

BILL ANALYSIS

Senate Research Center
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S.B. 510
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DIGEST AND PURPOSE

Under current law, no authority exists for municipalities to utilize design-build procedures in order to provide flexibility in constructing needed facilities and possibly save time in design and construction. As proposed, S.B. 510 authorizes municipalities to use design-build procedures.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 252.021(a) and (c), Local Government Code, to require a municipality, before entering into a contract that requires an expenditure of more than \$15,000 from one or more municipal funds, to comply with the procedure prescribed by this subchapter for competitive sealed bidding or competitive sealed proposals or with a method described by Subchapter E. Authorizes a municipality to use the competitive sealed proposal procedure for high technology procurements and, in a municipality with a population of 75,000 or more, for the purchase of insurance.

SECTION 2. Amends Section 252.022, Local Government Code, by adding Subsection (d) to provide that this chapter does not apply to an expenditure described by Section 252.021 if the governing body of a municipality determines that a method described by Subchapter E 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 3. Amends Chapter 252, Local Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. ALTERNATIVE PROJECT DELIVERY METHODS FOR CERTAIN MUNICIPAL PROJECTS

Sec. 252.111. DEFINITIONS. Defines “architect,” “contractor,” “design-build contract,” “design-build firm,” “design criteria package,” “engineer,” “facility,” “fee,” and “general conditions.”

Sec. 252.112. APPLICABILITY; OTHER LAW. Provides that any provision in the charter of a home-rule municipality that requires the use of competitive bidding or competitive sealed proposals or that prescribes procurement procedures and that is in conflict with this subchapter controls over this subchapter unless the governing body of the municipality elects to have this subchapter supersede the charter. Provides that the purchasing requirements of Section 361.426 (Governmental Entity Preference for Recycled Products), Health and Safety Code, apply to purchases by a municipality made under this subchapter. Provides that, except as provided by this section, to the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with

historically underutilized businesses.

Sec. 252.113. **PROCUREMENT PROCEDURES.** Authorizes a municipality, in entering into a contract for the construction of a facility, to use any of a number of stated methods that provides the best value for the municipality. Authorizes the municipality, except as provided by this subchapter, to consider a number of stated factors in determining whom to award a contract.

Sec. 252.114. **EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES.** Requires the governing body of a municipality that is considering a construction contract using a method specified by Section 252.113(a) other than a competitive bidding, before advertising, to determine which method provides the best value for the municipality. Requires the municipality to base its selection among offerors on criteria authorized to be used under Section 252.113(b). Requires the municipality to publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offerors and the relative weights, if known at the time of publication, given to the criteria. Requires the municipality to document the basis of its selection and to make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 252.115. **SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE BIDDING.** Authorizes a municipality, except to the extent prohibited by other law and to the extent consistent with this subchapter, to use competitive bidding to select a contractor to perform certain services. Provides that, except as otherwise specifically provided by this subsection, Chapter 271B does not apply to a competitive bidding process under this section. Provides that Sections 271.026, 271.027(a), and 271.0275 apply to a competitive bidding process under this section. Requires a municipality to award a competitively bid contract at the bid amount to the bidder offering the best value to the municipality according to the selection criteria that were established by the municipality. Authorizes the selection criteria to include the factors listed in Section 252.113(b).

Sec. 252.116. **SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS.** (a) Requires a municipality to follow the procedures prescribed by this section in selecting a contractor to perform certain services for a facility through competitive sealed proposals.

(b) Requires the municipality to select or designate an engineer or architect to prepare construction documents for the project. Provides that the selected or designated engineer or architect has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, V.T.C.S.) or Chapter 478 (Regulation of Practice of Architecture), Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, V.T.C.S.), as applicable. Requires the municipality, if the engineer or architect is not a full-time employee of the municipality, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code.

(c) Requires the municipality to provide or contract for, independently of the contractor, certain inspection and testing services necessary for acceptance of the facility by the municipality. Requires the municipality to select those services for which it contracts in accordance with Section 2254.004, Government Code, and to identify them in the request for proposals.

(d) Requires the municipality to prepare a request for competitive sealed proposals that includes certain elements that contractors may require to respond to the request. Requires the municipality to state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(e) Requires the municipality to receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposals. Requires the municipality, not later than the 45th day after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) Requires the municipality to select the offeror that offers the best value based on the published selection criteria and on its ranking evaluation. Requires the municipality to first attempt to negotiate a contract with the selected offeror. Authorizes the municipality and its engineer or architect to discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. Requires the municipality, if unable to negotiate a contract with the selected offeror, formally and in writing, to 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.

(g) Provides that, in determining best value, the municipality is not restricted to considering price alone, but is authorized to consider any other factor stated in the criteria.

Sec. 252.117. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. Authorizes a municipality to use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. Requires a municipality to follow the procedures prescribed by this section in using that method and in entering into a contract for the services of a construction manager-agent.

(b) Sets forth boundaries for the term “construction manager-agent” and establishes the capacity in which such an entity represents the municipality. Authorizes a municipality using the construction manager-agent method, under the contract between the municipality and the construction manager-agent, to require the construction manager-agent to provide certain services specified in the contract

(c) Makes a conforming change regarding a municipality being required, before or concurrently with the selection a construction manager-agent, to select or designate an engineer or architect who is required to prepare the construction documents and regarding the basis of selection. Prohibits the municipality’s engineer or architect from serving, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit the municipality’s engineer or architect from providing customary construction phase services under the engineer’s or architect’s original professional service agreement in accordance with applicable licensing laws.

(d) Makes a conforming change regarding a municipality’s selection of a construction manager-agent.

(e) Requires a municipality using the construction manager-agent method to procure, an

accordance with applicable law, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work

(f) Makes a conforming change requiring the municipality or the construction manager-agent to procure certain inspection and testing services necessary for acceptance of the facility by the municipality.

Sec. 252.118. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) Makes a conforming change regarding a municipality's use of the construction manager-at-risk method.

(b) Sets forth boundaries for the term "construction manager-at-risk."

(c) Makes a conforming change regarding the municipality selecting or designating an engineer or architect before or concurrently with the selection of a construction manager-at-risk. Makes a conforming change prohibiting the municipality's engineer, architect, or construction from serving as the construction manager-at-risk except under certain conditions.

(d) Makes a conforming change requiring the municipality to procure, independently of the construction manager-at-risk, certain inspection and testing services.

(e) Requires the municipality to select the construction manager-at-risk in either a one-step or two-step process. Requires the municipality to prepare a request for proposals, in the case of a one-step process, or a request for qualification, in the case of a two-step process, that includes certain stated information, including the selection criteria. Authorizes the selection criteria to include certain factors that demonstrate the capability of the construction manager-at-risk. Sets forth guidelines regarding both the one-step and the two-step processes.

(f) Makes conforming changes regarding the names of the offerors and the fees and prices stated in each proposal and the evaluation and ranking of proposals.

(g) Makes conforming changes regarding the selection of the offeror and the successful or unsuccessful negotiation of a contract with the offeror.

(h) Requires a construction manager-at-risk to publicly advertise, as prescribed for a governmental entity by Section 271.025, 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. Authorizes a construction manager-at-risk to seek to perform portions of the work itself if 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 if the municipality determines that the construction manager-at-risk's bid or proposal provides the best value for the municipality.

(i) Requires the construction manager-at-risk and the municipality or its representative to 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, engineer, architect, or municipality. Requires all bids or proposals to be made public after the award of the contract or not later than the seventh day after the date of final selection of bids or proposals,

whichever is later.

(j) Requires the municipality, if the construction manager-at-risk reviews, evaluates, and recommends to the municipality a bid or proposal from a trade contractor or subcontractor but the municipality requires another bid or proposal to be accepted, to 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 may incur because of the municipality's requirement that another bid or proposal be accepted.

(k) Authorizes the construction manager-at-risk, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, without advertising, to fulfill the contract requirements itself or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(l) Requires the penal sums of the performance and payment bonds delivered to the municipality, if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, to be in an amount equal to the project budget, as specified in the request for qualifications. Requires the construction manager to deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the municipality to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 252.119. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a) Makes a conforming change regarding a municipality's use of the design-build method.

(b) Requires the municipality to designate an engineer or architect to act as its representative. Makes a conforming change regarding the selection of an engineer or architect who is not a full-time employee of the municipality in accordance with Chapter 2254A (Professional Services), Government Code.

(c) Requires the municipality to prepare a request for qualifications that includes certain information that may assist potential design-build firms in submitting proposals for the project. Requires the municipality to also prepare a design criteria package that includes more detailed information on the project. Requires that, if the design-criteria package requires certain engineering or architectural services, those services be provided in accordance with the applicable law.

(d) Requires the municipality to evaluate statements of qualifications and select a design-build firm in two phases and sets forth specific guidelines for the requirements involved in each phase.

(e) Requires that, following selection of a design-build firm under Subsection (d), the firm's engineers complete the design, submitting all design elements for review and determination of scope compliance to the municipality or the municipality's engineer or architect before or concurrently with construction.

(f) Makes conforming changes regarding an engineer's and/or architect's responsibility for compliance with applicable laws.

(g) Makes a conforming change requiring the municipality to procure, independently of the design-build firm, certain inspection and testing services.

(h) Requires the design-build firm to supply a signed and sealed set of construction documents for the project to the municipality at the conclusion of construction.

(i) Provides that a payment or performance bond is not required for, and prohibits such from providing coverage for, the portion of a design-build contract under this section that includes design services only. Makes a conforming change regarding the delivery of penal sums of the performance and payment bonds.

Sec. 252.120. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR. (a) Authorizes a municipality to award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of prescribed and prepriced tasks.

(b) Establishes procedures by which the municipality is authorized to establish contractual unit prices for a job order contract.

(c) Requires the municipality to advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) Authorizes the municipality to require offerors to submit certain types of additional information besides certain stated types.

(e) Authorizes the municipality to award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) Requires an order for a job or project under the job order contract to be signed by the municipality's representative and the contractor. Authorizes the order to be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or a unit price based on the quantities and line times delivered.

(g) Requires the contractor to provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) Provides that the base term of a job order contract is for the period and with any renewal options that the municipality sets forth in the request for proposals. Prohibits the base term, if the municipality fails to advertise that term, from exceeding two years and provides that the term is not renewable without further advertisement and solicitation of proposals.

(i) Makes a conforming change requiring that engineering or architectural services required by a job order contract or an order issued under the contract be provided in accordance with applicable law.

SECTION 4. Amends Section 2254.002(1), Government Code, to redefine "governmental entity."

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2001.