

## **BILL ANALYSIS**

Senate Research Center

H.B. 1050  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Recent legislation authorized certain governmental entities to use alternative project delivery methods for delivering projects instead of relying on traditional design-bid-build processes. Depending on the specific project, an alternative delivery method may offer cost savings, an expedited project completion date, best value, or a combination of these benefits.

During the interim, local governmental entities were surveyed about their use of the competitive sealed proposal, construction manager-at-risk, and design-build methods for delivering civil works projects during a specified period of time that covered the early stages of the implementation of that legislation.

That survey and testimony before interim legislative committees indicated that the alternative delivery method law is being used and that the experience of those governmental entities using such methods has been instructive. Interested parties note that, in many instances, the law has worked to keep project costs down, and they point out that projects have been completed in a more efficient manner. The parties assert, however, that such a major change in law may require minor adjustments to correct inconsistencies or to apply lessons of experience learned over time as local governmental entities and the contracting community become more familiar with alternative delivery methods.

H.B. 1050 amends current law relating to purchasing and other contracts by certain governmental entities.

### **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 Section 791.011, Government Code, by adding Subsection (j), as follows:

(j) Provides that, for the purposes of this subsection, the term "purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors. Prohibits a local government from entering into a contract to purchase construction-related goods or services through a purchasing cooperative under this chapter in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 (Engineers) or 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting only Architects), Occupations Code, or the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

SECTION 2. Amends Section 2252.002, Government Code, to prohibit a governmental entity from awarding a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the

amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in a state in which the nonresident is a resident manufacturer.

SECTION 3. Amends Section 2267.354, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session 2011, as follows:

Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a) Redesignates existing Subsection (c) as Subsection (a). Provides that, after August 31, 2013, rather than after the period described by Subsection (a) or (b), certain government units are authorized to enter into contracts if they fulfill certain criteria.

(b) Redesignates existing Subsection (d) as Subsection (b) and makes no further change.

Deletes existing Subsection (a) text providing that, before September 1, 2013, certain governmental entities are authorized to enter into contracts if they fulfill certain criteria.

Deletes existing Subsection (b) authorizing 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 (Harbor and Port Facilities in Certain Municipalities), Transportation Code, before September 1, 2015, to enter into contracts under this subchapter for not more than two projects in any fiscal year.

SECTION 4. (a) Makes application of this section contingent upon passage of an Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

(b) Amends Subchapter H, Chapter 2269, Government Code, by adding Section 2269.3615, as follows:

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) Authorizes a governmental entity to require a design-build firm responding to a request for detailed proposals to identify companies that will fill key project roles, including project management, lead design firm, quality control management, and quality assurance management and serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) Prohibits a design-build firm, if the firm required to identify companies under Subsection (a) is selected for a design-build agreement, from making changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) Provides that, if the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

SECTION 5. (a) Makes application of this section contingent upon failure of passage of an Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

(b) Amends Subchapter H, Chapter 2267, Government Code, as added by Chapter 1129 (H.B. 628), Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 2267.3615, as follows:

Sec. 2267.3615. IDENTIFICATION OF PROJECT TEAM. (a) Authorizes a governmental entity to require a design-build firm responding to a request for detailed proposals to identify companies that will fill key project roles, including project management, lead design firm, quality control management, and quality assurance management and serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) Prohibits the firm, if a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, from making changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) Provides that, if the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

SECTION 6. Amends Section 252.048(c-1), Local Government Code, to authorize the governing body of a municipality, if a change order for a public works contract in a municipality with a population of 300,000, rather than 500,000, or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, to grant general authority to an administrative official of the municipality to approve the change order.

SECTION 7. Amends Section 49.273(i), Water Code, to prohibit the aggregate of the change orders from increasing the original contract price by more than 25 percent, rather than 10 percent.

SECTION 8. Provides that the changes in law made by this Act to Section 791.011 (Contracting Authority; Terms), Government Code, and Section 49.273(i), Water Code, apply only to a contract made on or after the effective date of this Act.

SECTION 9. Provides that the changes in law made by this Act to Sections 2267.3615 and 2269.3615, Government Code, as added 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.

SECTION 10. Repealer: Section 2267.353(d) (relating to requiring a governmental entity to make a formal finding on certain criteria before preparing a request for qualifications), Government Code.

SECTION 11. Effective date: September 1, 2013.