an approved decal or insignia indicating inspection by the department; and
- (4) establish procedures for the inspection of:
 - (A) the erection and installation of industrialized housing or buildings to be located in the municipality, to ensure compliance with mandatory building codes and commission rules; and
 - (B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

[FA5(1)]

No equivalent provision.

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No equivalent provision.

ARTICLE __. MISCELLANEOUS PROVISIONS

No equivalent provision.

No equivalent provision.

SECTION __. Section 791.011, Government Code, is amended by adding Subsection (h-1) to read as follows:
(h-1) In this subsection, "roofing materials or services" includes materials or services for repair or replacement of a roof. An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase roofing materials or services from a person who provided consulting services to the cooperative on the contract, including providing specifications for bids on the contract. This prohibition also applies to:
(1) a person that is an agent, subsidiary, or parent company of the person who consulted with the cooperative; or
(2) a person related in the second degree of consanguinity or affinity to a person who consulted with the cooperative.
[FA2]

No equivalent provision.

No equivalent provision.

SECTION __. The change in law made by this Act to Section 791.011, Government Code, applies only to an interlocal contract or an amendment to, supplement to, or waiver of a provision of a contract made on or after the effective date of this Act. An interlocal contract or an amendment to, supplement to, or waiver of a provision of a contract made before the effective date of this Act is governed by the law in effect when the contract or amendment, supplement, or waiver was made, and the former law is continued for that purpose.

No equivalent provision.

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[FA2]

SECTION 6.02. This Act takes effect September 1, 2011.

SECTION 6.02. Same as House version.

SECTION 6.02. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 28, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB628 by Callegari (Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.), **Conference Committee Report**

No fiscal implication to the State is anticipated.

The bill would amend existing rules and procedures for a governmental entity regarding procedures related to a public work contract, including: reverse auctions; construction management; multiple award contracts; design and construction contracting and delivery; number of eligible public works projects in a given year; engineering oversight; and job order contracting for ongoing maintenance or minor construction projects. The provisions of this bill apply to public works projects first advertised by governmental entities on, or after, September 1, 2011.

The bill exempts certain governmental entities from the new provisions, such as the Texas Department of Transportation (TXDOT), higher education institutions and systems (other than public junior colleges), regional toll-way authorities and mobility authorities, county toll authorities, and coordinated county transportation authorities.

The bill would authorize TXDOT to contract with land owners adjacent to the state highway system for the construction of an improvement on highway right of way that is related to improving access to the land owner's property. The bill prohibits the use of state or federal funds for the construction of such an improvement.

State agencies indicated that no direct fiscal implication is anticipated from implementation of the bill; however, the Texas Facilities Commission reports that the bill's provisions could negatively impact the state's negotiating position on public works projects by disclosing the full range of competitive offers prior to negotiation and award.

Local Government Impact

Based on information gathered from local government entities, it is assumed that an entity would continue to choose the method of contracting that would provide the best value; therefore, no significant fiscal impact is anticipated.

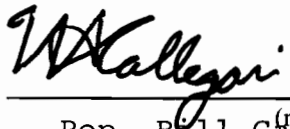
Source Agencies: 303 Facilities Commission, 405 Department of Public Safety, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board, 802 Parks and Wildlife Department, 808 Historical Commission, 809 Preservation Board

LBB Staff: JOB, KJG, JI, KY, KM, KKR, JJ, PJK

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 628 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



Rep. Bill Calligari (name)

MAY 27, 2011

(date)