

AN ACT

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

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

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

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

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

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

SECTION 3. Subtitle F, Title 10, Government Code, is 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 Sec. 2264.108. USE OF OTHER PROFESSIONAL SERVICES. (a) The
25 governmental entity shall provide or contract for, independently of
26 the contractor, the construction materials engineering, testing,
27 and inspection services and the verification testing services

1 necessary for acceptance of the facility by the governmental entity
2 under this subchapter.

3 (b) The governmental entity shall select the services for
4 which it contracts under this section in accordance with Section
5 2254.004.

6 [Sections 2264.109-2264.150 reserved for expansion]

7 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

8 Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION
9 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. A governmental
10 entity may use the competitive sealed proposal method to select a
11 contractor for the construction, rehabilitation, alteration, or
12 repair of a facility. In selecting a contractor through
13 competitive sealed proposals, a governmental entity shall follow
14 the procedures provided by this subchapter.

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

18 Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. (a) The
19 governmental entity shall provide or contract for, independently of
20 the contractor, the construction materials engineering, testing,
21 and inspection services and the verification testing services
22 necessary for acceptance of the facility by the governmental
23 entity.

24 (b) The governmental entity shall select the services for
25 which it contracts under this section in accordance with Section
26 2254.004.

27 Sec. 2264.154. PREPARATION OF REQUEST. (a) The

1 governmental entity shall prepare a request for competitive sealed
2 proposals that includes construction documents, selection
3 criteria, estimated budget, project scope, estimated project
4 completion date, and other information that a contractor may
5 require to respond to the request.

6 (b) The governmental entity shall state in the request for
7 proposals the selection criteria that will be used in selecting the
8 successful offeror.

9 Sec. 2264.155. EVALUATION OF OFFERORS. (a) The
10 governmental entity shall receive, publicly open, and read aloud
11 the names of the offerors.

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

15 Sec. 2264.156. SELECTION OF OFFEROR. (a) The governmental
16 entity shall select the offeror that offers the best value for the
17 governmental entity based on the published selection criteria and
18 on its ranking evaluation. In determining best value for the
19 governmental entity, the governmental entity is not restricted to
20 considering price alone but may consider any other factor stated in
21 the selection criteria.

22 (b) The governmental entity shall first attempt to
23 negotiate a contract with the selected offeror. The governmental
24 entity and its engineer or architect may discuss with the selected
25 offeror options for a scope or time modification and any price
26 change associated with the modification.

27 (c) If the governmental entity is unable to negotiate a

1 contract with the selected offeror, the governmental entity shall,
2 formally and in writing, end negotiations with that offeror and
3 proceed to the next offeror in the order of the selection ranking
4 until a contract is reached or all proposals are rejected.

5 [Sections 2264.157-2264.200 reserved for expansion]

6 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

7 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
8 MANAGER-AGENT SERVICES. (a) A construction manager-agent is a
9 sole proprietorship, partnership, corporation, or other legal
10 entity that provides consultation services to the governmental
11 entity regarding construction, rehabilitation, alteration, or
12 repair of a facility.

13 (b) A governmental entity may retain a construction
14 manager-agent for assistance in the construction, rehabilitation,
15 alteration, or repair of a facility only as provided by this
16 subchapter.

17 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION
18 MANAGER-AGENT. (a) The contract between the governmental entity
19 and the construction manager-agent may require the construction
20 manager-agent to provide:

21 (1) administrative personnel;

22 (2) equipment necessary to perform duties under this
23 subchapter;

24 (3) on-site management; and

25 (4) other services specified in the contract.

26 (b) A construction manager-agent may not self-perform any
27 aspect of the construction, rehabilitation, alteration, or repair

1 of the facility.

2 Sec. 2264.203. FIDUCIARY CAPACITY OF CONSTRUCTION
3 MANAGER-AGENT. A construction manager-agent represents the
4 governmental entity in a fiduciary capacity.

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

9 (b) The governmental entity's architect or engineer may not
10 serve, alone or in combination with another person, as the
11 construction manager-agent unless the architect or engineer is
12 hired to serve as the construction manager-agent under a separate
13 or concurrent selection process conducted in accordance with this
14 subchapter. This subsection does not prohibit the governmental
15 entity's architect or engineer from providing customary
16 construction phase services under the architect's or engineer's
17 original professional service agreement in accordance with
18 applicable licensing laws.

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

24 Sec. 2264.205. USE OF OTHER PROFESSIONAL SERVICES. (a) The
25 governmental entity or the construction manager-agent shall
26 procure, independently of the contractor, the construction
27 materials engineering, testing, and inspection services and the

1 verification testing services necessary for acceptance of the
2 facility by the governmental entity.

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

6 Sec. 2264.206. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
7 governmental entity shall select a construction manager-agent on
8 the basis of demonstrated competence and qualifications in the same
9 manner as provided for the selection of engineers or architects
10 under Section 2254.004.

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

17 [Sections 2264.208-2264.250 reserved for expansion]

18 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

19 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
20 MANAGER-AT-RISK. (a) A construction manager-at-risk is a sole
21 proprietorship, partnership, corporation, or other legal entity
22 that assumes the risk for construction, rehabilitation,
23 alteration, or repair of a facility at the contracted price as a
24 general contractor and provides consultation to the governmental
25 entity regarding construction during and after the design of the
26 facility.

27 (b) A governmental entity may use the construction

1 manager-at-risk method in selecting a general contractor for the
2 construction, rehabilitation, alteration, or repair of a facility
3 only as provided by this subchapter.

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

8 (b) The governmental entity's engineer or architect for a
9 project may not serve, alone or in combination with another person,
10 as the construction manager-at-risk unless the architect or
11 engineer is hired to serve as the construction manager-at-risk
12 under a separate or concurrent selection process conducted in
13 accordance with this subchapter. This subsection does not prohibit
14 the governmental entity's architect or engineer from providing
15 customary construction phase services under the architect's or
16 engineer's original professional service agreement in accordance
17 with applicable licensing laws.

18 Sec. 2264.253. USE OF OTHER PROFESSIONAL SERVICES. (a) The
19 governmental entity shall provide or contract for, independently of
20 the construction manager-at-risk, the construction materials
21 engineering, testing, and inspection services and the verification
22 testing services necessary for acceptance of the facility by the
23 governmental entity.

24 (b) The governmental entity shall select the services for
25 which it contracts under this section in accordance with Section
26 2254.004.

27 Sec. 2264.254. SELECTION PROCESS. (a) The governmental

1 entity shall select the construction manager-at-risk in a one-step
2 or two-step process.

3 (b) The governmental entity shall prepare a single request
4 for proposals, in the case of a one-step process, and an initial
5 request for qualifications, in the case of a two-step process, that
6 includes:

7 (1) general information on the project site, project
8 scope, schedule, selection criteria, estimated budget, and the time
9 and place for receipt of the proposals or qualifications;

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

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

14 (c) The governmental entity shall state the selection
15 criteria in the request for proposals or qualifications. The
16 selection criteria may include the offeror's experience, past
17 performance, safety record, proposed personnel and methodology,
18 and other appropriate factors that demonstrate the capability of
19 the construction manager-at-risk.

20 (d) If a one-step process is used, the governmental entity
21 may request, as part of the offeror's proposal, proposed fees and
22 prices for fulfilling the general conditions.

23 (e) If a two-step process is used, the governmental entity
24 may not request fees or prices in step one. In step two, the
25 governmental entity may request that five or fewer offerors,
26 selected solely on the basis of qualifications, provide additional
27 information, including the construction manager-at-risk's proposed

1 fee and price for fulfilling the general conditions.

2 (f) At each step, the governmental entity shall receive,
3 publicly open, and read aloud the names of the offerors. At the
4 appropriate step, the governmental entity shall also read aloud the
5 fees and prices, if any, stated in each proposal as the proposal is
6 opened.

7 (g) Not later than the 45th day after the date of opening the
8 final proposals, the governmental entity shall evaluate and rank
9 each proposal submitted in relation to the criteria set forth in the
10 request for proposals.

11 Sec. 2264.255. SELECTION OF OFFEROR. (a) The governmental
12 entity shall select the offeror that submits the proposal that
13 offers the best value for the governmental entity based on the
14 published selection criteria and on its ranking evaluation.

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

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

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

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

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

6 (2) the governmental entity determines that the
7 construction manager-at-risk's bid or proposal provides the best
8 value for the governmental entity.

9 Sec. 2264.257. REVIEW OF BIDS OR PROPOSALS. (a) The
10 construction manager-at-risk and the governmental entity shall
11 review all trade contractor or subcontractor bids or proposals in a
12 manner that does not disclose the contents of the bid or proposal
13 during the selection process to a person not employed by the
14 construction manager-at-risk, engineer, architect, or governmental
15 entity. All bids or proposals shall be made public after the later
16 of the award of the contract or the seventh day after the date of
17 final selection of bids or proposals.

18 (b) If the construction manager-at-risk reviews, evaluates,
19 and recommends to the governmental entity a bid or proposal from a
20 trade contractor or subcontractor but the governmental entity
21 requires another bid or proposal to be accepted, the governmental
22 entity shall compensate the construction manager-at-risk by a
23 change in price, time, or guaranteed maximum cost for any
24 additional cost and risk that the construction manager-at-risk
25 incurs because of the governmental entity's requirement that
26 another bid or proposal be accepted.

27 Sec. 2264.258. DEFAULT; PERFORMANCE OF WORK. If a selected

1 trade contractor or subcontractor defaults in the performance of
2 its work or fails to execute a subcontract after being selected in
3 accordance with this subchapter, the construction manager-at-risk
4 may itself fulfill the contract requirements or select a
5 replacement trade contractor or subcontractor to fulfill the
6 contract requirements.

7 Sec. 2264.259. PERFORMANCE OR PAYMENT BOND. (a) If a fixed
8 contract amount or guaranteed maximum price has not been determined
9 at the time the contract is awarded, the penal sums of the
10 performance and payment bonds delivered to the governmental entity
11 must each be in an amount equal to the project budget, as specified
12 in the request for proposals or qualifications.

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

20 [Sections 2264.260-2264.300 reserved for expansion]

21 SUBCHAPTER G. DESIGN-BUILD METHOD

22 Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
23 EXCEPTIONS. This subchapter applies only to a facility that is a
24 building or an associated structure. This subchapter does not
25 apply to:

26 (1) a highway, road, street, bridge, utility, water
27 supply project, water plant, wastewater plant, water and wastewater

1 distribution or conveyance facility, wharf, dock, airport runway or
2 taxiway, drainage project, or related type of project associated
3 with civil engineering construction; or

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

6 Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
7 governmental entity may use the design-build method for the
8 construction, rehabilitation, alteration, or repair of a building
9 or associated structure only as provided by this subchapter. In
10 using that method, the governmental entity shall enter into a
11 single contract with a design-build firm for the design and
12 construction of the building or associated structure.

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

17 Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. The
18 governmental entity shall select or designate an architect or
19 engineer independent of the design-build firm to act as the
20 governmental entity's representative for the duration of the work
21 on the facility.

22 Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. (a) The
23 governmental entity shall provide or contract for, independently of
24 the design-build firm, the construction materials engineering,
25 testing, and inspection services and the verification testing
26 services necessary for acceptance of the facility by the
27 governmental entity.

1 (b) The governmental entity shall select the services for
2 which it contracts under this section in accordance with Section
3 2254.004.

4 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
5 governmental entity shall prepare a request for qualifications that
6 includes general information on the project site, project scope,
7 budget, special systems, selection criteria, and other information
8 that may assist potential design-build firms in submitting
9 proposals for the project.

10 (b) The governmental entity shall also prepare the design
11 criteria package that includes more detailed information on the
12 project. If the preparation of the design criteria package
13 requires engineering or architectural services that constitute the
14 practice of engineering within the meaning of Chapter 1001,
15 Occupations Code, or the practice of architecture within the
16 meaning of Chapter 1051, Occupations Code, those services shall be
17 provided in accordance with the applicable law.

18 (c) The design criteria package must include a set of
19 documents that provides sufficient information, including criteria
20 for selection, to permit a design-build firm to prepare a response
21 to the governmental entity's request for qualifications and to
22 provide any additional information requested. The design criteria
23 package must specify criteria the governmental entity considers
24 necessary to describe the project and may include, as appropriate,
25 the legal description of the site, survey information concerning
26 the site, interior space requirements, special material
27 requirements, material quality standards, conceptual criteria for

1 the project, special equipment requirements, cost or budget
2 estimates, time schedules, quality assurance and quality control
3 requirements, site development requirements, applicable codes and
4 ordinances, provisions for utilities, parking requirements, and
5 any other requirement.

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

9 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
10 each design-build firm that responded to the request for
11 qualifications, the governmental entity shall evaluate the firm's
12 experience, technical competence, and capability to perform, the
13 past performance of the firm and members of the firm, and other
14 appropriate factors submitted by the firm in response to the
15 request for qualifications, except that cost-related or
16 price-related evaluation factors are not permitted.

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

21 (c) The governmental entity shall qualify a maximum of five
22 responders to submit proposals that contain additional information
23 and, if the governmental entity chooses, to interview for final
24 selection.

25 (d) The governmental entity shall evaluate the additional
26 information submitted by the offerors on the basis of the selection
27 criteria stated in the request for qualifications and the results

1 of any interview.

2 (e) The governmental entity may request additional
3 information regarding demonstrated competence and qualifications,
4 considerations of the safety and long-term durability of the
5 project, the feasibility of implementing the project as proposed,
6 the ability of the offeror to meet schedules, or costing
7 methodology. As used in this subsection, "costing methodology"
8 means an offeror's policies on subcontractor markup, definition of
9 general conditions, range of cost for general conditions, policies
10 on retainage, policies on contingencies, discount for prompt
11 payment, and expected staffing for administrative duties. The term
12 does not include a guaranteed maximum price or bid for overall
13 design or construction.

14 (f) The governmental entity shall rank each proposal
15 submitted on the basis of the criteria set forth in the request for
16 qualifications.

17 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
18 governmental entity shall select the design-build firm that submits
19 the proposal offering the best value for the governmental entity on
20 the basis of the published selection criteria and on its ranking
21 evaluations.

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

24 (c) If the governmental entity is unable to negotiate a
25 satisfactory contract with the selected firm, the governmental
26 entity shall, formally and in writing, end all negotiations with
27 that firm and proceed to negotiate with the next firm in the order

1 of the selection ranking until a contract is reached or
2 negotiations with all ranked firms end.

3 Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After
4 selection of the design-build firm, that firm's architects or
5 engineers shall complete the design and submit all design elements
6 for review and determination of scope compliance to the
7 governmental entity or governmental entity's architect or engineer
8 before or concurrently with construction.

9 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
10 design-build firm shall supply a signed and sealed set of
11 construction documents for the project to the governmental entity
12 at the conclusion of construction.

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

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

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

1 [Sections 2264.312-2264.350 reserved for expansion]

2 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

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

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

9 (2) indefinite quantities and orders are awarded
10 substantially on the basis of prescribed and prepriced tasks.

11 Sec. 2264.352. CONTRACTUAL UNIT PRICES. The governmental
12 entity may establish contractual unit prices for a job order
13 contract by:

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

16 (2) providing a list of prepriced work items and
17 requiring the offerors to propose one or more coefficients or
18 multipliers to be applied to the price book or prepriced work items
19 as the price proposal.

20 Sec. 2264.353. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
21 governmental entity may use the competitive sealed proposal method
22 under Subchapter D for job order contracts or may award a contract
23 through the use of an interlocal contract.

24 (b) The governmental entity shall advertise for, receive,
25 and publicly open sealed proposals for job order contracts.

26 (c) The governmental entity may require offerors to submit
27 information in addition to rates, including experience, past

1 performance, and proposed personnel and methodology.

2 (d) Unless required by Section 2264.355, a request for a
3 competitive sealed proposal under this subchapter is not required
4 to include the information required by Section 2264.154(a).

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

8 Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order
9 contract or an order issued under the contract requires
10 architectural or engineering services that constitute the practice
11 of engineering within the meaning of Chapter 1001, Occupations
12 Code, or the practice of architecture within the meaning of Chapter
13 1051, Occupations Code, those services shall be provided in
14 accordance with applicable law.

15 Sec. 2264.356. JOB ORDER CONTRACT TERM. (a) A job order
16 contract is for the base term and with any renewal options that the
17 governmental entity sets forth in the request for proposals.

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

21 Sec. 2264.357. JOB ORDERS. (a) An order for a job or
22 project under a job order contract must be signed by the
23 governmental entity's representative and the contractor.

24 (b) The order may be:

25 (1) a fixed price, lump-sum contract based
26 substantially on contractual unit pricing applied to estimated
27 quantities; or

1 (2) a unit price order based on the quantities and line
2 items delivered.

3 Sec. 2264.358. PAYMENT AND PERFORMANCE BONDS. The
4 contractor shall provide payment and performance bonds, if required
5 by law, based on the amount or estimated amount of any order.

6 [Sections 2264.359-2264.400 reserved for expansion]

7 SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

8 Sec. 2264.401. NOTICE REQUIREMENTS FOR CERTAIN LOCAL
9 GOVERNMENTS. (a) For a contract entered into by a defense base
10 development authority, municipality, or river authority under a
11 method provided by this chapter, the municipality or authority
12 shall publish notice of the time and place the bids or proposals or
13 the responses to a request for qualifications will be received and
14 opened.

15 (b) The notice must be published in a newspaper of general
16 circulation in the county in which the defense base development
17 authority's or municipality's central administrative office is
18 located or in the county in which the greatest amount of the river
19 authority's territory is located. If there is not a newspaper of
20 general circulation in that county, the notice shall be published
21 in a newspaper of general circulation in the county nearest the
22 county seat of the county in which the defense base development
23 authority's or municipality's central administrative office is
24 located or the county seat of the county in which the greatest
25 amount of the river authority's territory is located.

26 (c) The notice must be published once each week for at least
27 two weeks before the deadline for receiving bids, proposals, or

1 responses.

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

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

10 (b) The notice must be published in a newspaper of general
11 circulation in the county once each week for at least two weeks
12 before the deadline for receiving bids, proposals, or responses.
13 If there is not a newspaper of general circulation in the county,
14 the notice shall be:

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

16 (2) published in a newspaper of general circulation in
17 the county nearest the county seat of the county publishing the
18 notice.

19 [Sections 2264.403-2264.425 reserved for expansion]

20 SUBCHAPTER J. ENFORCEMENT

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

23 Sec. 2264.427. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
24 chapter may be enforced through an action for declaratory or
25 injunctive relief filed not later than the 30th day after the date
26 on which the contract is awarded.

27 (b) The injunctive relief provided by this section does not

1 apply to enforcement of a contract entered into by a state agency
2 that has a formal administrative appeals process regarding the
3 award of the contract.

4 SECTION 4. Subchapter D, Chapter 11, Education Code, is
5 amended by adding Section 11.168 to read as follows:

6 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR
7 CERTAIN PURPOSES. The board of trustees of a school district may
8 not enter into an agreement authorizing the use of school district
9 employees, property, or resources for the provision of materials or
10 labor for the design, construction, or renovation of improvements
11 to real property not owned or leased by the district.

12 SECTION 5. 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 6. 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 7. 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 8. 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 9. 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. (a) 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 (b) The injunctive relief provided by this section does not
9 apply to enforcement of a contract entered into by a state agency
10 that has a formal administrative appeals process regarding the
11 award of the contract.

12 SECTION 10. Section 252.021(a), Local Government Code, is
13 amended to read as follows:

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

17 (1) comply with the procedure prescribed by this
18 subchapter and Subchapter C for competitive sealed bidding or
19 competitive sealed proposals;

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

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

24 SECTION 11. Chapter 302, Local Government Code, is amended
25 by adding Section 302.006 to read as follows:

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

1 SECTION 12. Subchapter E, Chapter 335, Local Government
2 Code, is amended by adding Section 335.077 to read as follows:

3 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.
4 Chapter 2264, Government Code, does not apply to this chapter.

5 SECTION 13. Section 22.074, Transportation Code, is amended
6 by adding Subsection (f) to read as follows:

7 (f) Chapter 2264, Government Code, does not apply to a joint
8 board whose constituent agencies are populous home-rule
9 municipalities.

10 SECTION 14. Section 370.305, Transportation Code, is
11 amended by adding Subsection (e) to read as follows:

12 (e) Chapter 2264, Government Code, does not apply to
13 agreements entered into pursuant to this section.

14 SECTION 15. Section 431.101(g), Transportation Code, is
15 amended to read as follows:

16 (g) A local government corporation [~~created by a navigation~~
17 ~~district~~] must comply with all state law related to the design and
18 construction of projects, including the procurement of design and
19 construction services, that applies to the local government
20 [navigation district] that created the corporation.

21 SECTION 16. Chapter 451, Transportation Code, is amended by
22 adding Section 451.813 to read as follows:

23 Sec. 451.813. EXEMPTION FROM OTHER CONTRACTING LAW.
24 Chapter 2264, Government Code, does not apply to this subchapter,
25 as added by H.B. No. 2300, Acts of the 79th Legislature, Regular
26 Session, 2005.

27 SECTION 17. Subchapter C, Chapter 452, Transportation Code,

1 is amended by adding Section 452.1095 to read as follows:

2 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR
3 CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply
4 to an authority consisting of one subregion governed by a
5 subregional board created under Subchapter O.

6 SECTION 18. Section 60.452, Water Code, as added by Chapter
7 307, Acts of the 78th Legislature, Regular Session, 2003, is
8 amended by adding Subsection (c) to read as follows:

9 (c) Chapter 2264, Government Code, does not apply to this
10 subchapter.

11 SECTION 19. The following are repealed:

12 (1) Sections 44.0312, 44.0315, 44.035-44.041, and
13 44.043, Education Code;

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

15 (3) Sections 2166.2511, 2166.2526, 2166.2531,
16 2166.2532, 2166.2533, and 2166.2535, Government Code;

17 (4) Subchapter H, Chapter 271, Local Government Code;

18 and

19 (5) Section 431.101(e), Transportation Code.

20 SECTION 20. (a) The changes in law made by this Act apply
21 only to a contract or construction project for which a governmental
22 entity first advertises or otherwise requests bids, proposals,
23 offers, or qualifications, or makes a similar solicitation, on or
24 after the effective date of this Act.

25 (b) A contract or construction project for which a
26 governmental entity first advertises or otherwise requests bids,
27 proposals, offers, or qualifications, or makes a similar

1 solicitation, before the effective date of this Act is governed by
2 the law as it existed immediately before the effective date of this
3 Act, and that law is continued in effect for that purpose.

4 SECTION 21. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2525 was passed by the House on May 10, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2525 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2525 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 2525

I certify that H.B. No. 2525 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2525 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor