

SUBJECT: Revising standards for contracts for government construction projects

COMMITTEE: Government Reform — committee substitute recommended

VOTE: 6 ayes — Uresti, Otto, Y. Davis, Frost, Gonzales, Veasey

0 nays

1 absent — Hunter

WITNESSES: (*On original version:*)
For — Michael J. Chatron, AGC Texas Building Branch; Steve Stagner, Texas Council of Engineering Companies; Philip Todd, Dallas County Community College District; (*Registered, but did not testify:* Martin Blair; Yvonne Castillo, Texas Society of Architects; Susan Rocha, City of Round Rock; Gerhardt Schulle, Jr., Texas Society of Professional Engineers)

Against — Jerry Gallagher, Gallagher Construction Services; Jennifer Newton, Associated General Contractors of Texas, Highway, Heavy Utilities & Industrial Branch; (*Registered, but did not testify:* Lawrence Olsen, Texas Good Roads/Transportation Association)

On — Frank Brogan, Port of Corpus Christi; Amadeo Saenz, TxDOT; (*Registered, but did not testify:* John Roby, Port of Beaumont, Texas Ports Association)

BACKGROUND: Under the Education Code and the Local Government Code, school districts, universities, and local government entities may award contracts using the design-build method, the competitive sealed proposal method, the construction manager-agent method, the construction manager-at-risk method, or the job order contracts method. Under the Government Code, a government entity may award a contract using the design-build method, the competitive sealed proposal method, the construction manager-agent method, or the construction manager-at-risk method. The Government Code currently does not authorize use of the job order contracts method.

DIGEST: CSHB 2525 would add ch. 2264 to the Government Code, consolidating statutes on government entities' contracting methods under one chapter.

Chapter 2264 would apply to a government entity or quasi-government entity authorized to make a public works contract. In the event of a conflict with another law, ch. 2264 would prevail, with a few exceptions.

An entity could award a contract using the following methods in addition to competitive bidding: competitive sealed proposal method, construction manager-agent method, construction manager-at-risk method, design-build method, and job order contracts method.

A government entity could award job contracts for minor construction under the job order contracts method if the work was of a recurring nature but the delivery times were indefinite and if indefinite quantities and orders were awarded substantially on the basis of pre-described and pre-priced tasks.

The bill would change the definition of facility to cover any improvement to real property. Under CSHB 2525, the design-build method still could be used only for a building.

The chapter would not prevail over a conflicting provision relating to contracting with a historically underutilized business or a conflicting provision in a charter of a home-rule municipality or a rule of a county, river authority, or defense base development authority that required the use of competitive bidding. The governing body of a municipality, county, river authority, or defense base development could choose to have ch. 2264 overrule a conflicting provision in its charter or rule.

Ch. 2264 would not apply to a contract entered into by TxDOT or to energy savings performance contracts.

The bill would take effect September 1, 2005, and would apply only to a contract or construction project for which a government entity first requested bids on or after that date.

**SUPPORTERS
SAY:**

School districts, universities, government entities, and local government entities all are authorized to award contracts using several methods. The statutes authorizing such use, however, are spread over different codes and in multiple chapters in each code. CSHB 2525 simply would bring all of these statutes into one chapter in the Government Code. Additionally, the use of these other methods is limited to the construction, rehabilitation, repair, or alteration of a building. The bill would allow all methods except

design-build to be used for any improvement to real property. Use of the design-build method would remain limited to buildings.

Concerns about the bill as introduced were based on its application to TxDOT and energy savings performance contracts. The substitute amended the bill to state that it would not apply to TxDOT or energy savings performance contracts.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The bill as introduced would have applied ch. 2264 to contracts entered into by TxDOT. Architects or engineers would have had to prepare construction documents for projects that were competitively bid. The original did not exempt energy savings performance contracts from ch. 2264. The original would have required, rather than allowed, government entities to consider certain factors before awarding a contract. Entities would have had to publish the relative weight given to each criterion that would be considered in selecting a bid. An interested party who sought injunctive relief would have been allowed to recover reasonable attorney's fees. An entity that awarded a contract to an offeror other than the lowest bidder would have had to give any offeror who made a lower bid an opportunity to establish its responsibility to the entity. In a sealed competitive bid, the original would have required the entity to read aloud the names of the offerors and the amounts of each bid.