

By: Callegari

H.B. No. 2525

Substitute the following for H.B. No. 2525:

By: Davis of Dallas

C.S.H.B. No. 2525

A BILL TO BE ENTITLED

AN ACT

relating to contracts by governmental entities for construction projects and related professional services.

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

SECTION 1. 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 2. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

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

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

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

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

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

9 This chapter applies to a governmental entity or quasi-governmental
10 entity authorized by state law to make a public work contract,
11 including:

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

14 (2) a local government, including:

15 (A) a county;

16 (B) a municipality;

17 (C) a special district or authority, including a
18 school district, a hospital district, a river authority or any
19 other type of water district, and a defense base development
20 authority established under Chapter 379B, Local Government Code;
21 and

22 (D) any other political subdivision of this
23 state; and

24 (3) a public junior college as defined by Section
25 61.003, Education Code.

26 Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW
27 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this

1 section, this chapter prevails over any other law relating to
2 public works contracts.

3 (b) This chapter does not prevail over a conflicting
4 provision in a law relating to contracting with a historically
5 underutilized business.

6 (c) This chapter does not prevail over a conflicting
7 provision in:

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

9 (2) a rule of a county, river authority, or defense
10 base development authority that requires the use of competitive
11 bidding.

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

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

19 [Sections 2264.005-2264.050 reserved for expansion]

20 SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

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

27 (b) The entity shall provide notice of the delegation and

1 the limits of the delegation in the request for bids, proposals, or
2 qualifications or in an addendum to the request.

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

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

- 9 (1) procuring goods or services under this chapter;
10 (2) awarding a contract under this chapter; or
11 (3) overseeing procurement or construction for a
12 public work or public improvement under this chapter.

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

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

17 (2) shall ensure that its bid specifications and any
18 subsequent contract or other agreement do not deny or diminish the
19 right of a person to work because of the person's membership or
20 other relationship status with respect to an organization.

21 [Sections 2264.054-2264.100 reserved for expansion]

22 SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES

23 Sec. 2264.101. CRITERIA TO CONSIDER. In determining the
24 award of a contract under this chapter, the governmental entity may
25 consider:

- 26 (1) the purchase price;
27 (2) the reputation of the offeror and the offeror's

1 goods or services;

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

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

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

7 (6) the impact on the ability of the governmental
8 entity to comply with rules relating to historically underutilized
9 businesses;

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

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

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

20 (b) The governmental entity shall base its selection among
21 offerors on applicable criteria listed in Section 2264.101. The
22 governmental entity shall publish in the request for proposals or
23 qualifications the criteria that will be used to evaluate the
24 offerors.

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

1 Sec. 2264.103. ARCHITECT OR ENGINEER SERVICES. (a) An
2 architect or engineer required to be selected or designated under
3 this chapter has full responsibility for complying with Chapter
4 1001 or 1051, Occupations Code, as applicable.

5 (b) If the selected or designated architect or engineer is
6 not a full-time employee of the governmental entity, the
7 governmental entity shall select the architect or engineer on the
8 basis of demonstrated competence and qualifications as provided by
9 Section 2254.004.

10 Sec. 2264.104. RESPONSIBILITIES OF CONTRACTORS. In the
11 context of a contract for the construction, rehabilitation,
12 alteration, or repair of a facility under this chapter, a
13 contractor is a sole proprietorship, partnership, corporation, or
14 other legal entity that assumes the risk for constructing,
15 rehabilitating, altering, or repairing all or part of the facility
16 at the contracted price.

17 Sec. 2264.105. COMPETITIVE BIDDING. (a) Except as
18 otherwise provided by this chapter or other law, a governmental
19 entity may contract for the construction, alteration,
20 rehabilitation, or repair of a facility only after the entity
21 advertises for bids for the contract in a manner prescribed by law,
22 receives sealed competitive bids, and awards the contract to:

23 (1) the lowest responsible bidder; or

24 (2) the bidder offering the best value to the
25 governmental entity according to the selection criteria
26 established by the governmental entity in the request for bids.

27 (b) The governmental entity shall document the basis of its

1 selection and shall make the evaluations public not later than the
2 seventh day after the date the contract is awarded.

3 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
4 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
5 specifically provided by this section, Subchapter B, Chapter 271,
6 Local Government Code, does not apply to a competitive bidding
7 process made under this chapter. Sections 271.026, 271.027(a), and
8 271.0275, Local Government Code, apply to a competitive bidding
9 process made under this chapter by a governmental entity as defined
10 by Section 271.021, Local Government Code.

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

16 [Sections 2264.108-2264.150 reserved for expansion]

17 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

18 Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION
19 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. A governmental
20 entity may use the competitive sealed proposal method to select a
21 contractor for the construction, rehabilitation, alteration, or
22 repair of a facility. In selecting a contractor through
23 competitive sealed proposals, a governmental entity shall follow
24 the procedures provided by this subchapter.

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

1 Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. (a) The
2 governmental entity shall provide or contract for, independently of
3 the contractor, the inspection services, the testing of
4 construction materials engineering, and the verification testing
5 services necessary for acceptance of the facility by the
6 governmental entity.

7 (b) The governmental entity shall select the services for
8 which it contracts under this section in accordance with Section
9 2254.004.

10 Sec. 2264.154. PREPARATION OF REQUEST. (a) The
11 governmental entity shall prepare a request for competitive sealed
12 proposals that includes construction documents, selection
13 criteria, estimated budget, project scope, estimated project
14 completion date, and other information that a contractor may
15 require to respond to the request.

16 (b) The governmental entity shall state in the request for
17 proposals the selection criteria that will be used in selecting the
18 successful offeror.

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

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

25 Sec. 2264.156. SELECTION OF OFFEROR. (a) The governmental
26 entity shall select the offeror that offers the best value for the
27 governmental entity based on the published selection criteria and

1 on its ranking evaluation. In determining best value for the
2 governmental entity, the governmental entity is not restricted to
3 considering price alone but may consider any other factor stated in
4 the selection criteria.

5 (b) The governmental entity shall first attempt to
6 negotiate a contract with the selected offeror. The governmental
7 entity and its engineer or architect may discuss with the selected
8 offeror options for a scope or time modification and any price
9 change associated with the modification.

10 (c) If the governmental entity is unable to negotiate a
11 contract with the selected offeror, the governmental entity shall,
12 formally and in writing, end negotiations with that offeror and
13 proceed to the next offeror in the order of the selection ranking
14 until a contract is reached or all proposals are rejected.

15 [Sections 2264.157-2264.200 reserved for expansion]

16 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

17 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
18 MANAGER-AGENT SERVICES. (a) A construction manager-agent is a
19 sole proprietorship, partnership, corporation, or other legal
20 entity that provides consultation services to the governmental
21 entity regarding construction, rehabilitation, alteration, or
22 repair of a facility.

23 (b) A governmental entity may retain a construction
24 manager-agent for assistance in the construction, rehabilitation,
25 alteration, or repair of a facility only as provided by this
26 subchapter.

27 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION

1 MANAGER-AGENT. (a) The contract between the governmental entity
2 and the construction manager-agent may require the construction
3 manager-agent to provide:

4 (1) administrative personnel;

5 (2) equipment necessary to perform duties under this
6 subchapter;

7 (3) on-site management; and

8 (4) other services specified in the contract.

9 (b) A construction manager-agent may not be a contractor who
10 performs the construction, rehabilitation, alteration, or repair
11 of the facility.

12 Sec. 2264.203. FIDUCIARY CAPACITY OF CONSTRUCTION
13 MANAGER-AGENT. A construction manager-agent represents the
14 governmental entity in a fiduciary capacity and acts as the
15 entity's agent in fulfilling the entity's responsibilities related
16 to project management, cost management, schedule management, and
17 dispute resolution management for all phases of the project.

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

22 (b) The governmental entity's architect or engineer may not
23 serve, alone or in combination with another person, as the
24 construction manager-agent unless the architect or engineer is
25 hired to serve as the construction manager-agent under a separate
26 or concurrent selection process conducted in accordance with this
27 subchapter. This subsection does not prohibit the governmental

1 entity's architect or engineer from providing customary
2 construction phase services under the architect's or engineer's
3 original professional service agreement in accordance with
4 applicable licensing laws.

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

10 Sec. 2264.205. USE OF OTHER PROFESSIONAL SERVICES. (a) The
11 governmental entity or the construction manager-agent shall
12 procure, independently of the contractor, the inspection services,
13 the 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 or the construction
17 manager-agent shall select the services for which it contracts
18 under this section in accordance with Section 2254.004.

19 Sec. 2264.206. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
20 governmental entity shall select a construction manager-agent on
21 the basis of demonstrated competence and qualifications in the same
22 manner as provided for the selection of engineers or architects
23 under Section 2254.004.

24 Sec. 2264.207. SELECTION OF CONTRACTORS. A governmental
25 entity using the construction manager-agent method shall procure,
26 in accordance with applicable law and in any manner authorized by
27 this chapter, a general contractor, trade contractors, or

1 subcontractors who will serve as the prime contractor for their
2 specific portion of the work.

3 [Sections 2264.208-2264.250 reserved for expansion]

4 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

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

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

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

21 (b) The governmental entity's engineer or architect for a
22 project may not serve, alone or in combination with another person,
23 as the construction manager-at-risk unless the architect or
24 engineer is hired to serve as the construction manager-at-risk
25 under a separate or concurrent selection process conducted in
26 accordance with this subchapter. This subsection does not prohibit
27 the governmental entity's architect or engineer from providing

1 customary construction phase services under the architect's or
2 engineer's original professional service agreement in accordance
3 with applicable licensing laws.

4 Sec. 2264.253. USE OF OTHER PROFESSIONAL SERVICES. (a) The
5 governmental entity shall provide or contract for, independently of
6 the construction manager-at-risk, the inspection services, the
7 testing of construction materials engineering, and the
8 verification testing services necessary for acceptance of the
9 facility by the governmental entity.

10 (b) The governmental entity shall select the services for
11 which it contracts under this section in accordance with Section
12 2254.004.

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

16 (b) The governmental entity shall prepare a single request
17 for proposals, in the case of a one-step process, and an initial
18 request for qualifications, in the case of a two-step process, that
19 includes:

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

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

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

27 (c) The governmental entity shall state the selection

1 criteria in the request for proposals or qualifications. The
2 selection criteria may include the offeror's experience, past
3 performance, safety record, proposed personnel and methodology,
4 and other appropriate factors that demonstrate the capability of
5 the construction manager-at-risk.

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

9 (e) If a two-step process is used, the governmental entity
10 may not request fees or prices in step one. In step two, the
11 governmental entity may request that five or fewer offerors,
12 selected solely on the basis of qualifications, provide additional
13 information, including the construction manager-at-risk's proposed
14 fee and price for fulfilling the general conditions.

15 (f) At each step, the governmental entity shall receive,
16 publicly open, and read aloud the names of the offerors. At the
17 appropriate step, the governmental entity shall also read aloud the
18 fees and prices, if any, stated in each proposal as the proposal is
19 opened.

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

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

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

3 (c) If the governmental entity is unable to negotiate a
4 satisfactory contract with the selected offeror, the governmental
5 entity shall, formally and in writing, end negotiations with that
6 offeror and proceed to negotiate with the next offeror in the order
7 of the selection ranking until a contract is reached or
8 negotiations with all ranked offerors end.

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

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

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

19 (2) the governmental entity determines that the
20 construction manager-at-risk's bid or proposal provides the best
21 value for the governmental entity.

22 Sec. 2264.257. REVIEW OF BIDS OR PROPOSALS. (a) The
23 construction manager-at-risk and the governmental entity shall
24 review all trade contractor or subcontractor bids or proposals in a
25 manner that does not disclose the contents of the bid or proposal
26 during the selection process to a person not employed by the
27 construction manager-at-risk, engineer, architect, or governmental

1 entity. All bids or proposals shall be made public after the later
2 of the award of the contract or the seventh day after the date of
3 final selection of bids or proposals.

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

13 Sec. 2264.258. DEFAULT; PERFORMANCE OF WORK. If a selected
14 trade contractor or subcontractor defaults in the performance of
15 its work or fails to execute a subcontract after being selected in
16 accordance with this subchapter, the construction manager-at-risk
17 may itself fulfill the contract requirements or select a
18 replacement trade contractor or subcontractor to fulfill the
19 contract requirements.

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

26 (b) The construction manager-at-risk shall deliver the
27 bonds not later than the 10th day after the date the construction

1 manager-at-risk executes the contract unless the construction
2 manager-at-risk furnishes a bid bond or other financial security
3 acceptable to the governmental entity to ensure that the
4 construction manager will furnish the required performance and
5 payment bonds when a guaranteed maximum price is established.

6 [Sections 2264.260-2264.300 reserved for expansion]

7 SUBCHAPTER G. DESIGN-BUILD METHOD

8 Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
9 EXCEPTIONS. This subchapter applies only to a facility that is a
10 building or an associated structure. This subchapter does not
11 apply to:

12 (1) a highway, road, street, bridge, utility, water
13 supply project, water plant, wastewater plant, water and wastewater
14 distribution or conveyance facility, wharf, dock, airport runway or
15 taxiway, drainage project, or related type of project associated
16 with civil engineering construction; or

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

19 Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
20 governmental entity may use the design-build method for the
21 construction, rehabilitation, alteration, or repair of a building
22 or associated structure only as provided by this subchapter. In
23 using that method, the governmental entity shall enter into a
24 single contract with a design-build firm for the design and
25 construction of the building or associated structure.

26 Sec. 2264.303. DESIGN-BUILD FIRMS. A design-build firm
27 under this subchapter must be a partnership, corporation, or other

1 legal entity or team that includes an engineer or architect and a
2 construction contractor.

3 Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. The
4 governmental entity shall select or designate an architect or
5 engineer independent of the design-build firm to act as the
6 governmental entity's representative for the duration of the work
7 on the facility.

8 Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. (a) The
9 governmental entity shall provide or contract for, independently of
10 the design-build firm, the inspection services, the testing of
11 construction materials engineering, and the verification testing
12 services necessary for acceptance of the facility by the
13 governmental entity.

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

17 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
18 governmental entity shall prepare a request for qualifications that
19 includes general information on the project site, project scope,
20 budget, special systems, selection criteria, and other information
21 that may assist potential design-build firms in submitting
22 proposals for the project.

23 (b) The governmental entity shall also prepare the design
24 criteria package that includes more detailed information on the
25 project. If the preparation of the design criteria package
26 requires engineering or architectural services that constitute the
27 practice of engineering within the meaning of Chapter 1001,

1 Occupations Code, or the practice of architecture within the
2 meaning of Chapter 1051, Occupations Code, those services shall be
3 provided in accordance with the applicable law.

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

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

22 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
23 each design-build firm that responded to the request for
24 qualifications, the governmental entity shall evaluate the firm's
25 experience, technical competence, and capability to perform, the
26 past performance of the firm and members of the firm, and other
27 appropriate factors submitted by the firm in response to the

1 request for qualifications, except that cost-related or
2 price-related evaluation factors are not permitted.

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

7 (c) The governmental entity shall qualify a maximum of five
8 responders to submit proposals that contain additional information
9 and, if the governmental entity chooses, to interview for final
10 selection.

11 (d) The governmental entity shall evaluate the additional
12 information submitted by the offerors on the basis of the selection
13 criteria stated in the request for qualifications and the results
14 of any interview.

15 (e) The governmental entity may request additional
16 information regarding demonstrated competence and qualifications,
17 considerations of the safety and long-term durability of the
18 project, the feasibility of implementing the project as proposed,
19 the ability of the offeror to meet schedules, or costing
20 methodology. As used in this subsection, "costing methodology"
21 means an offeror's policies on subcontractor markup, definition of
22 general conditions, range of cost for general conditions, policies
23 on retainage, policies on contingencies, discount for prompt
24 payment, and expected staffing for administrative duties. The term
25 does not include a guaranteed maximum price or bid for overall
26 design or construction.

27 (f) The governmental entity shall rank each proposal

1 submitted on the basis of the criteria set forth in the request for
2 qualifications.

3 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
4 governmental entity shall select the design-build firm that submits
5 the proposal offering the best value for the governmental entity on
6 the basis of the published selection criteria and on its ranking
7 evaluations.

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

10 (c) If the governmental entity is unable to negotiate a
11 satisfactory contract with the selected firm, the governmental
12 entity shall, formally and in writing, end all negotiations with
13 that firm and proceed to negotiate with the next firm in the order
14 of the selection ranking until a contract is reached or
15 negotiations with all ranked firms end.

16 Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After
17 selection of the design-build firm, that firm's architects or
18 engineers shall complete the design and submit all design elements
19 for review and determination of scope compliance to the
20 governmental entity or governmental entity's architect or engineer
21 before or concurrently with construction.

22 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
23 design-build firm shall supply a signed and sealed set of
24 construction documents for the project to the governmental entity
25 at the conclusion of construction.

26 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
27 or performance bond is not required and may not provide coverage for

1 the portion of the design-build contract with the design-build firm
2 under this subchapter that includes design services only.

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

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

14 [Sections 2264.312-2264.350 reserved for expansion]

15 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

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

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

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

24 Sec. 2264.352. CONTRACTUAL UNIT PRICES. The governmental
25 entity may establish contractual unit prices for a job order
26 contract by:

27 (1) specifying one or more published construction unit

1 price books and the applicable divisions or line items; or

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

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

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

11 Sec. 2264.354. AWARDED OF JOB CONTRACTS. The governmental
12 entity may award job order contracts to one or more job order
13 contractors in connection with each solicitation of proposals.

14 Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order
15 contract or an order issued under the contract requires
16 architectural or engineering services that constitute the practice
17 of engineering within the meaning of Chapter 1001, Occupations
18 Code, or the practice of architecture within the meaning of Chapter
19 1051, Occupations Code, those services shall be provided in
20 accordance with applicable law.

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

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

27 Sec. 2264.357. JOB ORDERS. (a) An order for a job or

1 project under a job order contract must be signed by the
2 governmental entity's representative and the contractor.

3 (b) The order may be:

4 (1) a fixed price, lump-sum contract based
5 substantially on contractual unit pricing applied to estimated
6 quantities; or

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

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

12 [Sections 2264.359-2264.400 reserved for expansion]

13 SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

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

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

1 county seat of the county in which the defense base development
2 authority's or municipality's central administrative office is
3 located or the county seat of the county in which the greatest
4 amount of the river authority's territory is located.

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

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

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

16 (b) The notice must be published in a newspaper of general
17 circulation in the county once each week for at least two weeks
18 before the deadline for receiving bids, proposals, or responses.
19 If there is not a newspaper of general circulation in the county,
20 the notice shall be:

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

22 (2) published in a newspaper of general circulation in
23 the county nearest the county seat of the county publishing the
24 notice.

25 [Sections 2264.403-2264.425 reserved for expansion]

26 SUBCHAPTER J. ENFORCEMENT

27 Sec. 2264.426. VOID CONTRACT. A contract entered into in

1 violation of this chapter is void as against public policy.

2 Sec. 2264.427. INJUNCTIVE RELIEF. (a) As used in this
3 section, "interested person" includes a county or district
4 attorney, a criminal district attorney, a resident of a county that
5 enters into a contract under this chapter, or a resident of a county
6 in which a municipality or a river or defense base development
7 authority that enters into a contract under this chapter is
8 located.

9 (b) Any interested person may file an action to enjoin
10 performance of a contract made in violation of this chapter.

11 SECTION 3. Sections 44.031(a) and (f), Education Code, are
12 amended to read as follows:

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

- 19 (1) competitive bidding;
- 20 (2) competitive sealed proposals;
- 21 (3) a request for proposals, for services other than
22 construction services;
- 23 (4) a catalogue purchase as provided by Subchapter B,
24 Chapter 2157, Government Code;
- 25 (5) an interlocal contract;
- 26 (6) a method provided by Chapter 2264, Government
27 Code;

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

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

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

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

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

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

17 SECTION 4. Section 44.901, Education Code, is amended by
18 adding Subsection (j) to read as follows:

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

21 SECTION 5. Section 51.927, Education Code, is amended by
22 adding Subsection (k) to read as follows:

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

25 SECTION 6. Section 2166.406, Government Code, is amended by
26 adding Subsection (k) to read as follows:

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

1 SECTION 7. Subchapter A, Chapter 2254, Government Code, is
2 amended by adding Section 2254.007 to read as follows:

3 Sec. 2254.007. INJUNCTIVE RELIEF. (a) As used in this
4 section, "interested person" includes a county or district
5 attorney, a criminal district attorney, a resident of a county that
6 enters into a contract under this chapter, or a resident of a county
7 in which a municipality or a river authority that enters into a
8 contract under this chapter is located.

9 (b) Any interested person may file an action to enjoin
10 performance of a contract made in violation of this chapter.

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

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

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

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

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

23 SECTION 9. Chapter 302, Local Government Code, is amended
24 by adding Section 302.006 to read as follows:

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

27 SECTION 10. Section 22.074, Transportation Code, is amended

1 by adding Subsection (f) to read as follows:

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

5 SECTION 11. Section 60.452, Water Code, as added by Chapter
6 307, Acts of the 78th Legislature, Regular Session, 2003, is
7 amended by adding Subsection (c) to read as follows:

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

10 SECTION 12. The following are repealed:

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

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

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

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

17 SECTION 13. (a) The changes in law made by this Act apply
18 only to a contract or construction project for which a governmental
19 entity first advertises or otherwise requests bids, proposals,
20 offers, or qualifications, or makes a similar solicitation, on or
21 after the effective date of this Act.

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

1 SECTION 14. This Act takes effect September 1, 2005.