

By: Callegari

H.B. No. 2525

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to contracts by governmental entities for construction  
3 projects and related professional services and to public works  
4 performance and payment bonds.

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

6 SECTION 1. Section 2253.021, Government Code, is amended by  
7 adding Subsection (h) to read as follows:

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

13 SECTION 2. Section 2166.2525, Government Code, is amended  
14 to read as follows:

15 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The  
16 ~~[commission shall adopt rules that determine the circumstances for~~  
17 ~~use of each]~~ method of contracting allowed under this subchapter  
18 for design and construction services is any method provided by  
19 Chapter 2264. ~~[In developing the rules, the commission shall~~  
20 ~~solicit advice and comment from design and construction~~  
21 ~~professionals regarding the criteria the commission will use in~~  
22 ~~determining which contracting method is best suited for a project.]~~

23 SECTION 3. Subtitle F, Title 10, Government Code, is  
24 amended by adding Chapter 2264 to read as follows:

1 CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION

2 PROJECTS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 2264.001. DEFINITIONS. In this chapter:

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

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

9 (3) "Facility" means an improvement to real property.

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

15 Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
16 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.

17 This chapter applies to a governmental entity or quasi-governmental  
18 entity authorized by state law to make a public work contract,  
19 including:

20 (1) a state agency as defined by Section 2151.002,  
21 including the Texas Building and Procurement Commission;

22 (2) a local government, including:

23 (A) a county;

24 (B) a municipality;

25 (C) a special district or authority, including a  
26 school district, a hospital district, a river authority or any  
27 other type of water district, and a defense base development

1 authority established under Chapter 379B, Local Government Code;  
2 and

3 (D) any other political subdivision of this  
4 state; and

5 (3) a public junior college as defined by Section  
6 61.003, Education Code.

7 Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW  
8 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this  
9 section, this chapter prevails over any other law relating to  
10 public works contracts.

11 (b) This chapter does not prevail over a conflicting  
12 provision in a law relating to contracting with a historically  
13 underutilized business.

14 (c) This chapter does not prevail over a conflicting  
15 provision in:

16 (1) a charter of a home-rule municipality; or

17 (2) a rule of a county, river authority or any other  
18 type of water district, or defense base development authority that  
19 requires the use of competitive bidding.

20 (d) The governing body of a municipality, county, river  
21 authority, or defense base development authority to which  
22 Subsection (c) applies may elect to have this chapter overrule the  
23 conflicting provision in the charter or rule.

24 Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF  
25 TRANSPORTATION. This chapter does not apply to a contract entered  
26 into by the Texas Department of Transportation.

27 [Sections 2264.005-2264.050 reserved for expansion]

1                   SUBCHAPTER B. GENERAL POWERS AND DUTIES

2                   Sec. 2264.051. RULES. A governmental entity may adopt  
3 rules as necessary to implement this chapter.

4                   Sec. 2264.052. DELEGATION OF AUTHORITY. (a) The governing  
5 body of a governmental entity may delegate its authority under this  
6 chapter regarding an action authorized or required by this chapter  
7 to a designated representative, committee, or other person.

8                   (b) The entity shall provide notice of the delegation and  
9 the limits of the delegation in the request for bids, proposals, or  
10 qualifications or in an addendum to the request.

11                   (c) If the entity fails to provide notice under Subsection  
12 (b), a ranking, selection, or evaluation of bids, proposals, or  
13 qualifications for construction services other than by the entity's  
14 governing body in an open public meeting is advisory only.

15                   Sec. 2264.053. RIGHT TO WORK. (a) This section applies to  
16 a governmental entity when the governmental entity is engaged in:

- 17                   (1) procuring goods or services under this chapter;  
18                   (2) awarding a contract under this chapter; or  
19                   (3) overseeing procurement or construction for a

20 public work or public improvement under this chapter.

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

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

25                   (2) shall ensure that its bid specifications and any  
26 subsequent contract or other agreement do not deny or diminish the  
27 right of a person to work because of the person's membership or

1 other relationship status with respect to an organization.

2 [Sections 2264.054-2264.100 reserved for expansion]

3 SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES

4 Sec. 2264.101. CRITERIA TO CONSIDER. In determining the  
5 award of a contract under this chapter, the governmental entity may  
6 consider:

7 (1) the purchase price;

8 (2) the reputation of the offeror and the offeror's  
9 goods or services;

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

11 (4) the extent to which the goods or services meet the  
12 governmental entity's needs;

13 (5) the offeror's past relationship with the  
14 governmental entity;

15 (6) the impact on the ability of the governmental  
16 entity to comply with rules relating to historically underutilized  
17 businesses;

18 (7) the total long-term cost to the governmental  
19 entity to acquire the offeror's goods or services; and

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

22 Sec. 2264.102. USING METHOD OTHER THAN COMPETITIVE BIDDING  
23 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS. (a) The  
24 governing body of a governmental entity that considers a  
25 construction contract using a method authorized by this chapter  
26 other than competitive bidding must, before advertising, determine  
27 which method provides the best value for the governmental entity.

1       (b) The governmental entity shall base its selection among  
2 offerors on applicable criteria listed in Section 2264.101. The  
3 governmental entity shall publish in the request for proposals or  
4 qualifications the criteria that will be used to evaluate the  
5 offerors.

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

9       Sec. 2264.103. ARCHITECT OR ENGINEER SERVICES. (a) An  
10 architect or engineer required to be selected or designated under  
11 this chapter has full responsibility for complying with Chapter  
12 1001 or 1051, Occupations Code, as applicable.

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

18       Sec. 2264.104. RESPONSIBILITIES OF CONTRACTORS. In the  
19 context of a contract for the construction, rehabilitation,  
20 alteration, or repair of a facility under this chapter, a  
21 contractor is a sole proprietorship, partnership, corporation, or  
22 other legal entity that assumes the risk for constructing,  
23 rehabilitating, altering, or repairing all or part of the facility  
24 at the contracted price.

25       Sec. 2264.105. COMPETITIVE BIDDING. (a) Except as  
26 otherwise provided by this chapter or other law, a governmental  
27 entity may contract for the construction, alteration,

1 rehabilitation, or repair of a facility only after the entity  
2 advertises for bids for the contract in a manner prescribed by law,  
3 receives sealed competitive bids, and awards the contract to:

4 (1) the lowest responsible bidder; or

5 (2) the bidder offering the best value to the  
6 governmental entity according to the selection criteria  
7 established by the governmental entity in the request for bids.

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

11 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
12 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
13 specifically provided by this section, Subchapter B, Chapter 271,  
14 Local Government Code, does not apply to a competitive bidding  
15 process made under this chapter. Sections 271.026, 271.027(a), and  
16 271.0275, Local Government Code, apply to a competitive bidding  
17 process made under this chapter by a governmental entity as defined  
18 by Section 271.021, Local Government Code.

19 Sec. 2264.107. USE OF ARCHITECT OR ENGINEER. The  
20 governmental entity shall select or designate an architect or  
21 engineer in accordance with Chapter 1001 or 1051, Occupations Code,  
22 as applicable, to prepare the construction documents required for a  
23 project to be awarded by competitive bidding.

24 [Sections 2264.108-2264.150 reserved for expansion]

25 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

26 Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION  
27 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. A governmental

1 entity may use the competitive sealed proposal method to select a  
2 contractor for the construction, rehabilitation, alteration, or  
3 repair of a facility. In selecting a contractor through  
4 competitive sealed proposals, a governmental entity shall follow  
5 the procedures provided by this subchapter.

6 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The  
7 governmental entity shall select or designate an architect or  
8 engineer to prepare construction documents for the project.

9 Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
10 governmental entity shall provide or contract for, independently of  
11 the contractor, the inspection services, the testing of  
12 construction materials engineering, and the verification testing  
13 services necessary for acceptance of the facility by the  
14 governmental entity.

15 (b) The governmental entity shall select the services for  
16 which it contracts under this section in accordance with Section  
17 2254.004.

18 Sec. 2264.154. PREPARATION OF REQUEST. (a) The  
19 governmental entity shall prepare a request for competitive sealed  
20 proposals that includes construction documents, selection  
21 criteria, estimated budget, project scope, estimated project  
22 completion date, and other information that a contractor may  
23 require to respond to the request.

24 (b) The governmental entity shall state in the request for  
25 proposals the selection criteria that will be used in selecting the  
26 successful offeror.

27 Sec. 2264.155. EVALUATION OF OFFERORS. (a) The



1 governmental entity shall receive, publicly open, and read aloud  
2 the names of the offerors.

3 (b) Not later than the 45th day after the date of opening the  
4 proposals, the governmental entity shall evaluate and rank each  
5 proposal submitted in relation to the published selection criteria.

6 Sec. 2264.156. SELECTION OF OFFEROR. (a) The governmental  
7 entity shall select the offeror that offers the best value for the  
8 governmental entity based on the published selection criteria and  
9 on its ranking evaluation. In determining best value for the  
10 governmental entity, the governmental entity is not restricted to  
11 considering price alone but may consider any other factor stated in  
12 the selection criteria.

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

18 (c) If the governmental entity is unable to negotiate a  
19 contract with the selected offeror, the governmental entity shall,  
20 formally and in writing, end negotiations with that offeror and  
21 proceed to the next offeror in the order of the selection ranking  
22 until a contract is reached or all proposals are rejected.

23 [Sections 2264.157-2264.200 reserved for expansion]

24 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

25 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
26 MANAGER-AGENT SERVICES. (a) A construction manager-agent is a  
27 sole proprietorship, partnership, corporation, or other legal

1 entity that provides consultation services to the governmental  
2 entity regarding construction, rehabilitation, alteration, or  
3 repair of a facility.

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

8 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION  
9 MANAGER-AGENT. (a) The contract between the governmental entity  
10 and the construction manager-agent may require the construction  
11 manager-agent to provide:

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

17 (b) A construction manager-agent may not self-perform the  
18 construction, rehabilitation, alteration, or repair of the  
19 facility.

20 Sec. 2264.203. FIDUCIARY CAPACITY OF CONSTRUCTION  
21 MANAGER-AGENT. A construction manager-agent represents the  
22 governmental entity in a fiduciary capacity.

23 Sec. 2264.204. USE OF ARCHITECT OR ENGINEER. (a) On or  
24 before the selection of a construction manager-agent, the  
25 governmental entity shall select or designate an architect or  
26 engineer to prepare the construction documents for the project.

27 (b) The governmental entity's architect or engineer may not

1 serve, alone or in combination with another person, as the  
2 construction manager-agent unless the architect or engineer is  
3 hired to serve as the construction manager-agent under a separate  
4 or concurrent selection process conducted in accordance with this  
5 subchapter. This subsection does not prohibit the governmental  
6 entity's architect or engineer from providing customary  
7 construction phase services under the architect's or engineer's  
8 original professional service agreement in accordance with  
9 applicable licensing laws.

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

15 Sec. 2264.205. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
16 governmental entity or the construction manager-agent shall  
17 procure, independently of the contractor, the inspection services,  
18 the testing of construction materials engineering, and the  
19 verification testing services necessary for acceptance of the  
20 facility by the governmental entity.

21 (b) The governmental entity or the construction  
22 manager-agent shall select the services for which it contracts  
23 under this section in accordance with Section 2254.004.

24 Sec. 2264.206. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
25 governmental entity shall select a construction manager-agent on  
26 the basis of demonstrated competence and qualifications in the same  
27 manner as provided for the selection of engineers or architects

1 under Section 2254.004, except that the governmental entity must  
2 advertise the availability of the contract.

3 Sec. 2264.207. SELECTION OF CONTRACTORS. A governmental  
4 entity using the construction manager-agent method shall procure,  
5 in accordance with applicable law and in any manner authorized by  
6 this chapter, a general contractor, trade contractors, or  
7 subcontractors who will serve as the prime contractor for their  
8 specific portion of the work.

9 [Sections 2264.208-2264.250 reserved for expansion]

10 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

11 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
12 MANAGER-AT-RISK. (a) A construction manager-at-risk is a sole  
13 proprietorship, partnership, corporation, or other legal entity  
14 that assumes the risk for construction, rehabilitation,  
15 alteration, or repair of a facility at the contracted price as a  
16 general contractor and provides consultation to the governmental  
17 entity regarding construction during and after the design of the  
18 facility.

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

23 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or  
24 before the selection of a construction manager-at-risk, the  
25 governmental entity shall select or designate an architect or  
26 engineer to prepare the construction documents for the project.

27 (b) The governmental entity's engineer or architect for a

1 project may not serve, alone or in combination with another person,  
2 as the construction manager-at-risk unless the architect or  
3 engineer is hired to serve as the construction manager-at-risk  
4 under a separate or concurrent selection process conducted in  
5 accordance with this subchapter. This subsection does not prohibit  
6 the governmental entity's architect or engineer from providing  
7 customary construction phase services under the architect's or  
8 engineer's original professional service agreement in accordance  
9 with applicable licensing laws.

10 Sec. 2264.253. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
11 governmental entity shall provide or contract for, independently of  
12 the construction manager-at-risk, the inspection services, the  
13 testing of construction materials engineering, and the  
14 verification testing services necessary for acceptance of the  
15 facility by the governmental entity.

16 (b) The governmental entity shall select the services for  
17 which it contracts under this section in accordance with Section  
18 2254.004.

19 Sec. 2264.254. SELECTION PROCESS. (a) The governmental  
20 entity shall select the construction manager-at-risk in a one-step  
21 or two-step process.

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

26 (1) general information on the project site, project  
27 scope, schedule, selection criteria, estimated budget, and the time

1 and place for receipt of the proposals or qualifications;

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

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

6 (c) The governmental entity shall state the selection  
7 criteria in the request for proposals or qualifications. The  
8 selection criteria may include the offeror's experience, past  
9 performance, safety record, proposed personnel and methodology,  
10 and other appropriate factors that demonstrate the capability of  
11 the construction manager-at-risk.

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 price 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 of opening the  
27 final proposals, the governmental entity shall evaluate and rank

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

3 Sec. 2264.255. 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 Sec. 2264.256. PERFORMANCE OF WORK. (a) A construction  
16 manager-at-risk shall publicly advertise for bids or proposals and  
17 receive bids or proposals from trade contractors or subcontractors  
18 for the performance of all major elements of the work other than the  
19 minor work that may be included in the general conditions.

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

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

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

1       Sec. 2264.257. REVIEW OF BIDS OR PROPOSALS. (a) The  
2 construction manager-at-risk and the governmental entity shall  
3 review all trade contractor or subcontractor bids or proposals in a  
4 manner that does not disclose the contents of the bid or proposal  
5 during the selection process to a person not employed by the  
6 construction manager-at-risk, engineer, architect, or governmental  
7 entity. All bids or proposals shall be made public after the later  
8 of the award of the contract or the seventh day after the date of  
9 final selection of bids or proposals.

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

19       Sec. 2264.258. DEFAULT; PERFORMANCE OF WORK. If a selected  
20 trade contractor or subcontractor defaults in the performance of  
21 its work or fails to execute a subcontract after being selected in  
22 accordance with this subchapter, the construction manager-at-risk  
23 may itself fulfill the contract requirements or select a  
24 replacement trade contractor or subcontractor to fulfill the  
25 contract requirements.

26       Sec. 2264.259. PERFORMANCE OR PAYMENT BOND. (a) If a fixed  
27 contract amount or guaranteed maximum price has not been determined



1 at the time the contract is awarded, the penal sums of the  
2 performance and payment bonds delivered to the governmental entity  
3 must each be in an amount equal to the project budget, as specified  
4 in the request for proposals or qualifications.

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

12 [Sections 2264.260-2264.300 reserved for expansion]

13 SUBCHAPTER G. DESIGN-BUILD METHOD

14 Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
15 EXCEPTIONS. This subchapter applies only to a facility that is a  
16 building or an associated structure. This subchapter does not  
17 apply to:

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

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

25 Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
26 governmental entity may use the design-build method for the  
27 construction, rehabilitation, alteration, or repair of a building

1 or associated structure only as provided by this subchapter. In  
2 using that method, the governmental entity shall enter into a  
3 single contract with a design-build firm for the design and  
4 construction of the building or associated structure.

5 Sec. 2264.303. DESIGN-BUILD FIRMS. A design-build firm  
6 under this subchapter must be a partnership, corporation, or other  
7 legal entity or team that includes an engineer or architect and a  
8 construction contractor.

9 Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. The  
10 governmental entity shall select or designate an architect or  
11 engineer independent of the design-build firm to act as the  
12 governmental entity's representative for the duration of the work  
13 on the facility.

14 Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
15 governmental entity shall provide or contract for, independently of  
16 the design-build firm, the inspection services, the testing of  
17 construction materials engineering, and the verification testing  
18 services necessary for acceptance of the facility by the  
19 governmental entity.

20 (b) The governmental entity shall select the services for  
21 which it contracts under this section in accordance with Section  
22 2254.004.

23 Sec. 2264.306. PREPARATION OF REQUEST. (a) The  
24 governmental entity shall prepare a request for qualifications that  
25 includes general information on the project site, project scope,  
26 budget, special systems, selection criteria, and other information  
27 that may assist potential design-build firms in submitting

1 proposals for the project.

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

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

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

1       Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For  
2 each design-build firm that responded to the request for  
3 qualifications, the governmental entity shall evaluate the firm's  
4 experience, technical competence, and capability to perform, the  
5 past performance of the firm and members of the firm, and other  
6 appropriate factors submitted by the firm in response to the  
7 request for qualifications, except that cost-related or  
8 price-related evaluation factors are not permitted.

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

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

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

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

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

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

9 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The  
10 governmental entity shall select the design-build firm that submits  
11 the proposal offering the best value for the governmental entity on  
12 the basis of the published selection criteria and on its ranking  
13 evaluations.

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

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

22 Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After  
23 selection of the design-build firm, that firm's architects or  
24 engineers shall complete the design and submit all design elements  
25 for review and determination of scope compliance to the  
26 governmental entity or governmental entity's architect or engineer  
27 before or concurrently with construction.

1       Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The  
2 design-build firm shall supply a signed and sealed set of  
3 construction documents for the project to the governmental entity  
4 at the conclusion of construction.

5       Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
6 or performance bond is not required and may not provide coverage for  
7 the portion of the design-build contract with the design-build firm  
8 under this subchapter that includes design services only.

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

14       (c) The design-build firm shall deliver the bonds not later  
15 than the 10th day after the date the design-build firm executes the  
16 contract unless the design-build firm furnishes a bid bond or other  
17 financial security acceptable to the governmental entity to ensure  
18 that the design-build firm will furnish the required performance  
19 and payment bonds when a guaranteed maximum price is established.

20       [Sections 2264.312-2264.350 reserved for expansion]

21       SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

22       Sec. 2264.351. JOB ORDER CONTRACTS FOR FACILITIES  
23 CONSTRUCTION OR REPAIR. A governmental entity may award job order  
24 contracts for the minor construction, repair, rehabilitation, or  
25 alteration of a facility if:

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

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

3           Sec. 2264.352. CONTRACTUAL UNIT PRICES. The governmental  
4 entity may establish contractual unit prices for a job order  
5 contract by:

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

8           (2) providing a list of work items and requiring the  
9 offerors to propose one or more coefficients or multipliers to be  
10 applied to the price book or work items as the price proposal.

11           Sec. 2264.353. SEALED PROPOSALS METHOD. (a) The  
12 governmental entity shall advertise for, receive, and publicly open  
13 sealed proposals for job order contracts.

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

17           Sec. 2264.354. AWARDING OF JOB CONTRACTS. The governmental  
18 entity may award job order contracts to one or more job order  
19 contractors in connection with each solicitation of proposals.

20           Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order  
21 contract or an order issued under the contract requires  
22 architectural or engineering services that constitute the practice  
23 of engineering within the meaning of Chapter 1001, Occupations  
24 Code, or the practice of architecture within the meaning of Chapter  
25 1051, Occupations Code, those services shall be provided in  
26 accordance with applicable law.

27           Sec. 2264.356. JOB ORDER CONTRACT TERM. (a) A job order

1 contract is for the base term and with any renewal options that the  
2 governmental entity sets forth in the request for proposals.

3 (b) If the governmental entity fails to advertise the base  
4 term, the base term may not exceed two years and is not renewable  
5 without further advertisement and solicitation of proposals.

6 Sec. 2264.357. 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. 2264.358. 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 2264.359-2264.400 reserved for expansion]

19 SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

20 Sec. 2264.401. NOTICE REQUIREMENTS FOR CERTAIN LOCAL  
21 GOVERNMENTS. (a) For a contract entered into by a defense base  
22 development authority, municipality, or river authority under a  
23 method provided by this chapter, the municipality or authority  
24 shall publish notice of the time and place the bids or proposals or  
25 the responses to a request for qualifications will be received and  
26 opened.

27 (b) The notice must be published in a newspaper of general



1 circulation in the county in which the defense base development  
2 authority's or municipality's central administrative office is  
3 located or in the county in which the greatest amount of the river  
4 authority's territory is located. If there is not a newspaper of  
5 general circulation in that county, the notice shall be published  
6 in a newspaper of general circulation in the county nearest the  
7 county seat of the county in which the defense base development  
8 authority's or municipality's central administrative office is  
9 located or the county seat of the county in which the greatest  
10 amount of the river authority's territory is located.

11 (c) The notice must be published once each week for at least  
12 two weeks before the deadline for receiving bids, proposals, or  
13 responses.

14 (d) In a two-step procurement process, the time and place  
15 the second step bids, proposals, or responses will be received are  
16 not required to be published separately.

17 Sec. 2264.402. NOTICE REQUIREMENTS FOR COUNTIES. (a) For a  
18 contract entered into by a county under a method provided by this  
19 chapter, the county shall publish notice of the time and place the  
20 bids or proposals or request for qualifications will be received  
21 and opened.

22 (b) The notice must be published in a newspaper of general  
23 circulation in the county once each week for at least two weeks  
24 before the deadline for receiving bids, proposals, or responses.  
25 If there is not a newspaper of general circulation in the county,  
26 the notice shall be:

27 (1) posted at the courthouse door of the county; and

1           (2) published in a newspaper of general circulation in  
2 the county nearest the county seat of the county publishing the  
3 notice.

4           [Sections 2264.403-2264.425 reserved for expansion]

5                           SUBCHAPTER J. ENFORCEMENT

6           Sec. 2264.426. VOID CONTRACT. A contract entered into in  
7 violation of this chapter is void as against public policy.

8           Sec. 2264.427. DECLARATORY OR INJUNCTIVE RELIEF. This  
9 chapter may be enforced through an action for declaratory or  
10 injunctive relief filed not later than the 30th day after the date  
11 on which the contract is awarded.

12           SECTION 4. Sections 44.031(a) and (f), Education Code, are  
13 amended to read as follows:

14           (a) Except as provided by this subchapter, all school  
15 district contracts, except contracts for the purchase of produce or  
16 vehicle fuel or a contract made under Chapter 2264, Government  
17 Code, valued at \$25,000 or more in the aggregate for each 12-month  
18 period shall be made by the method, of the following methods, that  
19 provides the best value for the district:

20                   (1) competitive bidding;

21                   (2) competitive sealed proposals;

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

24                   (4) a catalogue purchase as provided by Subchapter B,  
25 Chapter 2157, Government Code;

26                   (5) an interlocal contract;

27                   (6) a method provided by Chapter 2264, Government

1 Code;

2 (7) [~~a design/build contract,~~

3 [~~(7) a contract to construct, rehabilitate, alter, or~~  
4 ~~repair facilities that involves using a construction manager,~~

5 [~~(8) a job order contract for the minor construction,~~  
6 ~~repair, rehabilitation, or alteration of a facility,~~

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

9 (8) [~~(10)~~] the formation of a political subdivision  
10 corporation under Section 304.001, Local Government Code.

11 (f) This section does not apply to a contract for  
12 professional services rendered, including services of an  
13 architect, attorney, engineer, or fiscal agent. A school district  
14 may, at its option, contract for professional services rendered by  
15 a financial consultant or a technology consultant in the manner  
16 provided by Section 2254.003, Government Code, in lieu of the  
17 methods provided by this section.

18 SECTION 5. Section 44.901, Education Code, is amended by  
19 adding Subsection (j) to read as follows:

20 (j) Chapter 2264, Government Code, does not apply to this  
21 section.

22 SECTION 6. Section 51.927, Education Code, is amended by  
23 adding Subsection (k) to read as follows:

24 (k) Chapter 2264, Government Code, does not apply to this  
25 section.

26 SECTION 7. Section 2166.406, Government Code, is amended by  
27 adding Subsection (k) to read as follows:

1        (k) Chapter 2264 does not apply to this section.

2        SECTION 8. Subchapter A, Chapter 2254, Government Code, is  
3 amended by adding Section 2254.007 to read as follows:

4        Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. This  
5 subchapter may be enforced through an action for declaratory or  
6 injunctive relief filed not later than the 30th day after the date  
7 on which the contract is awarded.

8        SECTION 9. Section 252.021(a), Local Government Code, is  
9 amended to read as follows:

10        (a) Before a municipality may enter into a contract that  
11 requires an expenditure of more than \$25,000 from one or more  
12 municipal funds, the municipality must:

13            (1) comply with the procedure prescribed by this  
14 subchapter and Subchapter C for competitive sealed bidding or  
15 competitive sealed proposals;

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

18            (3) comply with a method described by Chapter 2264,  
19 Government Code [~~Subchapter H, Chapter 271~~].

20        SECTION 10. Chapter 302, Local Government Code, is amended  
21 by adding Section 302.006 to read as follows:

22        Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW.  
23 Chapter 2264, Government Code, does not apply to this chapter.

24        SECTION 11. Section 22.074, Transportation Code, is amended  
25 by adding Subsection (f) to read as follows:

26        (f) Chapter 2264, Government Code, does not apply to a joint  
27 board whose constituent agencies are populous home-rule

1 municipalities.

2 SECTION 12. Section 60.452, Water Code, as added by Chapter  
3 307, Acts of the 78th Legislature, Regular Session, 2003, is  
4 amended by adding Subsection (c) to read as follows:

5 (c) Chapter 2264, Government Code, does not apply to this  
6 subchapter.

7 SECTION 13. The following are repealed:

8 (1) Sections 44.0312, 44.0315, 44.035-44.041, and  
9 44.043, Education Code;

10 (2) Subchapter T, Chapter 51, Education Code;

11 (3) Sections 2166.2511, 2166.2526, 2166.2531,  
12 2166.2532, 2166.2533, and 2166.2535, Government Code; and

13 (4) Subchapter H, Chapter 271, Local Government Code.

14 SECTION 14. (a) The changes in law made by this Act apply  
15 only to a contract or construction project for which a governmental  
16 entity first advertises or otherwise requests bids, proposals,  
17 offers, or qualifications, or makes a similar solicitation, on or  
18 after the effective date of this Act.

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

25 SECTION 15. This Act takes effect September 1, 2005.