

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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H.B. No. 447

A BILL TO BE ENTITLED

AN ACT

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

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

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended  
8 by adding Subsection (h) to read as follows:

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

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

15 SECTION 2.01. Subchapter B, Chapter 44, Education Code, is  
16 amended by adding Section 44.0351 to read as follows:

17 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the  
18 extent prohibited by other law and to the extent consistent with  
19 this subchapter, a school district may use competitive bidding to  
20 select a vendor as authorized by Section 44.031(a)(1).

21 (b) Except as otherwise specifically provided by this  
22 subsection, Subchapter B, Chapter 271, Local Government Code, does  
23 not apply to a competitive bidding process under this subchapter.  
24 Sections 271.026, 271.027(a), and 271.0275, Local Government Code,

1 apply to a competitive bidding process under this subchapter.

2 (c) A school district shall award a competitively bid  
3 contract at the bid amount to the bidder offering the best value for  
4 the district. In determining the best value for the district, the  
5 district is not restricted to considering price alone, but may  
6 consider any other factors stated in the selection criteria. The  
7 selection criteria may include the factors listed in Section  
8 44.031(b).

9 SECTION 2.02. Subchapter B, Chapter 44, Education Code, is  
10 amended by adding Section 44.0361 to read as follows:

11 Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In  
12 selecting a vendor through competitive sealed proposals as  
13 authorized by Section 44.031(a)(2), a school district shall follow  
14 the procedures prescribed by this section.

15 (b) The district shall prepare a request for competitive  
16 sealed proposals that includes information that vendors may require  
17 to respond to the request. The district shall state in the request  
18 for proposals the selection criteria that will be used in selecting  
19 the successful offeror.

20 (c) The district shall receive, publicly open, and read  
21 aloud the names of the offerors and, if any are required to be  
22 stated, all prices stated in each proposal. Within 45 days after  
23 the date of opening the proposals, the district shall evaluate and  
24 rank each proposal submitted in relation to the published selection  
25 criteria.

26 (d) The district shall select the offeror that offers the  
27 best value for the district based on the published selection

1 criteria and on its ranking evaluation. The district shall first  
2 attempt to negotiate with the selected offeror a contract. The  
3 district may discuss with the selected offeror options for a scope  
4 or time modification and any price change associated with the  
5 modification. If the district is unable to negotiate a contract  
6 with the selected offeror, the district shall, formally and in  
7 writing, end negotiations with that offeror and proceed to the next  
8 offeror in the order of the selection ranking until a contract is  
9 reached or all proposals are rejected.

10 (e) In determining the best value for the district, the  
11 district is not restricted to considering price alone, but may  
12 consider any other factors stated in the selection criteria.

13 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is  
14 amended by adding Section 44.0411 to read as follows:

15 Sec. 44.0411. CHANGE ORDERS. (a) If changes in plans or  
16 specifications are necessary after the performance of the contract  
17 is begun or if it is necessary to decrease or increase the quantity  
18 of work to be performed or of materials, equipment, or supplies to  
19 be furnished, the district may approve change orders making the  
20 changes.

21 (b) The total contract price may not be increased because of  
22 the changes unless additional money for increased costs is approved  
23 for that purpose from available funds or is provided for by the  
24 authorization of the issuance of time warrants.

25 (c) If a change order involves a decrease or an increase of  
26 \$25,000 or less, the district may grant general authority to an  
27 administrative official to approve the change orders.

1        (d) The original contract price may not be increased under  
2 this section by more than 25 percent. The original contract price  
3 may not be decreased under this section by more than 25 percent  
4 without the consent of the contractor.

5        SECTION 2.04. Section 791.011, Government Code, is amended  
6 by adding Subsections (h) and (i) to read as follows:

7        (h) An interlocal contract may not be used to purchase  
8 engineering or architectural services unless the services are in  
9 connection with the design or construction of a specific facility  
10 to be jointly owned, used, or financed by the parties to the  
11 contract.

12        (i) An interlocal contract may not be used to purchase  
13 construction services unless the services are in connection with  
14 the design or construction of a specific facility to be jointly  
15 owned, used, or financed by the parties to the contract or:

16                (1) the services are in connection with a job order  
17 contract;

18                (2) the governing body of the governmental entity for  
19 whom the work will ultimately be performed approves the purchase in  
20 open session;

21                (3) public notice is provided in a manner consistent  
22 with a direct contract for job order contracting services; and

23                (4) work orders under the contract comply with Section  
24 2264.353.

25        SECTION 2.05. Section 2166.2525, Government Code, is  
26 amended to read as follows:

27        Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The

1 ~~[commission shall adopt rules that determine the circumstances for~~  
2 ~~use of each]~~ method of contracting allowed under this subchapter  
3 for design and construction services is any method provided by  
4 Chapter 2264. ~~[In developing the rules, the commission shall~~  
5 ~~solicit advice and comment from design and construction~~  
6 ~~professionals regarding the criteria the commission will use in~~  
7 ~~determining which contracting method is best suited for a project.]~~

8 SECTION 2.06. Section 2254.003(b), Government Code, is  
9 amended to read as follows:

10 (b) The professional fees under the contract[+]

11 ~~[-(1) must be consistent with and not higher than the~~  
12 ~~recommended practices and fees published by the applicable~~  
13 ~~professional associations, and~~

14 ~~[-(2)]~~ may not exceed any maximum provided by law.

15 SECTION 2.07. Subchapter A, Chapter 2254, Government Code,  
16 is amended by adding Section 2254.007 to read as follows:

17 Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
18 subchapter may be enforced through an action for declaratory or  
19 injunctive relief filed not later than the 10th day after the date  
20 on which the contract is awarded.

21 (b) This section does not apply to enforcement of a contract  
22 entered into by a state agency. In this subsection, "state agency"  
23 has the meaning assigned by Section 2151.002. The term includes the  
24 Texas Building and Procurement Commission.

25 SECTION 2.08. Subtitle F, Title 10, Government Code, is  
26 amended by adding Chapter 2264 to read as follows:

1       CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR

2                       CONSTRUCTION PROJECTS

3                               SUBCHAPTER A. GENERAL PROVISIONS

4       Sec. 2264.001. DEFINITIONS. In this chapter:

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

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

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

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

15              (5) "General contractor" means a sole proprietorship,  
16 partnership, corporation, or other legal entity that assumes the  
17 risk for constructing, rehabilitating, altering, or repairing all  
18 or part of a facility at the contracted price.

19              (6) "Public work contract" means a contract for  
20 constructing, altering, or repairing a public building or carrying  
21 out or completing any public work.

22       Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
23 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.  
24 This chapter applies to a public work contract made by a  
25 governmental entity or quasi-governmental entity authorized by  
26 state law to make a public work contract, including:

27              (1) a state agency as defined by Section 2151.002,

1 including the Texas Building and Procurement Commission;

2 (2) a local government, including:

3 (A) a county;

4 (B) a municipality;

5 (C) a school district;

6 (D) any other special district or authority,  
7 including a hospital district, a defense base development authority  
8 established under Chapter 379B, Local Government Code, and a  
9 conservation and reclamation district, including a river authority  
10 or any other type of water district; and

11 (E) any other political subdivision of this  
12 state; and

13 (3) a public junior college as defined by Section  
14 61.003, Education Code.

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

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

22 (c) This chapter does not prevail over a conflicting  
23 provision that requires the use of competitive bidding in:

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

25 (2) a rule of a county, a defense base development  
26 authority, or a conservation and reclamation district, including a  
27 river authority or any other type of water district.

1       (d) The governing body of a governmental entity to which  
2 Subsection (c) applies may elect to have this chapter overrule the  
3 conflicting provision in the charter or rule.

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

7       Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER  
8 EDUCATION. (a) In this section, "institution of higher  
9 education," "public junior college," and "university system" have  
10 the meanings assigned by Section 61.003, Education Code.

11       (b) This chapter applies to a public junior college but does  
12 not apply to:

- 13               (1) any other institution of higher education; or  
14               (2) a university system.

15       [Sections 2264.006-2264.050 reserved for expansion]

16               SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

19       Sec. 2264.052. NOTICE REQUIREMENTS. (a) A governmental  
20 entity shall advertise or publish notice of requests for bids,  
21 proposals, or qualifications in a manner prescribed by law.

22       (b) For a contract entered into by a governmental entity  
23 under a method provided by this chapter, the governmental entity  
24 shall publish notice of the time and place the bid or proposal or  
25 request for qualifications will be received and opened in a manner  
26 prescribed by law.

27       Sec. 2264.053. DELEGATION OF AUTHORITY. (a) The governing



1 body of a governmental entity may delegate its authority under this  
2 chapter regarding an action authorized or required by this chapter  
3 to a designated representative, committee, or other person.

4 (b) The governmental entity shall provide notice of the  
5 delegation, the limits of the delegation, and the name or title of  
6 each person designated under Subsection (a) by rule or in the  
7 request for bids, proposals, or qualifications or in an addendum to  
8 the request.

9 Sec. 2264.054. RIGHT TO WORK. (a) This section applies to  
10 a governmental entity when the governmental entity is engaged in:

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

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

- 17 (1) may not consider whether a person is a member of or  
18 has another relationship with any organization; and  
19 (2) shall ensure that its bid specifications and any  
20 subsequent contract or other agreement do not deny or diminish the  
21 right of a person to work because of the person's membership or  
22 other relationship status with respect to an organization.

23 Sec. 2264.055. CRITERIA TO CONSIDER. (a) In determining  
24 the award of a contract under this chapter, the governmental entity  
25 may consider:

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

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

2           (4) the impact on the ability of the governmental  
3 entity to comply with rules relating to historically underutilized  
4 businesses;

5           (5) the offeror's safety record;

6           (6) the offeror's proposed personnel;

7           (7) whether the offeror's financial capability is  
8 appropriate to the size and scope of the project; and

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

11           (b) In determining the award of a contract under this  
12 chapter, the governmental entity shall:

13           (1) consider and apply any existing laws, including  
14 any criteria, related to historically underutilized businesses;  
15 and

16           (2) consider and apply any existing laws, rules, or  
17 applicable municipal charters, including laws applicable to local  
18 governments, related to the use of women, minority, small, or  
19 disadvantaged businesses.

20           Sec. 2264.056. USING METHOD OTHER THAN COMPETITIVE BIDDING  
21 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a)  
22 The governing body of a governmental entity that considers a  
23 construction contract using a method authorized by this chapter  
24 other than competitive bidding must, before advertising, determine  
25 which method provides the best value for the governmental entity.

26           (b) The governmental entity shall base its selection among  
27 offerors on applicable criteria listed for the particular method

1 used. The governmental entity shall publish in the request for  
2 proposals or qualifications the criteria that will be used to  
3 evaluate the offerors, and the applicable weighted value for each  
4 criterion.

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

8 Sec. 2264.057. ARCHITECT OR ENGINEER SERVICES. (a) An  
9 architect or engineer required to be selected or designated under  
10 this chapter has full responsibility for complying with Chapter  
11 1051 or 1001, Occupations Code, as applicable.

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

17 Sec. 2264.058. USE OF OTHER PROFESSIONAL SERVICES. (a)  
18 Independently of the contractor, construction manager-at-risk, or  
19 design-build firm, the governmental entity shall provide or  
20 contract for the construction materials engineering, testing, and  
21 inspection services and the verification testing services  
22 necessary for acceptance of the facility by the governmental  
23 entity.

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

27 Sec. 2264.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS

1 REQUIRED. A person who submits a bid, proposal, or qualification to  
2 a governmental entity shall seal it before delivery.

3 [Sections 2264.060-2264.100 reserved for expansion]

4 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

5 Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE  
6 BIDDING. (a) In this chapter, "competitive bidding" is a  
7 procurement method by which a governmental entity contracts with a  
8 contractor for the construction, alteration, rehabilitation, or  
9 repair of a facility by awarding the contract to the lowest  
10 responsible bidder.

11 (b) Except as otherwise provided by this chapter or other  
12 law, a governmental entity may contract for the construction,  
13 alteration, rehabilitation, or repair of a facility only after the  
14 entity advertises for bids for the contract in a manner prescribed  
15 by law, receives competitive bids, and awards the contract to the  
16 lowest responsible bidder.

17 Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The  
18 governmental entity shall select or designate an architect or  
19 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
20 as applicable, to prepare the construction documents required for a  
21 project to be awarded by competitive bidding.

22 Sec. 2264.103. PREPARATION OF REQUEST. The governmental  
23 entity shall prepare a request for competitive bids that includes  
24 construction documents, estimated budget, project scope, estimated  
25 project completion date, and other information that a contractor  
26 may require to submit a bid.

27 Sec. 2264.104. EVALUATION OF OFFERORS. The governmental

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

3 Sec. 2264.105. SELECTION OF OFFEROR. Not later than the  
4 seventh day after the date the contract is awarded, the  
5 governmental entity shall document the basis of its selection and  
6 shall make the evaluations public.

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

16 [Sections 2264.107-2264.150 reserved for expansion]

17 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

18 Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE  
19 SEALED PROPOSALS. (a) In this chapter, "competitive sealed  
20 proposals" is a procurement method by which a governmental entity  
21 requests proposals, ranks the offerors, negotiates as prescribed,  
22 and then contracts with a general contractor for the construction,  
23 rehabilitation, alteration, or repair of a facility.

24 (b) In selecting a contractor through competitive sealed  
25 proposals, a governmental entity shall follow the procedures  
26 provided by this subchapter.

27 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The

1 governmental entity shall select or designate an architect or  
2 engineer to prepare construction documents for the project.

3 Sec. 2264.153. PREPARATION OF REQUEST. The governmental  
4 entity shall prepare a request for competitive sealed proposals  
5 that includes construction documents, selection criteria and the  
6 weighted value for each criterion, estimated budget, project scope,  
7 estimated project completion date, and other information that a  
8 contractor may require to respond to the request.

9 Sec. 2264.154. EVALUATION OF OFFERORS. (a) The  
10 governmental entity shall receive, publicly open, and read aloud  
11 the names of the offerors and any monetary proposals made by the  
12 offerors.

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

16 Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental  
17 entity shall select the offeror that submits the proposal that  
18 offers the best value for the governmental entity based on:

19 (1) the selection criteria in the request for proposal  
20 and the weighted value for those criteria in the request for  
21 proposal; and

22 (2) its ranking evaluation.

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

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

6       [Sections 2264.156-2264.200 reserved for expansion]

7       SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

8       Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
9 MANAGER-AGENT. (a) In this chapter, the "construction  
10 manager-agent method" is a delivery method by which a governmental  
11 entity contracts with a construction manager-agent, instead of a  
12 general contractor, to provide administrative services and to  
13 manage multiple contracts with various construction prime  
14 contractors.

15       (b) A construction manager-agent is a sole proprietorship,  
16 partnership, corporation, or other legal entity that serves as the  
17 agent for the governmental entity by providing construction  
18 administration and management services described by Subsection (a)  
19 for the construction, rehabilitation, alteration, or repair of a  
20 facility.

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

25       Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION  
26 MANAGER-AGENT. The contract between the governmental entity and  
27 the construction manager-agent may require the construction

1 manager-agent to provide:

2 (1) administrative personnel;

3 (2) equipment necessary to perform duties under this  
4 subchapter;

5 (3) on-site management; and

6 (4) other services specified in the contract.

7 Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A  
8 construction manager-agent may not:

9 (1) self-perform any aspect of the construction,  
10 rehabilitation, alteration, or repair of the facility;

11 (2) be a party to a construction subcontract for the  
12 construction, rehabilitation, alteration, or repair of the  
13 facility; or

14 (3) provide project bonding for the construction,  
15 rehabilitation, alteration, or repair of the facility.

16 Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION  
17 MANAGER-AGENT. A construction manager-agent represents the  
18 governmental entity in a fiduciary capacity.

19 Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or  
20 before the selection of a construction manager-agent, the  
21 governmental entity shall select or designate an architect or  
22 engineer to prepare the construction documents for the project.

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



1 subchapter. This subsection does not prohibit the governmental  
2 entity's architect or engineer from providing customary  
3 construction phase services under the architect's or engineer's  
4 original professional service agreement in accordance with  
5 applicable licensing laws.

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

11 Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental  
12 entity using the construction manager-agent method shall procure,  
13 in accordance with applicable law and in any manner authorized by  
14 this chapter, a general contractor or trade contractors who will  
15 serve as the prime contractor for their specific portion of the  
16 work.

17 Sec. 2264.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
18 governmental entity shall select a construction manager-agent on  
19 the basis of demonstrated competence and qualifications in the same  
20 manner that an architect or engineer is selected under Section  
21 2254.004.

22 Sec. 2264.208. INSURANCE. A construction manager-agent  
23 selected under this subchapter shall maintain professional  
24 liability or errors and omissions insurance in the amount of at  
25 least \$1 million for each occurrence.

26 [Sections 2264.209-2264.250 reserved for expansion]

1           SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

2           Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
3 MANAGER-AT-RISK. (a) In this chapter, the "construction  
4 manager-at-risk method" is a delivery method by which a  
5 governmental entity contracts with an architect or engineer for  
6 design and construction phase services and contracts separately  
7 with a construction manager-at-risk to serve as the general  
8 contractor and to provide consultation during the design and  
9 construction, rehabilitation, alteration, or repair of a facility.

10           (b) A construction manager-at-risk is a sole  
11 proprietorship, partnership, corporation, or other legal entity  
12 that assumes the risk for construction, rehabilitation,  
13 alteration, or repair of a facility at the contracted price as a  
14 general contractor and provides consultation to the governmental  
15 entity regarding construction during and after the design of the  
16 facility. The contracted price may be a guaranteed maximum price.

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

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

25           (b) The governmental entity's architect or engineer for a  
26 project may not serve, alone or in combination with another person,  
27 as the construction manager-at-risk unless the architect or

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

8 Sec. 2264.253. SELECTION PROCESS. (a) The governmental  
9 entity shall select the construction manager-at-risk in a one-step  
10 or two-step process.

11 (b) The governmental entity shall prepare a single request  
12 for proposals, in the case of a one-step process, and an initial  
13 request for qualifications, in the case of a two-step process, that  
14 includes:

15 (1) a statement as to whether the selection process is  
16 a one-step or two-step process;

17 (2) general information on the project site, project  
18 scope, schedule, selection criteria and the weighted value for each  
19 criterion, and estimated budget and the time and place for receipt  
20 of the proposals or qualifications; and

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

23 (c) The governmental entity shall state the selection  
24 criteria in the request for proposals or qualifications.

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

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

7       (f) At each step, the governmental entity shall receive,  
8 publicly open, and read aloud the names of the offerors. At the  
9 appropriate step, the governmental entity shall also read aloud the  
10 fees and prices, if any, stated in each proposal as the proposal is  
11 opened.

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

16       Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental  
17 entity shall select the offeror that submits the proposal that  
18 offers the best value for the governmental entity based on the  
19 published selection criteria and on its ranking evaluation.

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

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

1        (d) Not later than the seventh day after the date the  
2 contract is awarded, the governmental entity shall make the  
3 rankings determined under Section 2264.253(g) public.

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

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

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

14            (2) the governmental entity determines that the  
15 construction manager-at-risk's bid or proposal provides the best  
16 value for the governmental entity.

17        Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The  
18 construction manager-at-risk shall review all trade contractor or  
19 subcontractor bids or proposals in a manner that does not disclose  
20 the contents of the bid or proposal during the selection process to  
21 a person not employed by the construction manager-at-risk,  
22 architect, engineer, or governmental entity. All bids or proposals  
23 shall be made available to the governmental entity on request and to  
24 the public after the later of the award of the contract or the  
25 seventh day after the date of final selection of bids or proposals.

26        (b) If the construction manager-at-risk reviews, evaluates,  
27 and recommends to the governmental entity a bid or proposal from a

1 trade contractor or subcontractor but the governmental entity  
2 requires another bid or proposal to be accepted, the governmental  
3 entity shall compensate the construction manager-at-risk by a  
4 change in price, time, or guaranteed maximum cost for any  
5 additional cost and risk that the construction manager-at-risk  
6 incurs because of the governmental entity's requirement that  
7 another bid or proposal be accepted.

8 Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected  
9 trade contractor or subcontractor defaults in the performance of  
10 its work or fails to execute a subcontract after being selected in  
11 accordance with this subchapter, the construction manager-at-risk  
12 may itself fulfill, without advertising, the contract requirements  
13 or select a replacement trade contractor or subcontractor to  
14 fulfill the contract requirements.

15 Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed  
16 contract amount or guaranteed maximum price has not been determined  
17 at the time the contract is awarded, the penal sums of the  
18 performance and payment bonds delivered to the governmental entity  
19 must each be in an amount equal to the construction budget, as  
20 specified in the request for proposals or qualifications.

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

1 [Sections 2264.259-2264.300 reserved for expansion]

2 SUBCHAPTER G. DESIGN-BUILD METHOD

3 Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In  
4 this chapter, "design-build" is a project delivery method by which  
5 a governmental entity contracts with a single entity to provide  
6 both design and construction services for the construction,  
7 rehabilitation, alteration, or repair of a facility.

8 Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
9 EXCEPTIONS. This subchapter applies only to a facility that is a  
10 building or an associated structure. This subchapter does not  
11 apply to:

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

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

19 Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
20 governmental entity may use the design-build method for the  
21 construction, rehabilitation, alteration, or repair of a building  
22 or associated structure only as provided by this subchapter. In  
23 using that method, the governmental entity shall enter into a  
24 single contract with a design-build firm for the design and  
25 construction of the building or associated structure.

26 Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm  
27 under this subchapter must be a sole proprietorship, partnership,

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

3 Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT  
4 REPRESENTATIVE. The governmental entity shall select or designate  
5 an architect or engineer independent of the design-build firm to  
6 act as the governmental entity's representative for the duration of  
7 the project.

8 Sec. 2264.306. PREPARATION OF REQUEST. (a) The  
9 governmental entity shall prepare a request for qualifications that  
10 includes general information on the project site, project scope,  
11 budget, special systems, selection criteria and the weighted value  
12 for each criterion, and other information that may assist potential  
13 design-build firms in submitting proposals for the project.

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

22 (c) The design criteria package must include a set of  
23 documents that provides sufficient information, including criteria  
24 for selection, to permit a design-build firm to prepare a response  
25 to the governmental entity's request for qualifications and to  
26 provide any additional information requested. The design criteria  
27 package must specify criteria the governmental entity considers



1 necessary to describe the project and may include, as appropriate,  
2 the legal description of the site, survey information concerning  
3 the site, interior space requirements, special material  
4 requirements, material quality standards, conceptual criteria for  
5 the project, special equipment requirements, cost or budget  
6 estimates, time schedules, quality assurance and quality control  
7 requirements, site development requirements, applicable codes and  
8 ordinances, provisions for utilities, parking requirements, and  
9 any other requirement.

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

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

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

25 (c) The governmental entity shall qualify a maximum of five  
26 responders to submit proposals that contain additional information  
27 and, if the governmental entity chooses, to interview for final

1 selection.

2 (d) The governmental entity shall evaluate the additional  
3 information submitted by the offerors on the basis of the selection  
4 criteria stated in the request for qualifications and the results  
5 of any interview.

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

18 (f) The governmental entity shall rank each proposal  
19 submitted on the basis of the criteria set forth in the request for  
20 qualifications.

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

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

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

7        (d) Not later than the seventh day after the date the  
8 contract is awarded, the governmental entity shall make the  
9 rankings determined under Section 2264.307(f) public.

10       Sec. 2264.309. SUBMISSION OF DESIGN AFTER SELECTION. After  
11 selection of the design-build firm, that firm's architects or  
12 engineers shall submit all design elements for review and  
13 determination of scope compliance to the governmental entity or the  
14 governmental entity's architect or engineer before or concurrently  
15 with construction.

16       Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The  
17 design-build firm shall supply a set of construction documents for  
18 the completed project to the governmental entity at the conclusion  
19 of construction. The documents must note any changes made during  
20 construction.

21       Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
22 or performance bond is not required and may not provide coverage for  
23 the design portion of the design-build contract with the  
24 design-build firm under this subchapter.

25       (b) If a fixed contract amount or guaranteed maximum price  
26 has not been determined at the time the design-build contract is  
27 awarded, the penal sums of the performance and payment bonds

1 delivered to the governmental entity must each be in an amount equal  
2 to the construction budget, as specified in the design criteria  
3 package.

4 (c) The design-build firm shall deliver the bonds not later  
5 than the 10th day after the date the design-build firm executes the  
6 contract unless the design-build firm furnishes a bid bond or other  
7 financial security acceptable to the governmental entity to ensure  
8 that the design-build firm will furnish the required performance  
9 and payment bonds before construction begins.

10 [Sections 2264.312-2264.350 reserved for expansion]

11 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

12 Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter,  
13 "job order contracting" is a procurement method used for  
14 maintenance, repair, alteration, renovation, remediation, or minor  
15 construction of an existing facility when the work is of a recurring  
16 nature but the delivery times, type, and quantities of work  
17 required are indefinite.

18 Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
19 EXCEPTIONS. This subchapter applies only to a facility that is a  
20 building or an associated structure. This subchapter does not  
21 apply to:

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

27 (2) a building or structure that is incidental to a

1 project that is primarily a civil engineering construction project.

2 Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR  
3 FACILITIES. (a) A governmental entity may award job order  
4 contracts for the maintenance, repair, alteration, renovation,  
5 remediation, or minor construction of a facility if:

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

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

10 (b) The governmental entity shall establish the maximum  
11 aggregate contract price when it advertises the proposal.

12 (c) The governing body of a governmental entity shall  
13 approve each job order that exceeds:

14 (1) \$500,000 under the contract; or

15 (2) a lesser amount as established by the governing  
16 body.

17 Sec. 2264.354. CONTRACTUAL UNIT PRICES. The governmental  
18 entity may establish contractual unit prices for a job order  
19 contract by:

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

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

26 Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
27 governmental entity may use the competitive sealed proposal method

1 under Subchapter D for job order contracts.

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

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

7 Sec. 2264.356. AWARDING OF JOB ORDER CONTRACTS. The  
8 governmental entity may award job order contracts to one or more job  
9 order contractors in connection with each solicitation of  
10 proposals.

11 Sec. 2264.357. USE OF ARCHITECT OR ENGINEER. If a job order  
12 contract or an order issued under the contract requires  
13 architectural or engineering services that constitute the practice  
14 of architecture within the meaning of Chapter 1051, Occupations  
15 Code, or the practice of engineering within the meaning of Chapter  
16 1001, Occupations Code, the governmental entity shall select or  
17 designate an architect or engineer to prepare the construction  
18 documents for the project.

19 Sec. 2264.358. JOB ORDER CONTRACT TERM. The base term for a  
20 job order contract may not exceed two years. The governmental  
21 entity may renew the contract annually for not more than three  
22 additional years.

23 Sec. 2264.359. JOB ORDERS. (a) An order for a job or  
24 project under a job order contract must be signed by the  
25 governmental entity's representative and the contractor.

26 (b) The order may be:

27 (1) a fixed price, lump-sum contract based

1 substantially on contractual unit pricing applied to estimated  
2 quantities; or

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

5 Sec. 2264.360. PAYMENT AND PERFORMANCE BONDS. The  
6 contractor shall provide payment and performance bonds, if required  
7 by law, based on the amount or estimated amount of any order.

8 [Sections 2264.361-2264.400 reserved for expansion]

9 SUBCHAPTER I. ENFORCEMENT

10 Sec. 2264.401. VOID CONTRACT. (a) A contract, including a  
11 job order, entered into in violation of this chapter and any bonds  
12 issued in connection with the contract are voidable as against  
13 public policy.

14 (b) An action to void a contract under this section does not  
15 excuse the obligation of the governmental entity to pay for any  
16 service performed or material delivered in good faith by a  
17 contractor, architect, engineer, design-builder, or construction  
18 manager before the date on which the contract is determined to be  
19 void.

20 Sec. 2264.402. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
21 chapter may be enforced through an action for declaratory or  
22 injunctive relief filed not later than the 10th day after the date  
23 on which the contract is awarded.

24 (b) This section does not apply to enforcement of a contract  
25 entered into by a state agency. In this subsection, "state agency"  
26 has the meaning assigned by Section 2151.002. The term includes the  
27 Texas Building and Procurement Commission.

1 SECTION 2.09. Sections 44.031(a) and (f), Education Code,  
2 are amended to read as follows:

3 (a) Except as provided by this subchapter, all school  
4 district contracts for the purchase of goods and services, except  
5 contracts for the purchase of produce or vehicle fuel, valued at  
6 \$25,000 or more in the aggregate for each 12-month period shall be  
7 made by the method, of the following methods, that provides the best  
8 value for the district:

9 (1) competitive bidding for services other than  
10 construction services;

11 (2) competitive sealed proposals for services other  
12 than construction services;

13 (3) a request for proposals, for services other than  
14 construction services;

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

17 (5) an interlocal contract;

18 (6) a method provided by Chapter 2264, Government  
19 Code;

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

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

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

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

27 (8) [(10)] the formation of a political subdivision



1 corporation under Section 304.001, Local Government Code.

2 (f) This section does not apply to a contract for  
3 professional services rendered, including services of an  
4 architect, attorney, engineer, or fiscal agent. A school district  
5 may, at its option, contract for professional services rendered by  
6 a financial consultant or a technology consultant in the manner  
7 provided by Section 2254.003, Government Code, in lieu of the  
8 methods provided by this section.

9 SECTION 2.10. Section 252.048, Local Government Code, is  
10 amended by adding Subsection (c-1) to read as follows:

11 (c-1) If a change order for a public works contract in a  
12 municipality with a population of 500,000 or more involves a  
13 decrease or an increase of \$100,000 or less, or a lesser amount as  
14 provided by ordinance, the governing body of the municipality may  
15 grant general authority to an administrative official of the  
16 municipality to approve the change order.

17 SECTION 2.11. Section 271.054, Local Government Code, is  
18 amended to read as follows:

19 Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the  
20 governing body of an issuer may enter into a contract requiring an  
21 expenditure by or imposing an obligation or liability on the  
22 issuer, or on a subdivision of the issuer if the issuer is a county,  
23 of more than \$25,000, the governing body must:

24 (1) submit the proposed contract to competitive  
25 bidding; or

26 (2) use an alternate method of project delivery  
27 authorized by Chapter 2264, Government Code.

1 SECTION 2.12. Section 431.101(g), Transportation Code, is  
2 amended to read as follows:

3 (g) A local government corporation [~~created by a navigation~~  
4 ~~district~~] must comply with all state law related to the design and  
5 construction of projects, including the procurement of design and  
6 construction services, that applies to the local government  
7 [~~navigation district~~] that created the corporation.

8 ARTICLE 3. ADDITIONAL EXEMPTIONS

9 SECTION 3.01. Section 44.901, Education Code, is amended by  
10 adding Subsection (j) to read as follows:

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

13 SECTION 3.02. Section 51.927, Education Code, is amended by  
14 adding Subsection (k) to read as follows:

15 (k) Chapter 2264, Government Code, does not apply to this  
16 section.

17 SECTION 3.03. Section 2166.406, Government Code, is amended  
18 by adding Subsection (k) to read as follows:

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

20 SECTION 3.04. Chapter 302, Local Government Code, is  
21 amended by adding Section 302.006 to read as follows:

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

24 SECTION 3.05. Subchapter E, Chapter 335, Local Government  
25 Code, is amended by adding Section 335.077 to read as follows:

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

1 SECTION 3.06. Section 22.074, Transportation Code, is  
2 amended by adding Subsection (f) to read as follows:

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

6 SECTION 3.07. Section 370.305, Transportation Code, is  
7 amended by adding Subsection (c-1) to read as follows:

8 (c-1) Chapter 2264, Government Code, does not apply to  
9 agreements entered into pursuant to this section.

10 SECTION 3.08. Subchapter Q, Chapter 451, Transportation  
11 Code, is amended by adding Section 451.8025 to read as follows:

12 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.  
13 Chapter 2264, Government Code, does not apply to this subchapter.

14 SECTION 3.09. Subchapter C, Chapter 452, Transportation  
15 Code, is amended by adding Section 452.1095 to read as follows:

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

20 SECTION 3.10. Section 60.452, Water Code, is amended by  
21 adding Subsection (c) to read as follows:

22 (c) Chapter 2264, Government Code, does not apply to this  
23 subchapter.

24 ARTICLE 4. CONFORMING AMENDMENT

25 SECTION 4.01. Section 252.021(a), Local Government Code, is  
26 amended to read as follows:

27 (a) Before a municipality may enter into a contract that

1 requires an expenditure of more than \$25,000 from one or more  
2 municipal funds, the municipality must:

3 (1) comply with the procedure prescribed by this  
4 subchapter and Subchapter C for competitive sealed bidding or  
5 competitive sealed proposals;

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

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

10 ARTICLE 5. REPEALER

11 SECTION 5.01. The following are repealed:

12 (1) Sections 44.0312, 44.0315, 44.035, 44.036,  
13 44.037, 44.038, 44.039, 44.040, 44.041, and 44.043, Education Code;

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

16 (3) Section 252.043(d-1), Local Government Code;

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

18 and

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

20 ARTICLE 6. TRANSITION; EFFECTIVE DATE

21 SECTION 6.01. (a) The changes in law made by this Act apply  
22 only to a contract or construction project for which a governmental  
23 entity first advertises or otherwise requests bids, proposals,  
24 offers, or qualifications, or makes a similar solicitation, on or  
25 after the effective date of this Act.

26 (b) A contract or construction project for which a  
27 governmental entity first advertises or otherwise requests bids,

1 proposals, offers, or qualifications, or makes a similar  
2 solicitation, before the effective date of this Act is governed by  
3 the law as it existed immediately before the effective date of this  
4 Act, and that law is continued in effect for that purpose.

5 SECTION 6.02. This Act takes effect September 1, 2007.

# ADOPTED

MAY 17 2007

*Lobby Daw*  
Secretary of the Senate

By: Jackson

H.B. No. 447

Substitute the following for H.B. No. 447:

By: Jackson

C.S.H.B. No. 447

## A BILL TO BE ENTITLED

1

### AN ACT

2 relating to contracts by governmental entities and related  
3 professional services, to public works performance and payment  
4 bonds, and to certain regulations of local authorities.

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

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended  
8 by adding Subsection (h) to read as follows:

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

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

15 SECTION 2.01. Sections 44.031(a) and (f), Education Code,  
16 are amended to read as follows:

17 (a) Except as provided by this subchapter, all school  
18 district contracts for the purchase of goods and services, except  
19 contracts for the purchase of produce or vehicle fuel, valued at  
20 \$25,000 or more in the aggregate for each 12-month period shall be  
21 made by the method, of the following methods, that provides the best  
22 value for the district:

23 (1) competitive bidding for services other than  
24 construction services;

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1

1           (2) competitive sealed proposals for services other  
2 than construction services;

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

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

7           (5) an interlocal contract;

8           (6) a method provided by Chapter 2264, Government  
9 Code;

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

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

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

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

17          (8) ~~[(10)]~~ the formation of a political subdivision  
18 corporation under Section 304.001, Local Government Code.

19          (f) This section does not apply to a contract for  
20 professional services rendered, including services of an  
21 architect, attorney, engineer, or fiscal agent. A school district  
22 may, at its option, contract for professional services rendered by  
23 a financial consultant or a technology consultant in the manner  
24 provided by Section 2254.003, Government Code, in lieu of the  
25 methods provided by this section.

26          SECTION 2.02. Subchapter B, Chapter 44, Education Code, is  
27 amended by adding Section 44.0351 to read as follows:

1       Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the  
2 extent prohibited by other law and to the extent consistent with  
3 this subchapter, a school district may use competitive bidding to  
4 select a vendor as authorized by Section 44.031(a)(1).

5       (b) Except as provided by this subsection, Subchapter B,  
6 Chapter 271, Local Government Code, does not apply to a competitive  
7 bidding process under this subchapter. Sections 271.026,  
8 271.027(a), and 271.0275, Local Government Code, apply to a  
9 competitive bidding process under this subchapter.

10       (c) A school district shall award a competitively bid  
11 contract at the bid amount to the bidder offering the best value for  
12 the district. In determining the best value for the district, the  
13 district is not restricted to considering price alone, but may  
14 consider any other factors stated in the selection criteria. The  
15 selection criteria may include the factors listed in Section  
16 44.031(b).

17       SECTION 2.03. Subchapter B, Chapter 44, Education Code, is  
18 amended by adding Section 44.0361 to read as follows:

19       Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In  
20 selecting a vendor through competitive sealed proposals as  
21 authorized by Section 44.031(a)(2), a school district shall follow  
22 the procedures prescribed by this section.

23       (b) The district shall prepare a request for competitive  
24 sealed proposals that includes information that vendors may require  
25 to respond to the request. The district shall state in the request  
26 for proposals the selection criteria that will be used in selecting  
27 the successful offeror.

20



1           (c) The district shall receive, publicly open, and read  
2 aloud the names of the offerors and, if any are required to be  
3 stated, all prices stated in each proposal. Not later than the 45th  
4 day after the date on which the proposals are opened, the district  
5 shall evaluate and rank each proposal submitted in relation to the  
6 published selection criteria.

7           (d) The district shall select the offeror that offers the  
8 best value for the district based on the published selection  
9 criteria and on its ranking evaluation. The district shall first  
10 attempt to negotiate with the selected offeror a contract. The  
11 district may discuss with the selected offeror options for a scope  
12 or time modification and any price change associated with the  
13 modification. If the district is unable to negotiate a contract  
14 with the selected offeror, the district shall, formally and in  
15 writing, end negotiations with that offeror and proceed to the next  
16 offeror in the order of the selection ranking until a contract is  
17 reached or all proposals are rejected.

18           (e) In determining the best value for the district, the  
19 district is not restricted to considering price alone, but may  
20 consider any other factors stated in the selection criteria.

21           SECTION 2.04. Subchapter B, Chapter 44, Education Code, is  
22 amended by adding Section 44.0411 to read as follows:

23           Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or  
24 specifications is necessary after the performance of a contract is  
25 begun or if it is necessary to decrease or increase the quantity of  
26 work to be performed or of materials, equipment, or supplies to be  
27 furnished, the district may approve change orders making the

1 changes.

2 (b) The total contract price may not be increased because of  
3 the changes unless additional money for increased costs is approved  
4 for that purpose from available money or is provided for by the  
5 authorization of the issuance of time warrants.

6 (c) The district may grant general authority to an  
7 administrative official to approve the change orders.

8 (d) A contract with an original contract price of \$1 million  
9 or more may not be increased under this section by more than 25  
10 percent. If a change order for a contract with an original contract  
11 price of less than \$1 million increases the contract amount to \$1  
12 million or more, subsequent change orders may not increase the  
13 revised contract amount by more than 25 percent.

14 SECTION 2.05. Subchapter A, Chapter 46, Education Code, is  
15 amended by adding Section 46.0111 to read as follows:

16 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,  
17 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL  
18 FACILITY. (a) In this section:

19 (1) "Net proceeds" means the difference between the  
20 amount recovered by or on behalf of a school district in an action,  
21 by settlement or otherwise, and the legal fees and litigation costs  
22 incurred by the district in prosecuting the action.

23 (2) "State's share" means an amount equal to the  
24 district's net proceeds from the recovery multiplied by a  
25 percentage determined by dividing the amount of state assistance  
26 under this subchapter used to pay the principal of and interest on  
27 bonds issued in connection with the instructional facility that is

1 the subject of the action by the total amount of principal and  
2 interest paid on the bonds as of the date of the judgment or  
3 settlement.

4 (b) A school district that brings an action for recovery of  
5 damages for the defective design, construction, renovation, or  
6 improvement of an instructional facility financed by bonds for  
7 which the district receives state assistance under this subchapter  
8 shall provide the commissioner with written notice of the action.

9 (c) The commissioner may join in the action on behalf of the  
10 state to protect the state's share in the action.

11 (d) A school district shall use the net proceeds from an  
12 action brought by the district for the defective design,  
13 construction, renovation, or improvement of an instructional  
14 facility financed by bonds for which the district receives state  
15 assistance under this subchapter to repair the defective design,  
16 construction, renovation, or improvement of the instructional  
17 facility on which the action is brought or to replace the facility.  
18 Section 46.008 applies to the repair.

19 (e) The state's share is state property. The school district  
20 shall send to the comptroller any portion of the state's share not  
21 used by the school district to repair the defective design,  
22 construction, renovation, or improvement of the instructional  
23 facility on which the action is brought or to replace the facility.  
24 Section 42.258 applies to the state's share under this subsection.

25 SECTION 2.06. Section 791.011, Government Code, is amended  
26 by amending Subsection (e) and adding Subsections (h) and (i) to  
27 read as follows:

1 (e) An interlocal contractual payment must be in an amount  
2 that fairly compensates the performing party for the services or  
3 functions performed under the contract. This subsection does not  
4 prohibit a local government from being reimbursed for its expenses  
5 or from sharing in the profits or revenue of the performing party if  
6 the reimbursement or sharing assists in the management of a local  
7 government.

8 (h) An interlocal contract may not be used to purchase  
9 engineering or architectural services unless the services are in  
10 connection with the design or construction of a specific facility  
11 to be jointly owned, used, or financed by the parties to the  
12 contract.

13 (i) An interlocal contract may not be used to purchase  
14 construction services unless the services are in connection with  
15 the design or construction of a specific facility to be jointly  
16 owned, used, or financed by the parties to the contract or:

17 (1) the services are in connection with a job order  
18 contract;

19 (2) the governing body of the governmental entity for  
20 whom the work will ultimately be performed approves the purchase in  
21 open session;

22 (3) public notice is provided in a manner consistent  
23 with a direct contract for job order contracting services; and

24 (4) work orders under the contract comply with Section  
25 2264.353.

26 SECTION 2.07. Section 2166.2525, Government Code, is  
27 amended to read as follows:

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

9           SECTION 2.08. Section 2254.003(b), Government Code, is  
10 amended to read as follows:

11           (b) The professional fees under the contract [+  
12           ~~[(1) must be consistent with and not higher than the~~  
13 ~~recommended practices and fees published by the applicable~~  
14 ~~professional associations, and~~

15           ~~[(2)]~~ may not exceed any maximum provided by law.

16           SECTION 2.09. Subchapter A, Chapter 2254, Government Code,  
17 is amended by adding Section 2254.007 to read as follows:

18           Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
19 subchapter may be enforced through an action for declaratory or  
20 injunctive relief filed not later than the 10th day after the date  
21 on which the contract is awarded.

22           (b) This section does not apply to enforcement of a contract  
23 entered into by a state agency. In this subsection, "state agency"  
24 has the meaning assigned by Section 2151.002. The term includes the  
25 Texas Building and Procurement Commission.

26           SECTION 2.10. Subtitle F, Title 10, Government Code, is  
27 amended by adding Chapter 2264 to read as follows:



1 including the Texas Building and Procurement Commission;

2 (2) a local government, including:

3 (A) a county;

4 (B) a municipality;

5 (C) a school district;

6 (D) any other special district or authority,  
7 including a hospital district, a defense base development authority  
8 established under Chapter 379B, Local Government Code, and a  
9 conservation and reclamation district, including a river authority  
10 or any other type of water district; and

11 (E) any other political subdivision of this  
12 state;

13 (3) a public junior college as defined by Section  
14 61.003, Education Code;

15 (4) any entity owned by a municipality; and

16 (5) any other entity that owns or operates a facility  
17 for the benefit of a municipality or county.

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

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

25 (c) This chapter does not prevail over a conflicting  
26 provision that requires the use of competitive bidding in:

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

1           (2) a rule of a county, a defense base development  
2 authority, or a conservation and reclamation district, including a  
3 river authority or any other type of water district.

4           (d) The governing body of a governmental entity to which  
5 Subsection (c) applies may elect to have this chapter overrule the  
6 conflicting provision in the charter or rule.

7           (e) This chapter does not prevail over a conflicting  
8 provision in an ordinance or resolution passed by the governing  
9 body of a municipally owned electric utility in a procedure  
10 described by Section 252.022(c), Local Government Code, that:

11           (1) requires the use of competitive bidding or  
12 competitive sealed proposals; or

13           (2) prescribes a design-build procurement procedure  
14 that conflicts with this chapter.

15           Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF  
16 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

17           (1) a contract entered into by the Texas Department of  
18 Transportation; or

19           (2) a project that receives money from a state or  
20 federal highway fund.

21           Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER  
22 EDUCATION. (a) In this section, "institution of higher  
23 education," "public junior college," and "university system" have  
24 the meanings assigned by Section 61.003, Education Code.

25           (b) This chapter applies to a public junior college but does  
26 not apply to:

27           (1) any other institution of higher education; or



1           (2) a university system.

2           [Sections 2264.006-2264.050 reserved for expansion]

3           SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

6           Sec. 2264.052. NOTICE REQUIREMENTS. (a) A governmental  
7 entity shall advertise or publish notice of requests for bids,  
8 proposals, or qualifications in a manner prescribed by law.

9           (b) For a contract entered into by a governmental entity  
10 under a method provided by this chapter, the governmental entity  
11 shall publish notice of the time and place the bid or proposal or  
12 request for qualifications will be received and opened in a manner  
13 prescribed by law.

14           Sec. 2264.053. DELEGATION OF AUTHORITY. (a) The governing  
15 body of a governmental entity may delegate its authority under this  
16 chapter regarding an action authorized or required by this chapter  
17 to a designated representative, committee, or other person.

18           (b) The governmental entity shall provide notice of the  
19 delegation, the limits of the delegation, and the name or title of  
20 each person designated under Subsection (a) by rule or in the  
21 request for bids, proposals, or qualifications or in an addendum to  
22 the request.

23           Sec. 2264.054. RIGHT TO WORK. (a) This section applies to  
24 a governmental entity when the governmental entity is engaged in:

25           (1) procuring goods or services under this chapter;

26           (2) awarding a contract under this chapter; or

27           (3) overseeing procurement or construction for a

1 public work or public improvement under this chapter.

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

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

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

10 Sec. 2264.055. CRITERIA TO CONSIDER. (a) In determining  
11 the award of a contract under this chapter, the governmental entity  
12 may consider:

13 (1) the price;

14 (2) the offeror's experience and reputation;

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

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

19 (5) the offeror's safety record;

20 (6) the offeror's proposed personnel;

21 (7) whether the offeror's financial capability is  
22 appropriate to the size and scope of the project; and

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

25 (b) In determining the award of a contract under this  
26 chapter, the governmental entity shall:

27 (1) consider and apply any existing laws, including

1 any criteria, related to historically underutilized businesses;  
2 and

3 (2) consider and apply any existing laws, rules, or  
4 applicable municipal charters, including laws applicable to local  
5 governments, related to the use of women, minority, small, or  
6 disadvantaged businesses.

7 Sec. 2264.056. USING METHOD OTHER THAN COMPETITIVE BIDDING  
8 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a)  
9 The governing body of a governmental entity that considers a  
10 construction contract using a method authorized by this chapter  
11 other than competitive bidding must, before advertising, determine  
12 which method provides the best value for the governmental entity.

13 (b) The governmental entity shall base its selection among  
14 offerors on applicable criteria listed for the particular method  
15 used. The governmental entity shall publish in the request for  
16 proposals or qualifications the criteria that will be used to  
17 evaluate the offerors, and the applicable weighted value for each  
18 criterion.

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

22 Sec. 2264.057. ARCHITECT OR ENGINEER SERVICES. (a) An  
23 architect or engineer required to be selected or designated under  
24 this chapter has full responsibility for complying with Chapter  
25 1051 or 1001, Occupations Code, as applicable.

26 (b) If the selected or designated architect or engineer is  
27 not a full-time employee of the governmental entity, the

51

1 governmental entity shall select the architect or engineer on the  
2 basis of demonstrated competence and qualifications as provided by  
3 Section 2254.004.

4 Sec. 2264.058. USE OF OTHER PROFESSIONAL SERVICES. (a)  
5 Independently of the contractor, construction manager-at-risk, or  
6 design-build firm, the governmental entity shall provide or  
7 contract for the construction materials engineering, testing, and  
8 inspection services and the verification testing services  
9 necessary for acceptance of the facility by the governmental  
10 entity.

11 (b) The governmental entity shall select the services for  
12 which it contracts under this section in accordance with Section  
13 2254.004.

14 Sec. 2264.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS  
15 REQUIRED. A person who submits a bid, proposal, or qualification to  
16 a governmental entity shall seal it before delivery.

17 [Sections 2264.060-2264.100 reserved for expansion]

18 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

19 Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE  
20 BIDDING. (a) In this chapter, "competitive bidding" is a  
21 procurement method by which a governmental entity contracts with a  
22 contractor for the construction, alteration, rehabilitation, or  
23 repair of a facility by awarding the contract to the lowest  
24 responsible bidder.

25 (b) Except as otherwise provided by this chapter or other  
26 law, a governmental entity may contract for the construction,  
27 alteration, rehabilitation, or repair of a facility only after the

1 entity advertises for bids for the contract in a manner prescribed  
2 by law, receives competitive bids, and awards the contract to the  
3 lowest responsible bidder.

4 Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The  
5 governmental entity shall select or designate an architect or  
6 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
7 as applicable, to prepare the construction documents required for a  
8 project to be awarded by competitive bidding.

9 Sec. 2264.103. PREPARATION OF REQUEST. The governmental  
10 entity shall prepare a request for competitive bids that includes  
11 construction documents, estimated budget, project scope, estimated  
12 project completion date, and other information that a contractor  
13 may require to submit a bid.

14 Sec. 2264.104. EVALUATION OF OFFERORS. The governmental  
15 entity shall receive, publicly open, and read aloud the names of the  
16 offerors and their bids.

17 Sec. 2264.105. SELECTION OF OFFEROR. Not later than the  
18 seventh day after the date the contract is awarded, the  
19 governmental entity shall document the basis of its selection and  
20 shall make the evaluations public.

21 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
22 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
23 specifically provided by this section, Subchapter B, Chapter 271,  
24 Local Government Code, does not apply to a competitive bidding  
25 process conducted under this chapter. Sections 271.026,  
26 271.027(a), and 271.0275, Local Government Code, apply to a  
27 competitive bidding process conducted under this chapter by a

1 governmental entity as defined by Section 271.021, Local Government  
2 Code.

3 [Sections 2264.107-2264.150 reserved for expansion]

4 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

5 Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE  
6 SEALED PROPOSALS. (a) In this chapter, "competitive sealed  
7 proposals" is a procurement method by which a governmental entity  
8 requests proposals, ranks the offerors, negotiates as prescribed,  
9 and then contracts with a general contractor for the construction,  
10 rehabilitation, alteration, or repair of a facility.

11 (b) In selecting a contractor through competitive sealed  
12 proposals, a governmental entity shall follow the procedures  
13 provided by this subchapter.

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

17 Sec. 2264.153. PREPARATION OF REQUEST. The governmental  
18 entity shall prepare a request for competitive sealed proposals  
19 that includes construction documents, selection criteria and the  
20 weighted value for each criterion, estimated budget, project scope,  
21 estimated project completion date, and other information that a  
22 contractor may require to respond to the request.

23 Sec. 2264.154. EVALUATION OF OFFERORS. (a) The  
24 governmental entity shall receive, publicly open, and read aloud  
25 the names of the offerors and any monetary proposals made by the  
26 offerors.

27 (b) Not later than the 45th day after the date of opening the

1 proposals, the governmental entity shall evaluate and rank each  
2 proposal submitted in relation to the published selection criteria.

3 Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental  
4 entity shall select the offeror that submits the proposal that  
5 offers the best value for the governmental entity based on:

6 (1) the selection criteria in the request for proposal  
7 and the weighted value for those criteria in the request for  
8 proposal; and

9 (2) its ranking evaluation.

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

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

20 [Sections 2264.156-2264.200 reserved for expansion]

21 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

22 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
23 MANAGER-AGENT. (a) In this chapter, the "construction  
24 manager-agent method" is a delivery method by which a governmental  
25 entity contracts with a construction manager-agent, instead of a  
26 general contractor, to provide administrative services and to  
27 manage multiple contracts with various construction prime

1 contractors.

2 (b) A construction manager-agent is a sole proprietorship,  
3 partnership, corporation, or other legal entity that serves as the  
4 agent for the governmental entity by providing construction  
5 administration and management services described by Subsection (a)  
6 for the construction, rehabilitation, alteration, or repair of a  
7 facility.

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

12 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION  
13 MANAGER-AGENT. The contract between the governmental entity and  
14 the construction manager-agent may require the construction  
15 manager-agent to provide:

16 (1) administrative personnel;

17 (2) equipment necessary to perform duties under this  
18 subchapter;

19 (3) on-site management; and

20 (4) other services specified in the contract.

21 Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A  
22 construction manager-agent may not:

23 (1) self-perform any aspect of the construction,  
24 rehabilitation, alteration, or repair of the facility;

25 (2) be a party to a construction subcontract for the  
26 construction, rehabilitation, alteration, or repair of the  
27 facility; or



1           (3) provide project bonding for the construction,  
2 rehabilitation, alteration, or repair of the facility.

3           Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION  
4 MANAGER-AGENT. A construction manager-agent represents the  
5 governmental entity in a fiduciary capacity.

6           Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or  
7 before the selection of a construction manager-agent, the  
8 governmental entity shall select or designate an architect or  
9 engineer to prepare the construction documents for the project.

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

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

25          Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental  
26 entity using the construction manager-agent method shall procure,  
27 in accordance with applicable law and in any manner authorized by

1 this chapter, a general contractor or trade contractors who will  
2 serve as the prime contractor for their specific portion of the  
3 work.

4 Sec. 2264.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
5 governmental entity shall select a construction manager-agent on  
6 the basis of demonstrated competence and qualifications in the same  
7 manner that an architect or engineer is selected under Section  
8 2254.004.

9 Sec. 2264.208. INSURANCE. A construction manager-agent  
10 selected under this subchapter shall maintain professional  
11 liability or errors and omissions insurance in the amount of at  
12 least \$1 million for each occurrence.

13 [Sections 2264.209-2264.250 reserved for expansion]

14 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

15 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
16 MANAGER-AT-RISK. (a) In this chapter, the "construction  
17 manager-at-risk method" is a delivery method by which a  
18 governmental entity contracts with an architect or engineer for  
19 design and construction phase services and contracts separately  
20 with a construction manager-at-risk to serve as the general  
21 contractor and to provide consultation during the design and  
22 construction, rehabilitation, alteration, or repair of a facility.

23 (b) A construction manager-at-risk is a sole  
24 proprietorship, partnership, corporation, or other legal entity  
25 that assumes the risk for construction, rehabilitation,  
26 alteration, or repair of a facility at the contracted price as a  
27 general contractor and provides consultation to the governmental

1 entity regarding construction during and after the design of the  
2 facility. The contracted price may be a guaranteed maximum price.

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

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

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

21 Sec. 2264.253. SELECTION PROCESS. (a) The governmental  
22 entity shall select the construction manager-at-risk in a one-step  
23 or two-step process.

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

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

3           (2) general information on the project site, project  
4 scope, schedule, selection criteria and the weighted value for each  
5 criterion, and estimated budget and the time and place for receipt  
6 of the proposals or qualifications; and

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

9           (c) The governmental entity shall state the selection  
10 criteria in the request for proposals or qualifications.

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

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

20           (f) At each step, the governmental entity shall receive,  
21 publicly open, and read aloud the names of the offerors. At the  
22 appropriate step, the governmental entity shall also read aloud the  
23 fees and prices, if any, stated in each proposal as the proposal is  
24 opened.

25           (g) Not later than the 45th day after the date of opening the  
26 final proposals, the governmental entity shall evaluate and rank  
27 each proposal submitted in relation to the criteria set forth in the

1 request for proposals.

2 Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental  
3 entity shall select the offeror that submits the proposal that  
4 offers the best value for the governmental entity based on the  
5 published selection criteria and on its ranking evaluation.

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

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

14 (d) Not later than the seventh day after the date the  
15 contract is awarded, the governmental entity shall make the  
16 rankings determined under Section 2264.253(g) public.

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

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

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

27 (2) the governmental entity determines that the

1 construction manager-at-risk's bid or proposal provides the best  
2 value for the governmental entity.

3 Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The  
4 construction manager-at-risk shall review all trade contractor or  
5 subcontractor bids or proposals in a manner that does not disclose  
6 the contents of the bid or proposal during the selection process to  
7 a person not employed by the construction manager-at-risk,  
8 architect, engineer, or governmental entity. All bids or proposals  
9 shall be made available to the governmental entity on request and to  
10 the public after the later of the award of the contract or the  
11 seventh day after the date of final selection of bids or proposals.

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

21 Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected  
22 trade contractor or subcontractor defaults in the performance of  
23 its work or fails to execute a subcontract after being selected in  
24 accordance with this subchapter, the construction manager-at-risk  
25 may itself fulfill, without advertising, the contract requirements  
26 or select a replacement trade contractor or subcontractor to  
27 fulfill the contract requirements.

1           Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed  
2 contract amount or guaranteed maximum price has not been determined  
3 at the time the contract is awarded, the penal sums of the  
4 performance and payment bonds delivered to the governmental entity  
5 must each be in an amount equal to the construction budget, as  
6 specified in the request for proposals or qualifications.

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

14           [Sections 2264.259-2264.300 reserved for expansion]

15                   SUBCHAPTER G. DESIGN-BUILD METHOD

16           Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In  
17 this chapter, "design-build" is a project delivery method by which  
18 a governmental entity contracts with a single entity to provide  
19 both design and construction services for the construction,  
20 rehabilitation, alteration, or repair of a facility.

21           Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
22 EXCEPTIONS. This subchapter applies only to a facility that is a  
23 building or an associated structure, including an electric utility  
24 structure. This subchapter does not apply to:

25                   (1) a highway, road, street, bridge, underground  
26 utility, water supply project, water plant, wastewater plant, water  
27 and wastewater distribution or conveyance facility, wharf, dock,

1 airport runway or taxiway, drainage project, or related type of  
2 project associated with civil engineering construction; or

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

5 Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
6 governmental entity may use the design-build method for the  
7 construction, rehabilitation, alteration, or repair of a building  
8 or associated structure only as provided by this subchapter. In  
9 using that method, the governmental entity shall enter into a  
10 single contract with a design-build firm for the design and  
11 construction of the building or associated structure.

12 Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm  
13 under this subchapter must be a sole proprietorship, partnership,  
14 corporation, or other legal entity or team that includes an  
15 architect or engineer and a construction contractor.

16 Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT  
17 REPRESENTATIVE. The governmental entity shall select or designate  
18 an architect or engineer independent of the design-build firm to  
19 act as the governmental entity's representative for the duration of  
20 the project.

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

27 (b) The governmental entity shall also prepare the design



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

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

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

26 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For  
27 each design-build firm that responded to the request for

1 qualifications, the governmental entity shall evaluate the firm's  
2 experience, technical competence, and capability to perform, the  
3 past performance of the firm and members of the firm, and other  
4 appropriate factors submitted by the firm in response to the  
5 request for qualifications, except that cost-related or  
6 price-related evaluation factors are not permitted.

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

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

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

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

1 payment, and expected staffing for administrative duties. The term  
2 does not include a guaranteed maximum price or bid for overall  
3 design or construction.

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

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

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

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

20 (d) Not later than the seventh day after the date the  
21 contract is awarded, the governmental entity shall make the  
22 rankings determined under Section 2264.307(f) public.

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

1 with construction.

2 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The  
3 design-build firm shall supply a set of construction documents for  
4 the completed project to the governmental entity at the conclusion  
5 of construction. The documents must note any changes made during  
6 construction.

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

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

17 (c) The design-build firm shall deliver the bonds not later  
18 than the 10th day after the date the design-build firm executes the  
19 contract unless the design-build firm furnishes a bid bond or other  
20 financial security acceptable to the governmental entity to ensure  
21 that the design-build firm will furnish the required performance  
22 and payment bonds before construction begins.

23 [Sections 2264.312-2264.350 reserved for expansion]

24 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

25 Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter,  
26 "job order contracting" is a procurement method used for  
27 maintenance, repair, alteration, renovation, remediation, or minor

1 construction of a facility when the work is of a recurring nature  
2 but the delivery times, type, and quantities of work required are  
3 indefinite.

4 Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
5 EXCEPTIONS. (a) This subchapter applies only to a facility that is  
6 a building, the design and construction of which is governed by  
7 accepted building codes, or a structure or land, whether improved  
8 or unimproved, that is associated with a building. This subchapter  
9 does not apply to:

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

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

17 (b) This subchapter does not prohibit the:

18 (1) procurement of commercial unitary and applied  
19 heating, ventilation, and air conditioning (HVAC) equipment,  
20 parts, and associated services, including temporary cooling  
21 services, to complete the maintenance, repair, alteration,  
22 renovation, remediation, or construction of a facility; or

23 (2) prepurchase of HVAC equipment and commissioning  
24 services through an interlocal contract.

25 Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR  
26 FACILITIES. (a) A governmental entity may award job order  
27 contracts for the maintenance, repair, alteration, renovation,

1 remediation, or minor construction of a facility if:

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

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

6 (b) The governmental entity shall establish the maximum  
7 aggregate contract price when it advertises the proposal.

8 (c) The governing body of a governmental entity shall  
9 approve each job order that exceeds:

10 (1) \$500,000 under the contract; or

11 (2) a lesser amount as established by the governing  
12 body.

13 Sec. 2264.354. CONTRACTUAL UNIT PRICES. The governmental  
14 entity may establish contractual unit prices for a job order  
15 contract by:

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

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

22 Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
23 governmental entity may use the competitive sealed proposal method  
24 under Subchapter D for job order contracts.

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

27 (c) The governmental entity may require offerors to submit

1 information in addition to rates, including experience, past  
2 performance, and proposed personnel and methodology.

3 Sec. 2264.356. AWARDING OF JOB ORDER CONTRACTS. The  
4 governmental entity may award job order contracts to one or more job  
5 order contractors in connection with each solicitation of  
6 proposals.

7 Sec. 2264.357. USE OF JOB ORDER CONTRACT. A job order  
8 contract may be used to accomplish work only for the governmental  
9 entity that awards the contract unless:

10 (1) the solicitation for the job order contract and  
11 the contract specifically provide for use by other persons; or

12 (2) the governmental entity enters into an interlocal  
13 agreement that provides otherwise.

14 Sec. 2264.358. USE OF ARCHITECT OR ENGINEER. If a job order  
15 contract or an order issued under the contract requires  
16 architectural or engineering services that constitute the practice  
17 of architecture within the meaning of Chapter 1051, Occupations  
18 Code, or the practice of engineering within the meaning of Chapter  
19 1001, Occupations Code, the governmental entity shall select or  
20 designate an architect or engineer to prepare the construction  
21 documents for the project.

22 Sec. 2264.359. JOB ORDER CONTRACT TERM. The base term for a  
23 job order contract may not exceed two years. The governmental  
24 entity may renew the contract annually for not more than three  
25 additional years.

26 Sec. 2264.360. JOB ORDERS. (a) An order for a job or  
27 project under a job order contract must be signed by the

1 governmental entity's representative and the contractor.

2 (b) The order may be:

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

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

8 Sec. 2264.361. PAYMENT AND PERFORMANCE BONDS. The  
9 contractor shall provide payment and performance bonds, if required  
10 by law, based on the amount or estimated amount of any order.

11 [Sections 2264.362-2264.400 reserved for expansion]

12 SUBCHAPTER I. ENFORCEMENT

13 Sec. 2264.401. VOID CONTRACT. (a) A contract, including a  
14 job order, entered into in violation of this chapter and any bonds  
15 issued in connection with the contract are voidable as against  
16 public policy.

17 (b) An action to void a contract under this section does not  
18 excuse the obligation of the governmental entity to pay for any  
19 service performed or material delivered in good faith by a  
20 contractor, architect, engineer, design-builder, or construction  
21 manager before the date on which the contract is determined to be  
22 void.

23 Sec. 2264.402. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
24 chapter may be enforced through an action for declaratory or  
25 injunctive relief filed not later than the 10th day after the date  
26 on which the contract is awarded.

27 (b) This section does not apply to enforcement of a contract



1 entered into by a state agency. In this subsection, "state agency"  
2 has the meaning assigned by Section 2151.002. The term includes the  
3 Texas Building and Procurement Commission.

4 SECTION 2.11. Section 252.048, Local Government Code, is  
5 amended by adding Subsection (c-1) to read as follows:

6 (c-1) If a change order for a public works contract in a  
7 municipality with a population of 500,000 or more involves a  
8 decrease or an increase of \$100,000 or less, or a lesser amount as  
9 provided by ordinance, the governing body of the municipality may  
10 grant general authority to an administrative official of the  
11 municipality to approve the change order.

12 SECTION 2.12. Section 271.054, Local Government Code, is  
13 amended to read as follows:

14 Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the  
15 governing body of an issuer may enter into a contract requiring an  
16 expenditure by or imposing an obligation or liability on the  
17 issuer, or on a subdivision of the issuer if the issuer is a county,  
18 of more than \$25,000, the governing body must:

19 (1) submit the proposed contract to competitive  
20 bidding; or

21 (2) use an alternate method of project delivery  
22 authorized by Chapter 2264, Government Code.

23 SECTION 2.13. Section 271.060, Local Government Code, is  
24 amended by amending Subsection (b) and adding Subsection (c) to  
25 read as follows:

26 (b) The total price of a contract may not be increased by a  
27 change order unless provision has been made for the payment of the

1 added cost by the appropriation of current funds or bond funds for  
2 that purpose, by the authorization of the issuance of certificates,  
3 or by a combination of those procedures.

4 (c) A contract with an [The] original contract price of \$1  
5 million or more may not be increased by more than 25 percent. If a  
6 change order for a contract with an original contract price of less  
7 than \$1 million increases the contract amount to \$1 million or more,  
8 subsequent change orders may not increase the revised contract  
9 amount by more than 25 percent. [The original price may not be  
10 decreased by more than 25 percent without the consent of the  
11 contractor.]

12 SECTION 2.14. Section 431.101(g), Transportation Code, is  
13 amended to read as follows:

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

19 SECTION 2.15. Subchapter D, Chapter 431, Transportation  
20 Code, is amended by adding Section 431.110 to read as follows:

21 Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN  
22 IMPROVEMENTS. Any competitive bidding requirement or restriction  
23 on a local government that created a local government corporation  
24 does not apply to an expenditure by the local government  
25 corporation for:

26 (1) an improvement:

27 (A) that is constructed in a reinvestment zone;

1 and

2 (B) the construction of which is managed by a  
3 private venture participant; or

4 (2) an improvement constructed by the corporation for  
5 which more than 50 percent of the construction is funded by a  
6 private entity.

7 ARTICLE 3. ADDITIONAL EXEMPTIONS

8 SECTION 3.01. Section 44.901, Education Code, is amended by  
9 adding Subsection (j) to read as follows:

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

12 SECTION 3.02. Section 51.927, Education Code, is amended by  
13 adding Subsection (k) to read as follows:

14 (k) Chapter 2264, Government Code, does not apply to this  
15 section.

16 SECTION 3.03. Section 2166.406, Government Code, is amended  
17 by adding Subsection (k) to read as follows:

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

19 SECTION 3.04. Chapter 302, Local Government Code, is  
20 amended by adding Section 302.006 to read as follows:

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

23 SECTION 3.05. Subchapter E, Chapter 335, Local Government  
24 Code, is amended by adding Section 335.077 to read as follows:

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

27 SECTION 3.06. Section 22.084, Transportation Code, is

1 amended by adding Subsection (c) to read as follows:

2 (c) Chapter 2264, Government Code, does not apply to an  
3 agreement entered into under this section.

4 SECTION 3.07. Section 370.305, Transportation Code, is  
5 amended by adding Subsection (c-1) to read as follows:

6 (c-1) Chapter 2264, Government Code, does not apply to  
7 agreements entered into pursuant to this section.

8 SECTION 3.08. Subchapter Q, Chapter 451, Transportation  
9 Code, is amended by adding Section 451.8025 to read as follows:

10 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.  
11 Chapter 2264, Government Code, does not apply to this subchapter.

12 SECTION 3.09. Subchapter C, Chapter 452, Transportation  
13 Code, is amended by adding Section 452.1095 to read as follows:

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

18 SECTION 3.10. Section 60.452, Water Code, is amended by  
19 adding Subsection (c) to read as follows:

20 (c) Chapter 2264, Government Code, does not apply to this  
21 subchapter.

22 ARTICLE 4. CONFORMING AMENDMENT

23 SECTION 4.01. Section 252.021(a), Local Government Code, is  
24 amended to read as follows:

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

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

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

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

8 ARTICLE 5. REPEALER

9 SECTION 5.01. (a) The following are repealed:

10 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,  
11 44.039, 44.040, and 44.041, Education Code;

12 (2) Sections 2166.2511, 2166.2526, 2166.2531,  
13 2166.2532, 2166.2533, and 2166.2535, Government Code;

14 (3) Section 252.043(d-1), Local Government Code;

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

16 and

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

18 (b) Section 1, Chapter 359, Acts of the 78th Legislature,  
19 Regular Session, 2003, and any provision enacted by Section 1 of  
20 that chapter are repealed.

21 ARTICLE 6. TRANSITION; EFFECTIVE DATE

22 SECTION 6.01. (a) The changes in law made by this Act apply  
23 only to a contract or construction project for which a governmental  
24 entity first advertises or otherwise requests bids, proposals,  
25 offers, or qualifications, or makes a similar solicitation, on or  
26 after the effective date of this Act.

27 (b) A contract or construction project for which a

1 governmental entity first advertises or otherwise requests bids,  
2 proposals, offers, or qualifications, or makes a similar  
3 solicitation, before the effective date of this Act is governed by  
4 the law as it existed immediately before the effective date of this  
5 Act, and that law is continued in effect for that purpose.

6 SECTION 6.02. This Act takes effect September 1, 2007.

FLOOR AMENDMENT NO. 1

BY: Jackson

1 Amend CSHB 447 in Article 3 by adding a new SECTION to read as  
2 follows:

3

4 SECTION \_\_. Section 60.401, Water Code, is amended by adding  
5 Subsection (d) to read as follows:

6 (d) Chapter 2264, Government Code, does not apply to  
7 this subchapter.

**ADOPTED**

MAY 17 2007

*Lately Spaw*  
Secretary of the Senate

79

FLOOR AMENDMENT NO. 2

BY: Jackson

- 1 Amend CSHB 447 in Article 2 by striking
- 2 Section 2264.352 (b), Gov't Code (p 13, ll 37-44)

# ADOPTED

MAY 17 2007

*Henry Spaul*  
Secretary of the Senate

3



FLOOR AMENDMENT NO. 3

BY: Jackson

1 Amend C.S.H.B 447 by adding a new Section to read as follows:

2  
3  
4  
5  
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17

SECTION \_\_. Section 11.168, Education Code, is amended by adding Subsection (b) to read as follows:

(b) This section does not prohibit the board of trustees of a school district from entering into an agreement with a non-governmental entity for the design, construction or renovation of improvements to real property not owned or leased by the district, if such improvements provide a benefit to real property owned or leased by the district. Benefits to real property owned or leased by the district include, but are not limited to, the design, construction or renovation of highways, roads, streets, sidewalks, cross walks, utilities and drainage improvements which serve or benefit the real property owned or leased by the school district.

**ADOPTED**

MAY 17 2007

*Antony Spaw*  
Secretary of the Senate

# ADOPTED

MAY 17 2007

FLOOR AMENDMENT NO. 4

*Lotay Daw*  
Secretary of the Senate

BY: *Jackson*

1 Amend C.S.H.B. 447 (Senate Committee Printing) as follows:

2 (1) In Section 2.10 of the bill, in added Section 2264.002,  
3 Government Code, strike Subdivision (3) (page 4, lines 60-61) and  
4 renumber the subsequent subdivisions accordingly.

5 (2) In Section 2.10 of the bill, strike added Section  
6 2264.005(b), Government Code (page 5, lines 30-33), and substitute:

7 (b) This chapter does not apply to:

8 (1) a public junior college or any other institution  
9 of higher education; or

10 (2) a university system.

82

# ADOPTED

FLOOR AMENDMENT NO. 5

MAY 17 2007

BY: Jackson

*Atty. Gen.*  
Secretary of the Senate

1 Amend C.S.H.B. No. 447 (Senate Committee Printing) (Senate  
2 Committee Printing) by adding the following appropriately  
3 numbered SECTIONS to Article 2 of the bill and renumbering  
4 subsequent SECTIONS of the bill accordingly:

5 SECTION 2.\_\_. Section 44.031(b), Education Code, is  
6 amended to read as follows:

7 (b) Except as provided by this subchapter, in determining  
8 to whom to award a contract, the district may consider:

9 (1) the purchase price;

10 (2) the reputation of the vendor and of the vendor's  
11 goods or services;

12 (3) the quality of the vendor's goods or services;

13 (4) the extent to which the goods or services meet  
14 the district's needs;

15 (5) the vendor's past relationship with the district;

16 (6) the impact on the ability of the district to  
17 comply with laws and rules relating to historically  
18 underutilized businesses;

19 (7) the total long-term cost to the district to  
20 acquire the vendor's goods or services; ~~and~~

21 (8) whether the vendor provides health care benefits  
22 or equivalent health savings benefits to employees; and

23 (9) any other relevant factor specifically listed in  
24 the request for bids or proposals.

25 SECTION \_\_. Subchapter B, Chapter 44, Education Code, is  
26 amended by adding Section 44.0421 to read as follows:

27 Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH  
28 CARE BENEFITS OR EQUIVALENT HEALTH SAVINGS BENEFITS. (a) A  
29 school district procuring goods or services shall give

1 preference to goods or services of a vendor that demonstrates  
2 that the vendor provides health care benefits or equivalent  
3 health savings benefits to the vendor's employees if:

4 (1) the goods or services meet district  
5 specifications regarding quantity and quality; and

6 (2) the cost of the goods or services does not exceed  
7 the cost of similar goods or services produced by a vendor that  
8 does not demonstrate that the vendor provides health care  
9 benefits or equivalent health savings benefits to the vendor's  
10 employees.

11 (b) A contract awarded to a vendor using the preference  
12 under this section must include terms that allow the district to  
13 terminate the contract if the vendor at any time during the life  
14 of the contract does not continue to provide health care  
15 benefits or equivalent health savings benefits at a level  
16 comparable to the level the vendor claimed to provide in its  
17 demonstration under Subsection (a).

18 SECTION 2.\_\_. Section 2155.074(b), Government Code, is  
19 amended to read as follows:

20 (b) In determining the best value for the state, the  
21 purchase price and whether the goods or services meet  
22 specifications are the most important considerations. However,  
23 the commission or other state agency may, subject to Subsection  
24 (c) and Section 2155.075, consider other relevant factors,  
25 including:

- 26 (1) installation costs;  
27 (2) life cycle costs;  
28 (3) the quality and reliability of the goods and  
29 services;  
30 (4) the delivery terms;

1 (5) indicators of probable vendor performance under  
2 the contract such as past vendor performance, the vendor's  
3 financial resources and ability to perform, the vendor's  
4 experience or demonstrated capability and responsibility, and  
5 the vendor's ability to provide reliable maintenance agreements  
6 and support;

7 (6) the cost of any employee training associated with  
8 a purchase;

9 (7) the effect of a purchase on agency productivity;

10 (8) the vendor's anticipated economic impact to the  
11 state or a subdivision of the state, including potential tax  
12 revenue and employment;

13 (9) whether the vendor provides health care benefits  
14 or equivalent health savings benefits to the vendor's employees;  
15 and

16 (10) [~~+9~~] other factors relevant to determining the  
17 best value for the state in the context of a particular  
18 purchase.

19 SECTION 2. Subchapter H, Chapter 2155, Government Code,  
20 is amended by adding Section 2155.452 to read as follows:

21 Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH  
22 CARE BENEFITS OR EQUIVALENT HEALTH SAVINGS BENEFITS. (a) The  
23 commission and all state agencies procuring goods or services  
24 shall give preference to goods or services of a vendor that  
25 demonstrates that the vendor provides health care benefits or  
26 equivalent health savings benefits to the vendor's employees if:

27 (1) the goods or services meet state specifications  
28 regarding quantity and quality; and

29 (2) the cost of the goods or services does not exceed  
30 the cost of other similar goods or services produced by a vendor  
31 that does not demonstrate that the vendor provides health care

1 benefits or equivalent health savings benefits to the vendor's  
2 employees.

3 (b) A contract awarded to a vendor using the preference  
4 under this section must include terms that allow the commission  
5 or a state agency to terminate the contract if the vendor at any  
6 time during the life of the contract does not continue to  
7 provide health care benefits or equivalent health savings  
8 benefits at a level comparable to the level the vendor claimed  
9 to provide in its demonstration under Subsection (a).

10 SECTION 2.\_\_. Section 44.0421, Education Code, and Section  
11 2155.452, Government Code, as added by this Act, apply only to a  
12 contract for the procurement of goods and services for which the  
13 solicitation of bids or proposals, request for proposals, or  
14 similar request for offers to provide the goods or services is  
15 first published on or after September 1, 2007. A contract for  
16 the procurement of goods and services for which the solicitation  
17 of bids or proposals, request for proposals, or similar request  
18 for offers to provide the goods or services is first published  
19 before September 1, 2007, is governed by the law in effect at  
20 the time the solicitation or request is published, and that law  
21 is continued in effect for that purpose.

**ADOPTED**

FLOOR AMENDMENT NO. 6

MAY 17 2007 BY: Shapiro

*Arlene Spaw*  
Secretary of the Senate

- 1 Amend C.S.H.B. 447 (Senate Committee Printing) as follows:
- 2 (1) On page 4, line 44, before the word "This", add "(a)".
- 3 (2) On page 4, between lines 64 and 65, add the following
- 4 subsection: (b) This chapter does not apply to regional tollway
- 5 authorities under Chapter 366, Transportation Code.

ADOPTED

FLOOR AMENDMENT NO. 7

MAY 17 2007: Lucio

*Letay Spaw*  
Secretary of the Senate

1 Amend C.S.H.B. 447 (senate committee printing) by adding  
2 the following appropriately numbered section to Article 2 of the  
3 bill and renumbering the remaining sections of the article  
4 appropriately:

5 SECTION 2. \_\_\_\_\_. Section 2166.259, Government Code, is  
6 amended by amending Subsections (a), (b), (d), and (e) and  
7 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

8 (a) This section applies only in relation to [~~a contract~~  
9 ~~for~~] a public works project that will involve a contract or  
10 aggregated multiple contracts with [~~has~~] an estimated cost of  
11 more than \$1 [~~\$20~~] million.

12 (b) The commission shall maintain a small contractor  
13 participation assistance program to ensure full opportunity for  
14 participation in public works projects by small contractors.  
15 The program must include a:

16 (1) system for the centralized purchase of necessary  
17 insurance coverage for the public works project that is required  
18 under Subsection (c);

19 (2) public outreach plan to:

20 (A) provide public information about the  
21 program; and

22 (B) encourage small contractors to participate  
23 in the program;

24 (3) technical assistance plan to aid small  
25 contractors in developing the skills necessary to participate in  
26 the program in accordance with Subsection (d); [~~and~~]

27 (4) financing assistance plan to provide  
28 administrative and other assistance to small contractors in



1 obtaining necessary financing arrangements to make the  
2 participation of those contractors possible; and

3 (5) method developed with guidance from the Texas  
4 Department of Insurance to assist small contractors in:

5 (A) preparing bond application packages for  
6 public works projects in a format acceptable to bond  
7 underwriters; and

8 (B) obtaining bonds required to participate in  
9 public works projects.

10 (b-1) The commission shall designate a commission employee  
11 to serve as small contractor participation assistance  
12 coordinator. In addition to any other responsibilities, the  
13 coordinator shall:

14 (1) administer the small contractor participation  
15 assistance program established under this section;

16 (2) with the assistance of the Texas Department of  
17 Insurance, provide to small contractors technical assistance and  
18 training related to preparing bond application packages and  
19 obtaining bonds; and

20 (3) with the assistance of the facilities  
21 construction and space management division of the commission,  
22 provide to small contractors technical assistance related to  
23 participation in the program.

24 (b-2) The small contractor participation assistance  
25 coordinator shall submit an annual report describing the  
26 activities and progress of the program to the governor, the  
27 lieutenant governor, and each member of the legislature.

28 (b-3) Funding appropriated to the commission for the small  
29 contractor participation assistance program may only be used for  
30 that program.

1 (d) A technical assistance plan adopted by the commission  
2 must include information on and assistance in:

3 (1) bid estimation, the bidding process, scheduling,  
4 and the understanding of bid documents;

5 (2) the reading of construction drawings and other  
6 analogous documents;

7 (3) business accounting, bonds, and bond  
8 requirements;

9 (4) negotiation with general contractors; ~~and~~

10 (5) other technical and administrative matters  
11 considered appropriate and necessary given the complexity and  
12 scope of the public works project; and

13 (6) small contractor safety training to ensure  
14 compliance with federal jobsite safety standards.

15 (e) The commission shall ~~may~~ negotiate contracts with  
16 persons or firms having expertise and any required license in  
17 the areas that must be included in the commission's technical  
18 assistance plan to provide the information and assistance.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 11, 2007**

**TO:** Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB447** by Callegari (Relating to contracts by governmental entities and related professional services, to public works performance and payment bonds, and to certain regulations of local authorities.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend statute and establish additional rules and procedures for a governmental entity regarding contracting and delivery of construction projects and establish standardized purchasing practices for public community colleges. It is assumed that any additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

This bill would take effect September 1, 2007.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 303 Building and Procurement Commission, 580 Water Development Board, 701 Central Education Agency, 601 Department of Transportation

**LBB Staff:** JOB, MN, MS, EP, KJG



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 3, 2007**

**TO:** Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB447** by Callegari (Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend statute and establish additional rules and procedures for a governmental entity regarding contracting and delivery of construction projects and establish standardized purchasing practices for public community colleges. It is assumed that any additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

This bill would take effect September 1, 2007.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 303 Building and Procurement Commission, 580 Water Development Board, 701 Central Education Agency, 601 Department of Transportation

**LBB Staff:** JOB, MN, MS, EP, KJG

2



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 30, 2007**

**TO:** Honorable Bill Callegari, Chair, House Committee on Government Reform

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB447** by Callegari (Relating to contracts by governmental entities for construction projects and related professional services and to public works performance and payment bonds.),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend statute and establish additional rules and procedures for a governmental entity regarding contracting and delivery of construction projects and establish standardized purchasing practices for public community colleges. It is assumed that any additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

This bill would take effect September 1, 2007.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 303 Building and Procurement Commission, 580 Water Development Board, 701 Central Education Agency, 601 Department of Transportation

**LBB Staff:** JOB, MN, MS, EP, KJG





**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

February 25, 2007

**TO:** Honorable Bill Callegari, Chair, House Committee on Government Reform

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB447** by Callegari (Relating to contracts by governmental entities for construction projects and related professional services and to public works performance and payment bonds.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend statute and establish additional rules and procedures for a governmental entity regarding contracting and delivery of construction projects and establish standardized purchasing practices for public community colleges. It is assumed that any additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

This bill would take effect September 1, 2007.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 303 Building and Procurement Commission, 601 Department of Transportation

**LBB Staff:** JOB, MN, MS, EP, KJG

