

1-1 By: Callegari (Senate Sponsor - Lindsay) H.B. No. 2525
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 17, 2005, read first time and referred to Committee on
1-4 Government Organization; May 20, 2005, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 6,
1-6 Nays 0; May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2525 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to contracts by governmental entities for construction
1-11 projects and related professional services and to public works
1-12 performance and payment bonds.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 2253.021, Government Code, is amended by
1-15 adding Subsection (h) to read as follows:

1-16 (h) A reverse auction procedure may not be used to obtain
1-17 services related to a public work contract for which a bond is
1-18 required under this section. In this subsection, "reverse auction
1-19 procedure" has the meaning assigned by Section 2155.062 or a
1-20 procedure similar to that assigned by Section 2155.062.

1-21 SECTION 2. Section 2166.2525, Government Code, is amended
1-22 to read as follows:

1-23 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The
1-24 commission shall adopt rules that determine the circumstances for
1-25 use of each method of contracting allowed under this subchapter
1-26 for design and construction services is any method provided by
1-27 Chapter 2264. [In developing the rules, the commission shall
1-28 solicit advice and comment from design and construction
1-29 professionals regarding the criteria the commission will use in
1-30 determining which contracting method is best suited for a project.]

1-31 SECTION 3. Subtitle F, Title 10, Government Code, is
1-32 amended by adding Chapter 2264 to read as follows:

1-33 CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION
1-34 PROJECTS

1-35 SUBCHAPTER A. GENERAL PROVISIONS

1-36 Sec. 2264.001. DEFINITIONS. In this chapter:

1-37 (1) "Architect" means an individual registered as an
1-38 architect under Chapter 1051, Occupations Code.

1-39 (2) "Engineer" means an individual licensed as an
1-40 engineer under Chapter 1001, Occupations Code.

1-41 (3) "Facility" means an improvement to real property.

1-42 (4) "General conditions" in the context of a contract
1-43 for the construction, rehabilitation, alteration, or repair of a
1-44 facility means on-site management, administrative personnel,
1-45 insurance, bonds, equipment, utilities, and incidental work,
1-46 including minor field labor and materials.

1-47 Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
1-48 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.
1-49 This chapter applies to a governmental entity or quasi-governmental
1-50 entity authorized by state law to make a public work contract,
1-51 including:

1-52 (1) a state agency as defined by Section 2151.002,
1-53 including the Texas Building and Procurement Commission;

1-54 (2) a local government, including:

1-55 (A) a county;

1-56 (B) a municipality;

1-57 (C) a special district or authority, including a
1-58 school district, a hospital district, a river authority or any
1-59 other type of water district, and a defense base development
1-60 authority established under Chapter 379B, Local Government Code;
1-61 and

1-62 (D) any other political subdivision of this

1-63 state; and

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

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

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

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

(1) a charter of a home-rule municipality; or
(2) a rule of a county, river authority or any other
type of water district, or defense base development authority that
requires the use of competitive bidding.

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

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

[Sections 2264.005-2264.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

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

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

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

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

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

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

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

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

relationship status with respect to an organization.
[Sections 2264-054-2264-100 reserved for expansion]

SUBCHAPTER C GENERAL CONTRACTING PROCEDURES

SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES

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

consider:

- (1) the purchase price;
- (2) the reputation of the offeror and the offeror's goods or services;
- (3) the quality of the offeror's goods or services;

(3) the quality of the offeror's goods or services,
(4) the extent to which the goods or services meet the governmental entity's needs;
(5) the offeror's past relationship with the governmental entity.

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

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

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

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

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

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

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

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

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

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

(1) the lowest responsible bidder; or
(2) the bidder offering the best value to the
governmental entity according to the selection criteria
established by the governmental entity in the request for bids.

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

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

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

Sec. 2264.108. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the contractor, the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity under this subchapter.

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

[Sections 2264.109-2264.150 reserved for expansion]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

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

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

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

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

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

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

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

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

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

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

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

[Sections 2264.157-2264.200 reserved for expansion]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION

MANAGER-AGENT SERVICES. (a) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation services to the governmental entity regarding construction, rehabilitation, alteration, or repair of a facility.

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

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

(1) administrative personnel;

(2) equipment necessary to perform duties under this subchapter.

(3) on-site management; and

(4) other services specified in the contract.

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

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

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

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

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

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

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

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

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

[Sections 2264.208-2264.250 reserved for expansion]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

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

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

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

(b) The governmental entity's engineer or architect for a project may not serve, alone or in combination with another person,

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

6-9 Sec. 2264.253. USE OF OTHER PROFESSIONAL SERVICES. (a) The
 6-10 governmental entity shall provide or contract for, independently of
 6-11 the construction manager-at-risk, the construction materials
 6-12 engineering, testing, and inspection services and the verification
 6-13 testing services necessary for acceptance of the facility by the
 6-14 governmental entity.

6-15 (b) The governmental entity shall select the services for
 6-16 which it contracts under this section in accordance with Section
 6-17 2254.004.

6-18 Sec. 2264.254. SELECTION PROCESS. (a) The governmental
 6-19 entity shall select the construction manager-at-risk in a one-step
 6-20 or two-step process.

6-21 (b) The governmental entity shall prepare a single request
 6-22 for proposals, in the case of a one-step process, and an initial
 6-23 request for qualifications, in the case of a two-step process, that
 6-24 includes:

6-25 (1) general information on the project site, project
 6-26 scope, schedule, selection criteria, estimated budget, and the time
 6-27 and place for receipt of the proposals or qualifications;

6-28 (2) a statement as to whether the selection process is
 6-29 a one-step or two-step process; and

6-30 (3) other information that may assist the governmental
 6-31 entity in its selection of a construction manager-at-risk.

6-32 (c) The governmental entity shall state the selection
 6-33 criteria in the request for proposals or qualifications. The
 6-34 selection criteria may include the offeror's experience, past
 6-35 performance, safety record, proposed personnel and methodology,
 6-36 and other appropriate factors that demonstrate the capability of
 6-37 the construction manager-at-risk.

6-38 (d) If a one-step process is used, the governmental entity
 6-39 may request, as part of the offeror's proposal, proposed fees and
 6-40 prices for fulfilling the general conditions.

6-41 (e) If a two-step process is used, the governmental entity
 6-42 may not request fees or prices in step one. In step two, the
 6-43 governmental entity may request that five or fewer offerors,
 6-44 selected solely on the basis of qualifications, provide additional
 6-45 information, including the construction manager-at-risk's proposed
 6-46 fee and price for fulfilling the general conditions.

6-47 (f) At each step, the governmental entity shall receive,
 6-48 publicly open, and read aloud the names of the offerors. At the
 6-49 appropriate step, the governmental entity shall also read aloud the
 6-50 fees and prices, if any, stated in each proposal as the proposal is
 6-51 opened.

6-52 (g) Not later than the 45th day after the date of opening the
 6-53 final proposals, the governmental entity shall evaluate and rank
 6-54 each proposal submitted in relation to the criteria set forth in the
 6-55 request for proposals.

6-56 Sec. 2264.255. SELECTION OF OFFEROR. (a) The governmental
 6-57 entity shall select the offeror that submits the proposal that
 6-58 offers the best value for the governmental entity based on the
 6-59 published selection criteria and on its ranking evaluation.

6-60 (b) The governmental entity shall first attempt to
 6-61 negotiate a contract with the selected offeror.

6-62 (c) If the governmental entity is unable to negotiate a
 6-63 satisfactory contract with the selected offeror, the governmental
 6-64 entity shall, formally and in writing, end negotiations with that
 6-65 offeror and proceed to negotiate with the next offeror in the order
 6-66 of the selection ranking until a contract is reached or
 6-67 negotiations with all ranked offerors end.

6-68 Sec. 2264.256. PERFORMANCE OF WORK. (a) A construction
 6-69 manager-at-risk shall publicly advertise for bids or proposals and

7-1 receive bids or proposals from trade contractors or subcontractors
 7-2 for the performance of all major elements of the work other than the
 7-3 minor work that may be included in the general conditions.

7-4 (b) A construction manager-at-risk may seek to perform
 7-5 portions of the work itself if:

7-6 (1) the construction manager-at-risk submits its bid
 7-7 or proposal for those portions of the work in the same manner as all
 7-8 other trade contractors or subcontractors; and

7-9 (2) the governmental entity determines that the
 7-10 construction manager-at-risk's bid or proposal provides the best
 7-11 value for the governmental entity.

7-12 Sec. 2264.257. REVIEW OF BIDS OR PROPOSALS. (a) The
 7-13 construction manager-at-risk and the governmental entity shall
 7-14 review all trade contractor or subcontractor bids or proposals in a
 7-15 manner that does not disclose the contents of the bid or proposal
 7-16 during the selection process to a person not employed by the
 7-17 construction manager-at-risk, engineer, architect, or governmental
 7-18 entity. All bids or proposals shall be made public after the later
 7-19 of the award of the contract or the seventh day after the date of
 7-20 final selection of bids or proposals.

7-21 (b) If the construction manager-at-risk reviews, evaluates,
 7-22 and recommends to the governmental entity a bid or proposal from a
 7-23 trade contractor or subcontractor but the governmental entity
 7-24 requires another bid or proposal to be accepted, the governmental
 7-25 entity shall compensate the construction manager-at-risk by a
 7-26 change in price, time, or guaranteed maximum cost for any
 7-27 additional cost and risk that the construction manager-at-risk
 7-28 incurs because of the governmental entity's requirement that
 7-29 another bid or proposal be accepted.

7-30 Sec. 2264.258. DEFAULT; PERFORMANCE OF WORK. If a selected
 7-31 trade contractor or subcontractor defaults in the performance of
 7-32 its work or fails to execute a subcontract after being selected in
 7-33 accordance with this subchapter, the construction manager-at-risk
 7-34 may itself fulfill the contract requirements or select a
 7-35 replacement trade contractor or subcontractor to fulfill the
 7-36 contract requirements.

7-37 Sec. 2264.259. PERFORMANCE OR PAYMENT BOND. (a) If a fixed
 7-38 contract amount or guaranteed maximum price has not been determined
 7-39 at the time the contract is awarded, the penal sums of the
 7-40 performance and payment bonds delivered to the governmental entity
 7-41 must each be in an amount equal to the project budget, as specified
 7-42 in the request for proposals or qualifications.

7-43 (b) The construction manager-at-risk shall deliver the
 7-44 bonds not later than the 10th day after the date the construction
 7-45 manager-at-risk executes the contract unless the construction
 7-46 manager-at-risk furnishes a bid bond or other financial security
 7-47 acceptable to the governmental entity to ensure that the
 7-48 construction manager will furnish the required performance and
 7-49 payment bonds when a guaranteed maximum price is established.

7-50 [Sections 2264.260-2264.300 reserved for expansion]

SUBCHAPTER G. DESIGN-BUILD METHOD

7-51 Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
 7-52 EXCEPTIONS. This subchapter applies only to a facility that is a
 7-53 building or an associated structure. This subchapter does not
 7-54 apply to:

7-55 (1) a highway, road, street, bridge, utility, water
 7-56 supply project, water plant, wastewater plant, water and wastewater
 7-57 distribution or conveyance facility, wharf, dock, airport runway or
 7-58 taxiway, drainage project, or related type of project associated
 7-59 with civil engineering construction; or

7-60 (2) a building or structure that is incidental to a
 7-61 project that is primarily a civil engineering construction project.

7-62 Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
 7-63 governmental entity may use the design-build method for the
 7-64 construction, rehabilitation, alteration, or repair of a building
 7-65 or associated structure only as provided by this subchapter. In
 7-66 using that method, the governmental entity shall enter into a
 7-67 single contract with a design-build firm for the design and
 7-68 construction of the building or associated structure.

8-1 Sec. 2264.303. DESIGN-BUILD FIRMS. A design-build firm
8-2 under this subchapter must be a partnership, corporation, or other
8-3 legal entity or team that includes an engineer or architect and a
8-4 construction contractor.

8-5 Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. The
8-6 governmental entity shall select or designate an architect or
8-7 engineer independent of the design-build firm to act as the
8-8 governmental entity's representative for the duration of the work
8-9 on the facility.

8-10 Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. (a) The
8-11 governmental entity shall provide or contract for, independently of
8-12 the design-build firm, the construction materials engineering,
8-13 testing, and inspection services and the verification testing
8-14 services necessary for acceptance of the facility by the
8-15 governmental entity.

8-16 (b) The governmental entity shall select the services for
8-17 which it contracts under this section in accordance with Section
8-18 2254.004.

8-19 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
8-20 governmental entity shall prepare a request for qualifications that
8-21 includes general information on the project site, project scope,
8-22 budget, special systems, selection criteria, and other information
8-23 that may assist potential design-build firms in submitting
8-24 proposals for the project.

8-25 (b) The governmental entity shall also prepare the design
8-26 criteria package that includes more detailed information on the
8-27 project. If the preparation of the design criteria package
8-28 requires engineering or architectural services that constitute the
8-29 practice of engineering within the meaning of Chapter 1001,
8-30 Occupations Code, or the practice of architecture within the
8-31 meaning of Chapter 1051, Occupations Code, those services shall be
8-32 provided in accordance with the applicable law.

8-33 (c) The design criteria package must include a set of
8-34 documents that provides sufficient information, including criteria
8-35 for selection, to permit a design-build firm to prepare a response
8-36 to the governmental entity's request for qualifications and to
8-37 provide any additional information requested. The design criteria
8-38 package must specify criteria the governmental entity considers
8-39 necessary to describe the project and may include, as appropriate,
8-40 the legal description of the site, survey information concerning
8-41 the site, interior space requirements, special material
8-42 requirements, material quality standards, conceptual criteria for
8-43 the project, special equipment requirements, cost or budget
8-44 estimates, time schedules, quality assurance and quality control
8-45 requirements, site development requirements, applicable codes and
8-46 ordinances, provisions for utilities, parking requirements, and
8-47 any other requirement.

8-48 (d) The governmental entity may not require offerors to
8-49 submit detailed engineering or architectural designs as part of a
8-50 proposal or a response to a request for qualifications.

8-51 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
8-52 each design-build firm that responded to the request for
8-53 qualifications, the governmental entity shall evaluate the firm's
8-54 experience, technical competence, and capability to perform, the
8-55 past performance of the firm and members of the firm, and other
8-56 appropriate factors submitted by the firm in response to the
8-57 request for qualifications, except that cost-related or
8-58 price-related evaluation factors are not permitted.

8-59 (b) Each firm must certify to the governmental entity that
8-60 each engineer or architect that is a member of the firm was selected
8-61 based on demonstrated competence and qualifications, in the manner
8-62 provided by Section 2254.004.

8-63 (c) The governmental entity shall qualify a maximum of five
8-64 responders to submit proposals that contain additional information
8-65 and, if the governmental entity chooses, to interview for final
8-66 selection.

8-67 (d) The governmental entity shall evaluate the additional
8-68 information submitted by the offerors on the basis of the selection
8-69 criteria stated in the request for qualifications and the results

9-1 of any interview.

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

9-14 (f) The governmental entity shall rank each proposal
 9-15 submitted on the basis of the criteria set forth in the request for
 9-16 qualifications.

9-17 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
 9-18 governmental entity shall select the design-build firm that submits
 9-19 the proposal offering the best value for the governmental entity on
 9-20 the basis of the published selection criteria and on its ranking
 9-21 evaluations.

9-22 (b) The governmental entity shall first attempt to
 9-23 negotiate a contract with the selected firm.

9-24 (c) If the governmental entity is unable to negotiate a
 9-25 satisfactory contract with the selected firm, the governmental
 9-26 entity shall, formally and in writing, end all negotiations with
 9-27 that firm and proceed to negotiate with the next firm in the order
 9-28 of the selection ranking until a contract is reached or
 9-29 negotiations with all ranked firms end.

9-30 Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After
 9-31 selection of the design-build firm, that firm's architects or
 9-32 engineers shall complete the design and submit all design elements
 9-33 for review and determination of scope compliance to the
 9-34 governmental entity or governmental entity's architect or engineer
 9-35 before or concurrently with construction.

9-36 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
 9-37 design-build firm shall supply a signed and sealed set of
 9-38 construction documents for the project to the governmental entity
 9-39 at the conclusion of construction.

9-40 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
 9-41 or performance bond is not required and may not provide coverage for
 9-42 the portion of the design-build contract with the design-build firm
 9-43 under this subchapter that includes design services only.

9-44 (b) If a fixed contract amount or guaranteed maximum price
 9-45 has not been determined at the time the design-build contract is
 9-46 awarded, the penal sums of the performance and payment bonds
 9-47 delivered to the governmental entity must each be in an amount equal
 9-48 to the project budget, as specified in the design criteria package.

9-49 (c) The design-build firm shall deliver the bonds not later
 9-50 than the 10th day after the date the design-build firm executes the
 9-51 contract unless the design-build firm furnishes a bid bond or other
 9-52 financial security acceptable to the governmental entity to ensure
 9-53 that the design-build firm will furnish the required performance
 9-54 and payment bonds when a guaranteed maximum price is established.

9-55 [Sections 2264.312-2264.350 reserved for expansion]

9-56 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

9-57 Sec. 2264.351. JOB ORDER CONTRACTS FOR FACILITIES
 9-58 CONSTRUCTION OR REPAIR. A governmental entity may award job order
 9-59 contracts for the minor construction, repair, rehabilitation, or
 9-60 alteration of a facility if:

9-61 (1) the work is of a recurring nature but the delivery
 9-62 times are indefinite; and

9-63 (2) indefinite quantities and orders are awarded
 9-64 substantially on the basis of predescribed and prepriced tasks.

9-65 Sec. 2264.352. CONTRACTUAL UNIT PRICES. The governmental
 9-66 entity may establish contractual unit prices for a job order
 9-67 contract by:

9-68 (1) specifying one or more published construction unit
 9-69 price books and the applicable divisions or line items; or

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

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

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

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

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

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

Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in

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

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

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

(b) The order may be:

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

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

sec. 2264.358. PAYMENT AND PERFORMANCE BONDS.

[Sections 2264.359-2264.400 reserved for expansion]

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

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

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

(d) In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are

11-1 not required to be published separately.

11-2 Sec. 2264.402. NOTICE REQUIREMENTS FOR COUNTIES. (a) For a
11-3 contract entered into by a county under a method provided by this
11-4 chapter, the county shall publish notice of the time and place the
11-5 bids or proposals or request for qualifications will be received
11-6 and opened.

11-7 (b) The notice must be published in a newspaper of general
11-8 circulation in the county once each week for at least two weeks
11-9 before the deadline for receiving bids, proposals, or responses.
11-10 If there is not a newspaper of general circulation in the county,
11-11 the notice shall be:

11-12 (1) posted at the courthouse door of the county; and
11-13 (2) published in a newspaper of general circulation in
11-14 the county nearest the county seat of the county publishing the
11-15 notice.

11-16 [Sections 2264.403-2264.425 reserved for expansion]

11-17 SUBCHAPTER J. ENFORCEMENT

11-18 Sec. 2264.426. VOID CONTRACT. A contract entered into in
11-19 violation of this chapter is void as against public policy.

11-20 Sec. 2264.427. DECLARATORY OR INJUNCTIVE RELIEF. This
11-21 chapter may be enforced through an action for declaratory or
11-22 injunctive relief filed not later than the 30th day after the date
11-23 on which the contract is awarded.

11-24 SECTION 4. Sections 44.031(a) and (f), Education Code, are
11-25 amended to read as follows:

11-26 (a) Except as provided by this subchapter, all school
11-27 district contracts, except contracts for the purchase of produce or
11-28 vehicle fuel or a contract made under Chapter 2264, Government
11-29 Code, valued at \$25,000 or more in the aggregate for each 12-month
11-30 period shall be made by the method, of the following methods, that
11-31 provides the best value for the district:

11-32 (1) competitive bidding;
11-33 (2) competitive sealed proposals;
11-34 (3) a request for proposals, for services other than
11-35 construction services;

11-36 (4) a catalogue purchase as provided by Subchapter B,
11-37 Chapter 2157, Government Code;

11-38 (5) an interlocal contract;

11-39 (6) a method provided by Chapter 2264, Government
11-40 Code;

11-41 (7) [a design/build contract;
11-42 [(7) a contract to construct, rehabilitate, alter, or
11-43 repair facilities that involves using a construction manager;
11-44 [(8) a job order contract for the minor construction,
11-45 repair, rehabilitation, or alteration of a facility;
11-46 [(9) the reverse auction procedure as defined by
11-47 Section 2155.062(d), Government Code; or
11-48 (8) [(10) the formation of a political subdivision
11-49 corporation under Section 304.001, Local Government Code.

11-50 (f) This section does not apply to a contract for
11-51 professional services rendered, including services of an
11-52 architect, attorney, engineer, or fiscal agent. A school district
11-53 may, at its option, contract for professional services rendered by
11-54 a financial consultant or a technology consultant in the manner
11-55 provided by Section 2254.003, Government Code, in lieu of the
11-56 methods provided by this section.

11-57 SECTION 5. Section 44.901, Education Code, is amended by
11-58 adding Subsection (j) to read as follows:

11-59 (j) Chapter 2264, Government Code, does not apply to this
11-60 section.

11-61 SECTION 6. Section 51.927, Education Code, is amended by
11-62 adding Subsection (k) to read as follows:

11-63 (k) Chapter 2264, Government Code, does not apply to this
11-64 section.

11-65 SECTION 7. Section 2166.406, Government Code, is amended by
11-66 adding Subsection (k) to read as follows:

11-67 (k) Chapter 2264 does not apply to this section.

11-68 SECTION 8. Subchapter A, Chapter 2254, Government Code, is
11-69 amended by adding Section 2254.007 to read as follows:

12-1 Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
 12-2 subchapter may be enforced through an action for declaratory or
 12-3 injunctive relief filed not later than the 30th day after the date
 12-4 on which the contract is awarded.

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

12-9 SECTION 9. Section 252.021(a), Local Government Code, is
 12-10 amended to read as follows:

12-11 (a) Before a municipality may enter into a contract that
 12-12 requires an expenditure of more than \$25,000 from one or more
 12-13 municipal funds, the municipality must:

12-14 (1) comply with the procedure prescribed by this
 12-15 subchapter and Subchapter C for competitive sealed bidding or
 12-16 competitive sealed proposals;

12-17 (2) use the reverse auction procedure, as defined by
 12-18 Section 2155.062(d), Government Code, for purchasing; or

12-19 (3) comply with a method described by Chapter 2264,
 12-20 Government Code [Subchapter H, Chapter 271].

12-21 SECTION 10. Chapter 302, Local Government Code, is amended
 12-22 by adding Section 302.006 to read as follows:

12-23 Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW.
 12-24 Chapter 2264, Government Code, does not apply to this chapter.

12-25 SECTION 11. Subchapter E, Chapter 335, Local Government
 12-26 Code, is amended by adding Section 335.077 to read as follows:

12-27 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.
 12-28 Chapter 2264, Government Code, does not apply to this chapter.

12-29 SECTION 12. Section 22.074, Transportation Code, is amended
 12-30 by adding Subsection (f) to read as follows:

12-31 (f) Chapter 2264, Government Code, does not apply to a joint
 12-32 board whose constituent agencies are populous home-rule
 12-33 municipalities.

12-34 SECTION 13. Section 370.305, Transportation Code, is
 12-35 amended by adding Subsection (e) to read as follows:

12-36 (e) Chapter 2264, Government Code, does not apply to
 12-37 agreements entered into pursuant to this section.

12-38 SECTION 14. Section 431.101(g), Transportation Code, is
 12-39 amended to read as follows:

12-40 (g) A local government corporation [~~created by a navigation~~
 12-41 ~~district~~] must comply with all state law related to the design and
 12-42 construction of projects, including the procurement of design and
 12-43 construction services, that applies to the local government
 12-44 [~~navigation district~~] that created the corporation.

12-45 SECTION 15. Chapter 451, Transportation Code, is amended by
 12-46 adding Section 451.813 to read as follows:

12-47 Sec. 451.813. EXEMPTION FROM OTHER CONTRACTING LAW.
 12-48 Chapter 2264, Government Code, does not apply to this subchapter,
 12-49 as added by H.B. No. 2300, Acts of the 79th Legislature, Regular
 12-50 Session, 2005.

12-51 SECTION 16. Section 60.452, Water Code, as added by Chapter
 12-52 307, Acts of the 78th Legislature, Regular Session, 2003, is
 12-53 amended by adding Subsection (c) to read as follows:

12-54 (c) Chapter 2264, Government Code, does not apply to this
 12-55 subchapter.

12-56 SECTION 17. The following are repealed:

12-57 (1) Sections 44.0312, 44.0315, 44.035-44.041, and
 12-58 44.043, Education Code;

12-59 (2) Subchapter T, Chapter 51, Education Code;

12-60 (3) Sections 2166.2511, 2166.2526, 2166.2531,
 12-61 2166.2532, 2166.2533, and 2166.2535, Government Code;

12-62 (4) Subchapter H, Chapter 271, Local Government Code;
 12-63 and

12-64 (5) Section 431.101(e), Transportation Code.

12-65 SECTION 18. (a) The changes in law made by this Act apply
 12-66 only to a contract or construction project for which a governmental
 12-67 entity first advertises or otherwise requests bids, proposals,
 12-68 offers, or qualifications, or makes a similar solicitation, on or
 12-69 after the effective date of this Act.

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

SECTION 19. This Act takes effect September 1, 2005.

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