

SUBJECT: Alternative system to manage certain transportation construction projects

COMMITTEE: Transportation — committee substitute recommended

VOTE: 5 ayes — Krusee, Phillips, Casteel, Deshotel, Hill

3 nays — Callegari, Hamric, West

1 absent — Flores

WITNESSES: For — Michael Blasdel, Edwards and Kelcey; Doug Fuller, FLUOR; Kim Marshall, Parsons Brinckerhoff; Bryan Nash, Granite Construction Company; Jerome Swift, Washington Group International; Frank Wilson, Houston METRO; Joe Wingerter, Kiewit Corporation

Against — Steve Stagner, Texas Council of Engineering Companies and Houston Council of Engineering Companies; J.R. (Bob) Jones

BACKGROUND: Transportation Code, ch. 451, governs the transportation authorities of several cities, including Houston.

DIGEST: *The author plans to offer a floor substitute for CSHB 2300, and this analysis refers to that version of the bill.*

CSHB 2300 would establish an alternative procurement procedure known as a "hybrid delivery system" for selecting providers of design and construction services for certain construction projects in a rapid transit authority.

The bill would apply to a rapid transit authority whose principal municipality had a population of at least 1.2 million. It would apply only to a transit project approved by voters at a referendum or to a single transit project with a cost of more than \$100 million.

Selection of engineer-architect. The authority would have to select an engineer or engineer-architecture team responsible for the design of the civil works components of the facility to be constructed under the project. The team could have construction management capabilities.

The engineer-architect would have to be selected in accordance with the Professional Services Procurement Act and would have authority for compliance with state law governing engineering. The authority would enter into a contract with the engineer-architect to provide planning and design services and an estimate of design costs.

RFPs. Upon completion of the development design documents, the authority would issue requests for proposals (RFPs) from facility providers. The bill would define "facility provider" as a company responsible for providing and installing the components of a facility and constructing the associated civil works components.

The authority would evaluate the information submitted by a facility provider on the basis of selection criteria stated in the RFP, and would create a list of two to four facility providers who best met the criteria.

The authority would have to select the facility provider who offered the best value on the basis of the published criteria and price. The authority could consider factors other than price that were stated in the selection criteria. The authority then would attempt to negotiate a contract with the selected provider. The authority and its engineer-architect could discuss modifications of the proposal with the provider before finalizing a contract. If the authority could not negotiate a contract with the selected provider, the authority would end negotiations and proceed to the next ranked provider until a contract was reached or all proposals were rejected.

Final design contracts. The authority in consultation with its facility provider would negotiate with the engineer-architect to determine the scope of work and fees associated with the final design of the civil works components of the facility. The authority also would negotiate the integration of system components and civil works components with the engineer-architect. Final design contracts would have to be incorporated into the authority's contract with the facility provider. Changes would have to be approved by the authority and the provider.

The authority would have to provide a mechanism under which issues such as design quality, quality assurance, code compliance, value engineering, or life cycle costing could be communicated by the engineer-architect to the facility provider and the authority in order to receive

approval of proposed action. The facility provider's oversight of the engineer-architect would be limited to:

- design management and coordination of civil works components;
- integration of the design system components into the civil works;
- the facility provider's assumption of responsibility for contract compliance, performance warranties, and guarantees for the acceptance of design management; and
- other risk-related items as stipulated in contract.

Management and coordination fees could not exceed 8 percent of final design fees unless otherwise amended by the engineer architect through allocation of the civil works engineer-architect fee to the specialty design manager and coordinator for specialty design assistance.

Other provisions. If the authority chose periodically to audit its construction materials, it would have to contract for the inspection and testing of construction materials and other testing that was necessary for government approval of the entity. This contract would have to be independent of the facility provider contract.

The authority could require the facility provider to advertise for proposals from contractors for construction of the civil works components of a facility. The provider only could submit bids for that work in the same manner as other contractors.

The authority would have to use local vendors and service providers to the greatest extent allowed by law.

The provisions of the bill would sunset on August 31, 2015.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

The floor substitute to CSHB 2300 would allow the Harris County Metropolitan Transit Authority (METRO) to benefit from an improved project management system that would enhance the authority's ability to deliver transportation projects quickly and cost-effectively. The hybrid delivery system proposed under the bill would employ principles similar to a design-build project delivery system. This would allow for more flexibility for management of large construction projects than the

restrictive requirements under competitive bidding to which the authority currently is subject.

The floor substitute would address concerns that had been raised by the engineering community about the committee substitute. That version of the bill would have allowed an authority to operate under the comprehensive development agreement (CDA) program that regional transportation authorities can utilize. Concerns were raised that CDAs could weaken the ability of certified engineers to evaluate a project and ensure that it complied with government standards. The floor substitute would create a hybrid system that ensured active participation in the planning of a project by engineering professionals while still providing METRO with the ability to work primarily with a direct point of contract in the facility provider.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

As filed, CSHB 2300 would have provided an authority with the same powers as a regional mobility authority to enter a comprehensive development agreement. The committee substitute would have applied to an authority confirmed before July, 1, 1985, in which the principal municipality had a population of less than 750,000 (Austin). The bill also would have lowered the required cost of an eligible project to \$50 million.