

**House Bill 447**  
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ARTICLE 1. PUBLIC WORKS PERFORMANCE  
AND PAYMENT BONDS

Same as House version.

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

Same as House version.

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

ARTICLE 2. CONTRACTS BY GOVERNMENTAL  
ENTITIES

Same as House version.

No equivalent provision.

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

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or benefit the real property owned or leased by the school district.

No equivalent provision.

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

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

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
- (7) the total long-term cost to the district to acquire the vendor's goods or services; [~~and~~]
- (8) whether the vendor provides health care benefits or equivalent health savings benefits to employees; and
- (9) any other relevant factor specifically listed in the request for bids or proposals.

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

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

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

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

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

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

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

(b) The district shall prepare a request for competitive

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

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

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

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

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

(b) The district shall prepare a request for competitive

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sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

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

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

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

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sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

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

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

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

SECTION 2.04. Subchapter B, Chapter 44, Education

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Code, is amended by adding Section 44.0411 to read as follows:

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

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

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

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

No equivalent provision.

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Code, is amended by adding Section 44.0411 to read as follows:

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

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

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

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

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

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Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH CARE BENEFITS OR EQUIVALENT HEALTH SAVINGS BENEFITS. (a) A school district procuring goods or services shall give preference to goods or services of a vendor that demonstrates that the vendor provides health care benefits or equivalent health savings benefits to the vendor's employees if:  
(1) the goods or services meet district specifications regarding quantity and quality; and  
(2) the cost of the goods or services does not exceed the cost of similar goods or services produced by a vendor that does not demonstrate that the vendor provides health care benefits or equivalent health savings benefits to the vendor's employees.  
(b) A contract awarded to a vendor using the preference under this section must include terms that allow the district to terminate the contract if the vendor at any time during the life of the contract does not continue to provide health care benefits or equivalent health savings benefits at a level comparable to the level the vendor claimed to provide in its demonstration under Subsection (a).

No equivalent provision.

SECTION 2.05. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.0111 to read as follows:  
Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN, CONSTRUCTION,

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RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL FACILITY. (a) In this section:

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

(2) "State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under this subchapter used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

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

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

(d) A school district shall use the net proceeds from an action brought by the district for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter to repair the defective design, construction, renovation, or improvement of the instructional facility on which the

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action is brought or to replace the facility. Section 46.008 applies to the repair.

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

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

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

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

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

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

(i) An interlocal contract may not be used to purchase construction services unless the services are in connection with the design or construction of a specific

(i) An interlocal contract may not be used to purchase construction services unless the services are in connection with the design or construction of a specific



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facility to be jointly owned, used, or financed by the parties to the contract or:

- (1) the services are in connection with a job order contract;
- (2) the governing body of the governmental entity for whom the work will ultimately be performed approves the purchase in open session;
- (3) public notice is provided in a manner consistent with a direct contract for job order contracting services; and
- (4) work orders under the contract comply with Section 2264.353.

No equivalent provision.

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facility to be jointly owned, used, or financed by the parties to the contract or:

- (1) the services are in connection with a job order contract;
- (2) the governing body of the governmental entity for whom the work will ultimately be performed approves the purchase in open session;
- (3) public notice is provided in a manner consistent with a direct contract for job order contracting services; and
- (4) work orders under the contract comply with Section 2264.353.

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

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

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) the delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance

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agreements and support;  
(6) the cost of any employee training associated with a purchase;  
(7) the effect of a purchase on agency productivity;  
(8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment;  
(9) whether the vendor provides health care benefits or equivalent health savings benefits to the vendor's employees; and  
(10) [~~9~~] other factors relevant to determining the best value for the state in the context of a particular purchase.

No equivalent provision.

SECTION \_\_. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.452 to read as follows:  
Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH CARE BENEFITS OR EQUIVALENT HEALTH SAVINGS BENEFITS. (a) The commission and all state agencies procuring goods or services shall give preference to goods or services of a vendor that demonstrates that the vendor provides health care benefits or equivalent health savings benefits to the vendor's employees if:  
(1) the goods or services meet state specifications regarding quantity and quality; and  
(2) the cost of the goods or services does not exceed the cost of other similar goods or services produced by a vendor that does not demonstrate that the vendor

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provides health care benefits or equivalent health savings benefits to the vendor's employees.

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

No equivalent provision.

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

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

SECTION 2.07. Same as House version.

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

No equivalent provision.

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

- (a) This section applies only in relation to ~~[a contract for]~~ a public works project that will involve a contract or aggregated multiple contracts with ~~[has]~~ an estimated cost of more than \$1 ~~[\$20]~~ million.
- (b) The commission shall maintain a small contractor participation assistance program to ensure full opportunity for participation in public works projects by small contractors. The program must include a:
  - (1) system for the centralized purchase of necessary insurance coverage for the public works project that is required under Subsection (c);
  - (2) public outreach plan to:
    - (A) provide public information about the program; and
    - (B) encourage small contractors to participate in the

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program;

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

(4) financing assistance plan to provide administrative and other assistance to small contractors in obtaining necessary financing arrangements to make the participation of those contractors possible; and

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

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

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

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

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

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

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

(b-2) The small contractor participation assistance

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coordinator shall submit an annual report describing the activities and progress of the program to the governor, the lieutenant governor, and each member of the legislature.

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

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

- (1) bid estimation, the bidding process, scheduling, and the understanding of bid documents;
- (2) the reading of construction drawings and other analogous documents;
- (3) business accounting, bonds, and bond requirements;
- (4) negotiation with general contractors; ~~and~~
- (5) other technical and administrative matters considered appropriate and necessary given the complexity and scope of the public works project; and
- (6) small contractor safety training to ensure compliance with federal jobsite safety standards.

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

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

SECTION 2.08. Same as House version.

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(b) The professional fees under the contract[:  
~~[(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and~~  
[(2)] may not exceed any maximum provided by law.

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

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

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

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

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an

SECTION 2.09. Same as House version.

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

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an

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architect under Chapter 1051, Occupations Code.

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

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

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

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

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

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

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

(2) a local government, including:

(A) a county;

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architect under Chapter 1051, Occupations Code.

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

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

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

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

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

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

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

(2) a local government, including:

(A) a county;

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(B) a municipality;  
(C) a school district;  
(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and  
(E) any other political subdivision of this state; and  
(3) a public junior college as defined by Section 61.003, Education Code.

Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.  
(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.  
(c) This chapter does not prevail over a conflicting provision that requires the use of competitive bidding in:  
(1) a charter of a home-rule municipality; or  
(2) a rule of a county, a defense base development authority, or a conservation and reclamation district, including a river authority or any other type of water district.  
(d) The governing body of a governmental entity to

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(B) a municipality;  
(C) a school district;  
(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and  
(E) any other political subdivision of this state;  
(4) any entity owned by a municipality; and  
(5) any other entity that owns or operates a facility for the benefit of a municipality or county.  
(b) This chapter does not apply to regional tollway authorities under Chapter 366, Transportation Code.  
Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.  
(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.  
(c) This chapter does not prevail over a conflicting provision that requires the use of competitive bidding in:  
(1) a charter of a home-rule municipality; or  
(2) a rule of a county, a defense base development authority, or a conservation and reclamation district, including a river authority or any other type of water district.  
(d) The governing body of a governmental entity to

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which Subsection (c) applies may elect to have this chapter overrule the conflicting provision in the charter or rule.

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

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

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

(1) any other institution of higher education; or

(2) a university system.

[Sections 2264.006-2264.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND

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which Subsection (c) applies may elect to have this chapter overrule the conflicting provision in the charter or rule.

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

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

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

Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS.

This chapter does not apply to:

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

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

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

(b) This chapter does not apply to:

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

(2) a university system.

[Sections 2264.006-2264.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND

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DUTIES

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

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

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

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

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

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

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

(b) In engaging in an activity to which this section

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DUTIES

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(b) In engaging in an activity to which this section

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applies, a governmental entity:

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

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

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

(1) the price;

(2) the offeror's experience and reputation;

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

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

(5) the offeror's safety record;

(6) the offeror's proposed personnel;

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

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

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

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

(2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable

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

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

(2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable

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to local governments, related to the use of women, minority, small, or disadvantaged businesses.

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

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

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

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

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

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qualifications as provided by Section 2254.004.

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

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

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

[Sections 2264.060-2264.100 reserved for expansion]

SUBCHAPTER C. COMPETITIVE BIDDING METHOD

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

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

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qualifications as provided by Section 2254.004.

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contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

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

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

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

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

Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise specifically provided by this section, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process conducted under this chapter. Sections 271.026,

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contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

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

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271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process conducted under this chapter by a governmental entity as defined by Section 271.021, Local Government Code.

[Sections 2264.107-2264.150 reserved for expansion]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

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

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

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

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

Sec. 2264.154. EVALUATION OF OFFERORS. (a)

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271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process conducted under this chapter by a governmental entity as defined by Section 271.021, Local Government Code.

[Sections 2264.107-2264.150 reserved for expansion]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

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

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

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

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

Sec. 2264.154. EVALUATION OF OFFERORS. (a)

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The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

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

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

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

(2) its ranking evaluation.

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

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

[Sections 2264.156-2264.200 reserved for expansion]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

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The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

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[Sections 2264.156-2264.200 reserved for expansion]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

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

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

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

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

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

Sec. 2264.203. LIMITS ON CONSTRUCTION

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

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

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- (2) equipment necessary to perform duties under this subchapter;
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- (4) other services specified in the contract.

Sec. 2264.203. LIMITS ON CONSTRUCTION

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MANAGER-AGENT. A construction manager-agent may not:

- (1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
- (2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
- (3) provide project bonding for the construction, rehabilitation, alteration, or repair of the facility.

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

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

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

(c) To the extent that the construction manager-agent's

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MANAGER-AGENT. A construction manager-agent may not:

- (1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
- (2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
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(c) To the extent that the construction manager-agent's

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services are defined as part of the practice of architecture or engineering under Chapter 1051 or 1001, Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

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

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

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

[Sections 2264.209-2264.250 reserved for expansion]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with

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services are defined as part of the practice of architecture or engineering under Chapter 1051 or 1001, Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

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

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

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

[Sections 2264.209-2264.250 reserved for expansion]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with

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a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

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

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

Sec. 2264.252. USE OF ARCHITECT OR ENGINEER.

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

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

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a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

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

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

Sec. 2264.252. USE OF ARCHITECT OR ENGINEER.

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

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

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providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.  
Sec. 2264.253. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.  
(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:  
(1) a statement as to whether the selection process is a one-step or two-step process;  
(2) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and  
(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.  
(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.  
(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.  
(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

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providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.  
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(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:  
(1) a statement as to whether the selection process is a one-step or two-step process;  
(2) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and  
(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.  
(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.  
(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.  
(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

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

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

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

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

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

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

Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from

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

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

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

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

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

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

Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from

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trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

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

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

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

Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS.

(a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any

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trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

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

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

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

Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS.

(a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any

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additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

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

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

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

[Sections 2264.259-2264.300 reserved for expansion]

SUBCHAPTER G. DESIGN-BUILD METHOD

Sec. 2264.301. CONTRACTS FOR FACILITIES:

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additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

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

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

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

[Sections 2264.259-2264.300 reserved for expansion]

SUBCHAPTER G. DESIGN-BUILD METHOD

Sec. 2264.301. CONTRACTS FOR FACILITIES:

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DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

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

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

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

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

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

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DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

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

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

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

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

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

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construction contractor.

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

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

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

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional

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construction contractor.

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

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

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

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional

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information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

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

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

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

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information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

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

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

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

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2254.004.

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

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

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

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

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

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2254.004.

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

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

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

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

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

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evaluations.

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

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

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

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

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

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

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evaluations.

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

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

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

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

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

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

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portion of the design-build contract with the design-build firm under this subchapter.

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

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

[Sections 2264.312-2264.350 reserved for expansion]

SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

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

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

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portion of the design-build contract with the design-build firm under this subchapter.

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

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

[Sections 2264.312-2264.350 reserved for expansion]

SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

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

Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. (a) This subchapter applies only to a facility that is a building, **the design and construction of which is governed by accepted building**

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(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or  
(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.  
Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:  
(1) the work is of a recurring nature but the delivery times are indefinite; and  
(2) indefinite quantities and orders are awarded substantially on the basis of prescribed and prepriced tasks.  
(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.  
(c) The governing body of a governmental entity shall approve each job order that exceeds:  
(1) \$500,000 under the contract; or  
(2) a lesser amount as established by the governing body.  
Sec. 2264.354. CONTRACTUAL UNIT PRICES. The

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codes, or a structure or land, whether improved or unimproved, that is associated with a building. This subchapter does not apply to:  
(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or  
(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.  
Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:  
(1) the work is of a recurring nature but the delivery times are indefinite; and  
(2) indefinite quantities and orders are awarded substantially on the basis of prescribed and prepriced tasks.  
(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.  
(c) The governing body of a governmental entity shall approve each job order that exceeds:  
(1) \$500,000 under the contract; or  
(2) a lesser amount as established by the governing body.  
Sec. 2264.354. CONTRACTUAL UNIT PRICES. The

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governmental entity may establish contractual unit prices for a job order contract by:

- (1) specifying one or more published construction unit price books and the applicable divisions or line items; or
- (2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.

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

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

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

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

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governmental entity may establish contractual unit prices for a job order contract by:

- (1) specifying one or more published construction unit price books and the applicable divisions or line items; or
- (2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.

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

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

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

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

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

- (1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or
- (2) the governmental entity enters into an interlocal

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

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

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

(b) The order may be:

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

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

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

[Sections 2264.361-2264.400 reserved for expansion]

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agreement that provides otherwise.

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

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

Sec. 2264.360. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

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

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

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

[Sections 2264.362-2264.400 reserved for expansion]

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

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

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

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

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

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

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

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

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

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

SECTION 2.01. Same as House version.

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district:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;
- (5) an interlocal contract;
- (6) a method provided by Chapter 2264, Government Code;
- ~~(7) [a design/build contract;~~
- ~~[(7) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;~~
- ~~[(8) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;~~
- ~~[(9)]~~ the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (8) [(40)] the formation of a political subdivision corporation under Section 304.001, Local Government Code.
- (f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, engineer, or fiscal agent. A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

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

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

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

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

- (1) submit the proposed contract to competitive bidding;
- or
- (2) use an alternate method of project delivery authorized by Chapter 2264, Government Code.

No equivalent provision.

SECTION 2.11. Same as House version.

SECTION 2.12. Same as House version.

SECTION 2.13. Section 271.060, Local Government Code, is amended by amending Subsection (b) and

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adding Subsection (c) to read as follows:

(b) The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

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

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

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

No equivalent provision.

SECTION 2.14. Same as House version.

SECTION 2.15. Subchapter D, Chapter 431, Transportation Code, is amended by adding Section

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431.110 to read as follows:

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

(1) an improvement:

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

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

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

ARTICLE 3. ADDITIONAL EXEMPTIONS

Same as House version.

SECTION 3.01. Section 44.901, Education Code, is amended by adding Subsection (j) to read as follows:  
(j) Chapter 2264, Government Code, does not apply to this section.

Same as House version.

SECTION 3.02. Section 51.927, Education Code, is amended by adding Subsection (k) to read as follows:  
(k) Chapter 2264, Government Code, does not apply to this section.

Same as House version.

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SECTION 3.03. Section 2166.406, Government Code, is amended by adding Subsection (k) to read as follows:  
(k) Chapter 2264 does not apply to this section.

Same as House version.

SECTION 3.04. Chapter 302, Local Government Code, is amended by adding Section 302.006 to read as follows:  
Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this chapter.

Same as House version.

SECTION 3.05. Subchapter E, Chapter 335, Local Government Code, is amended by adding Section 335.077 to read as follows:  
Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this chapter.

Same as House version.

SECTION 3.06. Section 22.074, Transportation Code, is amended by adding Subsection (f) to read as follows:  
(f) Chapter 2264, Government Code, does not apply to a joint board whose constituent agencies are populous home-rule municipalities.

No equivalent provision.



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No equivalent provision.

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

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

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

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

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

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

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SECTION 3.06. Section 22.084, Transportation Code, is amended by adding Subsection (c) to read as follows:

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

Same as House version.

Same as House version.

Same as House version.

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No equivalent provision.

SECTION \_\_. Section 60.401, Water Code, is amended by adding Subsection (d) to read as follows:  
(d) Chapter 2264, Government Code, does not apply to this subchapter.

SECTION 3.10. Section 60.452, Water Code, is amended by adding Subsection (c) to read as follows:  
(c) Chapter 2264, Government Code, does not apply to this subchapter.

Same as House version.

ARTICLE 4. CONFORMING AMENDMENT

Same as House version.

SECTION 4.01. Section 252.021(a), Local Government Code, is amended to read as follows:  
(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must:  
(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;  
(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing;  
or  
(3) comply with a method described by Chapter 2264,

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Government Code [Subchapter H, Chapter 271].

ARTICLE 5. REPEALER

Same as House version.

SECTION 5.01. The following are repealed:

- (1) Sections 44.0312, 44.0315, 44.035, 44.036, 44.037, 44.038, 44.039, 44.040, 44.041, and 44.043, Education Code;
- (2) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code;
- (3) Section 252.043(d-1), Local Government Code;
- (4) Subchapter H, Chapter 271, Local Government Code; and
- (5) Section 431.101(e), Transportation Code.

SECTION 5.01. (a) The following are repealed:

- (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038, 44.039, 44.040, and 44.041, Education Code;
  - (2) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code;
  - (3) Section 252.043(d-1), Local Government Code;
  - (4) Subchapter H, Chapter 271, Local Government Code; and
  - (5) Section 431.101(e), Transportation Code.
- (b) Section 1, Chapter 359, Acts of the 78th Legislature, Regular Session, 2003, and any provision enacted by Section 1 of that chapter are repealed.

ARTICLE 6. TRANSITION; EFFECTIVE DATE

Same as House version.

SECTION 6.01. (a) The changes in law made by this Act apply only to a contract or construction project for which a governmental entity first advertises or otherwise

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requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

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

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

Same as House version.