

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

2-1                   (3) a public junior college as defined by Section  
2-2 61.003, Education Code.  
2-3                   Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW  
2-4 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this  
2-5 section, this chapter prevails over any other law relating to  
2-6 public works contracts.  
2-7                   (b) This chapter does not prevail over a conflicting  
2-8 provision in a law relating to contracting with a historically  
2-9 underutilized business.  
2-10                  (c) This chapter does not prevail over a conflicting  
2-11 provision in:  
2-12                   (1) a charter of a home-rule municipality; or  
2-13                   (2) a rule of a county, river authority or any other  
2-14 type of water district, or defense base development authority that  
2-15 requires the use of competitive bidding.  
2-16                   (d) The governing body of a municipality, county, river  
2-17 authority, or defense base development authority to which  
2-18 Subsection (c) applies may elect to have this chapter overrule the  
2-19 conflicting provision in the charter or rule.  
2-20                   Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF  
2-21 TRANSPORTATION. This chapter does not apply to a contract entered  
2-22 into by the Texas Department of Transportation.  
2-23                   [Sections 2264.005-2264.050 reserved for expansion]  
2-24                   SUBCHAPTER B. GENERAL POWERS AND DUTIES  
2-25                   Sec. 2264.051. RULES. A governmental entity may adopt  
2-26 rules as necessary to implement this chapter.  
2-27                   Sec. 2264.052. DELEGATION OF AUTHORITY. (a) The governing  
2-28 body of a governmental entity may delegate its authority under this  
2-29 chapter regarding an action authorized or required by this chapter  
2-30 to a designated representative, committee, or other person.  
2-31                   (b) The entity shall provide notice of the delegation and  
2-32 the limits of the delegation in the request for bids, proposals, or  
2-33 qualifications or in an addendum to the request.  
2-34                   (c) If the entity fails to provide notice under Subsection  
2-35 (b), a ranking, selection, or evaluation of bids, proposals, or  
2-36 qualifications for construction services other than by the entity's  
2-37 governing body in an open public meeting is advisory only.  
2-38                   Sec. 2264.053. RIGHT TO WORK. (a) This section applies to  
2-39 a governmental entity when the governmental entity is engaged in:  
2-40                   (1) procuring goods or services under this chapter;  
2-41                   (2) awarding a contract under this chapter; or  
2-42                   (3) overseeing procurement or construction for a  
2-43 public work or public improvement under this chapter.  
2-44                   (b) In engaging in an activity to which this section  
2-45 applies, a governmental entity:  
2-46                   (1) may not consider whether a person is a member of or  
2-47 has another relationship with any organization; and  
2-48                   (2) shall ensure that its bid specifications and any  
2-49 subsequent contract or other agreement do not deny or diminish the  
2-50 right of a person to work because of the person's membership or  
2-51 other relationship status with respect to an organization.  
2-52                   [Sections 2264.054-2264.100 reserved for expansion]  
2-53                   SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES  
2-54                   Sec. 2264.101. CRITERIA TO CONSIDER. In determining the  
2-55 award of a contract under this chapter, the governmental entity may  
2-56 consider:  
2-57                   (1) the purchase price;  
2-58                   (2) the reputation of the offeror and the offeror's  
2-59 goods or services;  
2-60                   (3) the quality of the offeror's goods or services;  
2-61                   (4) the extent to which the goods or services meet the  
2-62 governmental entity's needs;  
2-63                   (5) the offeror's past relationship with the  
2-64 governmental entity;  
2-65                   (6) the impact on the ability of the governmental  
2-66 entity to comply with rules relating to historically underutilized  
2-67 businesses;  
2-68                   (7) the total long-term cost to the governmental  
2-69 entity to acquire the offeror's goods or services; and

3-1 (8) any other relevant factor specifically listed in  
3-2 the request for bids, proposals, or qualifications.

3-3 Sec. 2264.102. USING METHOD OTHER THAN COMPETITIVE BIDDING  
3-4 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS. (a) The  
3-5 governing body of a governmental entity that considers a  
3-6 construction contract using a method authorized by this chapter  
3-7 other than competitive bidding must, before advertising, determine  
3-8 which method provides the best value for the governmental entity.

3-9 (b) The governmental entity shall base its selection among  
3-10 offerors on applicable criteria listed in Section 2264.101. The  
3-11 governmental entity shall publish in the request for proposals or  
3-12 qualifications the criteria that will be used to evaluate the  
3-13 offerors.

3-14 (c) The governmental entity shall document the basis of its  
3-15 selection and shall make the evaluations public not later than the  
3-16 seventh day after the date the contract is awarded.

3-17 Sec. 2264.103. ARCHITECT OR ENGINEER SERVICES. (a) An  
3-18 architect or engineer required to be selected or designated under  
3-19 this chapter has full responsibility for complying with Chapter  
3-20 1001 or 1051, Occupations Code, as applicable.

3-21 (b) If the selected or designated architect or engineer is  
3-22 not a full-time employee of the governmental entity, the  
3-23 governmental entity shall select the architect or engineer on the  
3-24 basis of demonstrated competence and qualifications as provided by  
3-25 Section 2254.004.

3-26 Sec. 2264.104. RESPONSIBILITIES OF CONTRACTORS. In the  
3-27 context of a contract for the construction, rehabilitation,  
3-28 alteration, or repair of a facility under this chapter, a  
3-29 contractor is a sole proprietorship, partnership, corporation, or  
3-30 other legal entity that assumes the risk for constructing,  
3-31 rehabilitating, altering, or repairing all or part of the facility  
3-32 at the contracted price.

3-33 Sec. 2264.105. COMPETITIVE BIDDING. (a) Except as  
3-34 otherwise provided by this chapter or other law, a governmental  
3-35 entity may contract for the construction, alteration,  
3-36 rehabilitation, or repair of a facility only after the entity  
3-37 advertises for bids for the contract in a manner prescribed by law,  
3-38 receives sealed competitive bids, and awards the contract to:

- 3-39 (1) the lowest responsible bidder; or
- 3-40 (2) the bidder offering the best value to the  
3-41 governmental entity according to the selection criteria  
3-42 established by the governmental entity in the request for bids.

3-43 (b) The governmental entity shall document the basis of its  
3-44 selection and shall make the evaluations public not later than the  
3-45 seventh day after the date the contract is awarded.

3-46 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
3-47 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
3-48 specifically provided by this section, Subchapter B, Chapter 271,  
3-49 Local Government Code, does not apply to a competitive bidding  
3-50 process made under this chapter. Sections 271.026, 271.027(a), and  
3-51 271.0275, Local Government Code, apply to a competitive bidding  
3-52 process made under this chapter by a governmental entity as defined  
3-53 by Section 271.021, Local Government Code.

3-54 Sec. 2264.107. USE OF ARCHITECT OR ENGINEER. The  
3-55 governmental entity shall select or designate an architect or  
3-56 engineer in accordance with Chapter 1001 or 1051, Occupations Code,  
3-57 as applicable, to prepare the construction documents required for a  
3-58 project to be awarded by competitive bidding.

3-59 Sec. 2264.108. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
3-60 governmental entity shall provide or contract for, independently of  
3-61 the contractor, the construction materials engineering, testing,  
3-62 and inspection services and the verification testing services  
3-63 necessary for acceptance of the facility by the governmental entity  
3-64 under this subchapter.

3-65 (b) The governmental entity shall select the services for  
3-66 which it contracts under this section in accordance with Section  
3-67 2254.004.

3-68 [Sections 2264.109-2264.150 reserved for expansion]

4-1 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

4-2 Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION  
 4-3 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. A governmental  
 4-4 entity may use the competitive sealed proposal method to select a  
 4-5 contractor for the construction, rehabilitation, alteration, or  
 4-6 repair of a facility. In selecting a contractor through  
 4-7 competitive sealed proposals, a governmental entity shall follow  
 4-8 the procedures provided by this subchapter.

4-9 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The  
 4-10 governmental entity shall select or designate an architect or  
 4-11 engineer to prepare construction documents for the project.

4-12 Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
 4-13 governmental entity shall provide or contract for, independently of  
 4-14 the contractor, the construction materials engineering, testing,  
 4-15 and inspection services and the verification testing services  
 4-16 necessary for acceptance of the facility by the governmental  
 4-17 entity.

4-18 (b) The governmental entity shall select the services for  
 4-19 which it contracts under this section in accordance with Section  
 4-20 2254.004.

4-21 Sec. 2264.154. PREPARATION OF REQUEST. (a) The  
 4-22 governmental entity shall prepare a request for competitive sealed  
 4-23 proposals that includes construction documents, selection  
 4-24 criteria, estimated budget, project scope, estimated project  
 4-25 completion date, and other information that a contractor may  
 4-26 require to respond to the request.

4-27 (b) The governmental entity shall state in the request for  
 4-28 proposals the selection criteria that will be used in selecting the  
 4-29 successful offeror.

4-30 Sec. 2264.155. EVALUATION OF OFFERORS. (a) The  
 4-31 governmental entity shall receive, publicly open, and read aloud  
 4-32 the names of the offerors.

4-33 (b) Not later than the 45th day after the date of opening the  
 4-34 proposals, the governmental entity shall evaluate and rank each  
 4-35 proposal submitted in relation to the published selection criteria.

4-36 Sec. 2264.156. SELECTION OF OFFEROR. (a) The governmental  
 4-37 entity shall select the offeror that offers the best value for the  
 4-38 governmental entity based on the published selection criteria and  
 4-39 on its ranking evaluation. In determining best value for the  
 4-40 governmental entity, the governmental entity is not restricted to  
 4-41 considering price alone but may consider any other factor stated in  
 4-42 the selection criteria.

4-43 (b) The governmental entity shall first attempt to  
 4-44 negotiate a contract with the selected offeror. The governmental  
 4-45 entity and its engineer or architect may discuss with the selected  
 4-46 offeror options for a scope or time modification and any price  
 4-47 change associated with the modification.

4-48 (c) If the governmental entity is unable to negotiate a  
 4-49 contract with the selected offeror, the governmental entity shall,  
 4-50 formally and in writing, end negotiations with that offeror and  
 4-51 proceed to the next offeror in the order of the selection ranking  
 4-52 until a contract is reached or all proposals are rejected.

4-53 [Sections 2264.157-2264.200 reserved for expansion]

4-54 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

4-55 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 4-56 MANAGER-AGENT SERVICES. (a) A construction manager-agent is a  
 4-57 sole proprietorship, partnership, corporation, or other legal  
 4-58 entity that provides consultation services to the governmental  
 4-59 entity regarding construction, rehabilitation, alteration, or  
 4-60 repair of a facility.

4-61 (b) A governmental entity may retain a construction  
 4-62 manager-agent for assistance in the construction, rehabilitation,  
 4-63 alteration, or repair of a facility only as provided by this  
 4-64 subchapter.

4-65 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION  
 4-66 MANAGER-AGENT. (a) The contract between the governmental entity  
 4-67 and the construction manager-agent may require the construction  
 4-68 manager-agent to provide:

4-69 (1) administrative personnel;

5-1 (2) equipment necessary to perform duties under this  
 5-2 subchapter;  
 5-3 (3) on-site management; and  
 5-4 (4) other services specified in the contract.

5-5 (b) A construction manager-agent may not self-perform any  
 5-6 aspect of the construction, rehabilitation, alteration, or repair  
 5-7 of the facility.

5-8 Sec. 2264.203. FIDUCIARY CAPACITY OF CONSTRUCTION  
 5-9 MANAGER-AGENT. A construction manager-agent represents the  
 5-10 governmental entity in a fiduciary capacity.

5-11 Sec. 2264.204. USE OF ARCHITECT OR ENGINEER. (a) On or  
 5-12 before the selection of a construction manager-agent, the  
 5-13 governmental entity shall select or designate an architect or  
 5-14 engineer to prepare the construction documents for the project.

5-15 (b) The governmental entity's architect or engineer may not  
 5-16 serve, alone or in combination with another person, as the  
 5-17 construction manager-agent unless the architect or engineer is  
 5-18 hired to serve as the construction manager-agent under a separate  
 5-19 or concurrent selection process conducted in accordance with this  
 5-20 subchapter. This subsection does not prohibit the governmental  
 5-21 entity's architect or engineer from providing customary  
 5-22 construction phase services under the architect's or engineer's  
 5-23 original professional service agreement in accordance with  
 5-24 applicable licensing laws.

5-25 (c) To the extent that the construction manager-agent's  
 5-26 services are defined as part of the practice of engineering or  
 5-27 architecture under Chapter 1001 or 1051, Occupations Code, those  
 5-28 services must be conducted by a person licensed under the  
 5-29 applicable chapter.

5-30 Sec. 2264.205. USE OF OTHER PROFESSIONAL SERVICES. (a) The  
 5-31 governmental entity or the construction manager-agent shall  
 5-32 procure, independently of the contractor, the construction  
 5-33 materials engineering, testing, and inspection services and the  
 5-34 verification testing services necessary for acceptance of the  
 5-35 facility by the governmental entity.

5-36 (b) The governmental entity or the construction  
 5-37 manager-agent shall select the services for which it contracts  
 5-38 under this section in accordance with Section 2254.004.

5-39 Sec. 2264.206. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
 5-40 governmental entity shall select a construction manager-agent on  
 5-41 the basis of demonstrated competence and qualifications in the same  
 5-42 manner as provided for the selection of engineers or architects  
 5-43 under Section 2254.004.

5-44 Sec. 2264.207. SELECTION OF CONTRACTORS. A governmental  
 5-45 entity using the construction manager-agent method shall procure,  
 5-46 in accordance with applicable law and in any manner authorized by  
 5-47 this chapter, a general contractor, trade contractors, or  
 5-48 subcontractors who will serve as the prime contractor for their  
 5-49 specific portion of the work.

5-50 [Sections 2264.208-2264.250 reserved for expansion]

5-51 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

5-52 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 5-53 MANAGER-AT-RISK. (a) A construction manager-at-risk is a sole  
 5-54 proprietorship, partnership, corporation, or other legal entity  
 5-55 that assumes the risk for construction, rehabilitation,  
 5-56 alteration, or repair of a facility at the contracted price as a  
 5-57 general contractor and provides consultation to the governmental  
 5-58 entity regarding construction during and after the design of the  
 5-59 facility.

5-60 (b) A governmental entity may use the construction  
 5-61 manager-at-risk method in selecting a general contractor for the  
 5-62 construction, rehabilitation, alteration, or repair of a facility  
 5-63 only as provided by this subchapter.

5-64 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or  
 5-65 before the selection of a construction manager-at-risk, the  
 5-66 governmental entity shall select or designate an architect or  
 5-67 engineer to prepare the construction documents for the project.

5-68 (b) The governmental entity's engineer or architect for a  
 5-69 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]

#### 7-51 SUBCHAPTER G. DESIGN-BUILD METHOD

7-52 Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
 7-53 EXCEPTIONS. This subchapter applies only to a facility that is a  
 7-54 building or an associated structure. This subchapter does not  
 7-55 apply to:

7-56 (1) a highway, road, street, bridge, utility, water  
 7-57 supply project, water plant, wastewater plant, water and wastewater  
 7-58 distribution or conveyance facility, wharf, dock, airport runway or  
 7-59 taxiway, drainage project, or related type of project associated  
 7-60 with civil engineering construction; or

7-61 (2) a building or structure that is incidental to a  
 7-62 project that is primarily a civil engineering construction project.

7-63 Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
 7-64 governmental entity may use the design-build method for the  
 7-65 construction, rehabilitation, alteration, or repair of a building  
 7-66 or associated structure only as provided by this subchapter. In  
 7-67 using that method, the governmental entity shall enter into a  
 7-68 single contract with a design-build firm for the design and  
 7-69 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

10-1 (2) providing a list of prepriced work items and  
10-2 requiring the offerors to propose one or more coefficients or  
10-3 multipliers to be applied to the price book or prepriced work items  
10-4 as the price proposal.

10-5 Sec. 2264.353. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
10-6 governmental entity may use the competitive sealed proposal method  
10-7 under Subchapter D for job order contracts or may award a contract  
10-8 through the use of an interlocal contract.

10-9 (b) The governmental entity shall advertise for, receive,  
10-10 and publicly open sealed proposals for job order contracts.

10-11 (c) The governmental entity may require offerors to submit  
10-12 information in addition to rates, including experience, past  
10-13 performance, and proposed personnel and methodology.

10-14 (d) Unless required by Section 2264.355, a request for a  
10-15 competitive sealed proposal under this subchapter is not required  
10-16 to include the information required by Section 2264.154(a).

10-17 Sec. 2264.354. AWARDING OF JOB CONTRACTS. The governmental  
10-18 entity may award job order contracts to one or more job order  
10-19 contractors in connection with each solicitation of proposals.

10-20 Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order  
10-21 contract or an order issued under the contract requires  
10-22 architectural or engineering services that constitute the practice  
10-23 of engineering within the meaning of Chapter 1001, Occupations  
10-24 Code, or the practice of architecture within the meaning of Chapter  
10-25 1051, Occupations Code, those services shall be provided in  
10-26 accordance with applicable law.

10-27 Sec. 2264.356. JOB ORDER CONTRACT TERM. (a) A job order  
10-28 contract is for the base term and with any renewal options that the  
10-29 governmental entity sets forth in the request for proposals.

10-30 (b) If the governmental entity fails to advertise the base  
10-31 term, the base term may not exceed two years and is not renewable  
10-32 without further advertisement and solicitation of proposals.

10-33 Sec. 2264.357. JOB ORDERS. (a) An order for a job or  
10-34 project under a job order contract must be signed by the  
10-35 governmental entity's representative and the contractor.

10-36 (b) The order may be:  
10-37 (1) a fixed price, lump-sum contract based  
10-38 substantially on contractual unit pricing applied to estimated  
10-39 quantities; or

10-40 (2) a unit price order based on the quantities and line  
10-41 items delivered.

10-42 Sec. 2264.358. PAYMENT AND PERFORMANCE BONDS. The  
10-43 contractor shall provide payment and performance bonds, if required  
10-44 by law, based on the amount or estimated amount of any order.

10-45 [Sections 2264.359-2264.400 reserved for expansion]

10-46 SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

10-47 Sec. 2264.401. NOTICE REQUIREMENTS FOR CERTAIN LOCAL  
10-48 GOVERNMENTS. (a) For a contract entered into by a defense base  
10-49 development authority, municipality, or river authority under a  
10-50 method provided by this chapter, the municipality or authority  
10-51 shall publish notice of the time and place the bids or proposals or  
10-52 the responses to a request for qualifications will be received and  
10-53 opened.

10-54 (b) The notice must be published in a newspaper of general  
10-55 circulation in the county in which the defense base development  
10-56 authority's or municipality's central administrative office is  
10-57 located or in the county in which the greatest amount of the river  
10-58 authority's territory is located. If there is not a newspaper of  
10-59 general circulation in that county, the notice shall be published  
10-60 in a newspaper of general circulation in the county nearest the  
10-61 county seat of the county in which the defense base development  
10-62 authority's or municipality's central administrative office is  
10-63 located or the county seat of the county in which the greatest  
10-64 amount of the river authority's territory is located.

10-65 (c) The notice must be published once each week for at least  
10-66 two weeks before the deadline for receiving bids, proposals, or  
10-67 responses.

10-68 (d) In a two-step procurement process, the time and place  
10-69 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.

13-1 (b) A contract or construction project for which a  
13-2 governmental entity first advertises or otherwise requests bids,  
13-3 proposals, offers, or qualifications, or makes a similar  
13-4 solicitation, before the effective date of this Act is governed by  
13-5 the law as it existed immediately before the effective date of this  
13-6 Act, and that law is continued in effect for that purpose.  
13-7 SECTION 19. This Act takes effect September 1, 2005.

13-8 \* \* \* \* \*