

By: Callegari

H.B. No. 628

Substitute the following for H.B. No. 628:

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C.S.H.B. No. 628

A BILL TO BE ENTITLED

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

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

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

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

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

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

15 SECTION 2.01. Section 11.168, Education Code, is amended to  
16 read as follows:

17 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR  
18 CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection  
19 (b) or Section 45.109(a-1) or ~~and~~ (a-2), the board of trustees of  
20 a school district may not enter into an agreement authorizing the  
21 use of school district employees, property, or resources for the  
22 provision of materials or labor for the design, construction, or  
23 renovation of improvements to real property not owned or leased by  
24 the district.

1        (b) This section does not prohibit the board of trustees of  
2 a school district from entering into an agreement for the design,  
3 construction, or renovation of improvements to real property not  
4 owned or leased by the district if the improvements benefit real  
5 property owned or leased by the district. Benefits to real property  
6 owned or leased by the district include the design, construction,  
7 or renovation of highways, roads, streets, sidewalks, crosswalks,  
8 utilities, and drainage improvements that serve or benefit the real  
9 property owned or leased by the district.

10        SECTION 2.02. Sections 44.031(a) and (f), Education Code,  
11 are amended to read as follows:

12        (a) Except as provided by this subchapter, all school  
13 district contracts for the purchase of goods and services, except  
14 contracts for the purchase of produce or vehicle fuel, valued at  
15 \$50,000 or more in the aggregate for each 12-month period shall be  
16 made by the method, of the following methods, that provides the best  
17 value for the district:

18                (1) competitive bidding for services other than  
19 construction services;

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

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

24                (4) an interlocal contract for services other than  
25 construction services;

26                (5) a method provided by Chapter 2267, Government  
27 Code, for construction services [~~a design/build contract,~~

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

3           ~~[(7) a job order contract for the minor construction,~~  
4 ~~repair, rehabilitation, or alteration of a facility];~~

5           (6) ~~[(8)]~~ the reverse auction procedure as defined by  
6 Section 2155.062(d), Government Code; or

7           (7) ~~[(9)]~~ the formation of a political subdivision  
8 corporation under Section 304.001, Local Government Code.

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

16           SECTION 2.03. Subchapter B, Chapter 44, Education Code, is  
17 amended by adding Sections 44.0351 and 44.0352 to read as follows:

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

22           (b) Except as provided by this subsection, Subchapter B,  
23 Chapter 271, Local Government Code, does not apply to a competitive  
24 bidding process under this subchapter. Sections 271.026,  
25 271.027(a), and 271.0275, Local Government Code, apply to a  
26 competitive bidding process under this subchapter.

27           (c) A school district shall award a competitively bid

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

7 Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In  
8 selecting a vendor through competitive sealed proposals as  
9 authorized by Section 44.031(a)(2), a school district shall follow  
10 the procedures prescribed by this section.

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

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

22 (d) The district shall select the offeror that offers the  
23 best value for the district based on the published selection  
24 criteria and on its ranking evaluation. The district shall first  
25 attempt to negotiate a contract with the selected offeror. The  
26 district may discuss with the selected offeror options for a scope  
27 or time modification and any price change associated with the

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

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

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

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

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

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

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

1 increase the revised contract amount by more than 25 percent of the  
2 original contract price.

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

5 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,  
6 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL  
7 FACILITY. (a) In this section:

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

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

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

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

1       (d) A school district shall use the net proceeds from an  
2 action brought by the district for the defective design,  
3 construction, renovation, or improvement of an instructional  
4 facility financed by bonds for which the district receives state  
5 assistance under this subchapter to repair the defective design,  
6 construction, renovation, or improvement of the instructional  
7 facility on which the action is brought or to replace the facility.  
8 Section 46.008 applies to the repair.

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

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

19       (h) An interlocal contract or any other agreement between a  
20 governmental entity and a purchasing cooperative may not be used to  
21 purchase engineering or architectural services.

22       (i) An interlocal contract or another agreement between a  
23 governmental entity and a purchasing cooperative may be used for  
24 job order contracting services if:

25               (1) the work orders under the contract comply with  
26 Section 2267.403; and

27               (2) the governmental entity publishes notice of intent

1 to authorize an interlocal agreement in a manner consistent with a  
2 direct contract for job order contracting services.

3 (j) An interlocal contract or another agreement between a  
4 governmental entity and a purchasing cooperative may be used for  
5 construction services limited to a maintenance, repair, or  
6 replacement project for an existing building if:

7 (1) the governmental entity publishes notice of the  
8 proposed agreement before authorizing a contract for a construction  
9 services contract of \$50,000 or more; and

10 (2) the governing body of the governmental entity  
11 accepts the terms of the proposed agreement in an open meeting for  
12 which notice has been posted.

13 SECTION 2.07. Section 2155.502(c), Government Code, is  
14 amended to read as follows:

15 (c) The commission may not list a multiple award contract on  
16 a schedule developed under Subsection (a) if the goods or services  
17 provided by that contract:

18 (1) are available from only one vendor;

19 (2) are telecommunications services, facilities, or  
20 equipment; ~~or~~

21 (3) are commodity items as defined by Section  
22 2157.068(a); or

23 (4) are engineering services as described by Section  
24 1001.003, Occupations Code, or architectural services as described  
25 by Section 1051.001, Occupations Code.

26 SECTION 2.08. Section 2166.2525, Government Code, is  
27 amended to read as follows:





1 risk for constructing, rehabilitating, altering, or repairing all  
2 or part of a facility at the contracted price.

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

6 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
7 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.

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

11 (1) a state agency as defined by Section 2151.002,  
12 including the Texas Facilities Commission;

13 (2) a local government, including:

14 (A) a county;

15 (B) a municipality;

16 (C) a school district;

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

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

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

26 (4) a board of trustees governed by Chapter 54,  
27 Transportation Code.

1       Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW  
2 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this  
3 section, this chapter prevails over any other law relating to a  
4 public work contract.

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

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

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

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

16       (d) This chapter does not prevail over any law, rule, or  
17 regulation relating to competitive bidding or competitive sealed  
18 proposals for construction services that applies to a river  
19 authority or to a conservation and reclamation district created  
20 under Section 59, Article XVI, Texas Constitution, unless the  
21 governing body of the river authority or conservation and  
22 reclamation district elects to permit this chapter to supersede the  
23 law, rule, or regulation.

24       (e) This chapter does not prevail over a conflicting  
25 provision in a regulation that prescribes procurement procedures  
26 for construction services that is adopted by the governing board of  
27 a river authority or of a conservation and reclamation district

1 created pursuant to Section 59, Article XVI, Texas Constitution,  
2 that owns electric generation capacity in excess of 2,500  
3 megawatts, except with respect to Subchapter H.

4 Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF  
5 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

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

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

10 Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER  
11 EDUCATION. (a) In this section, "institution of higher  
12 education," "public junior college," and "university system" have  
13 the meanings assigned by Section 61.003, Education Code.

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

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

17 (2) a university system.

18 Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.  
19 This chapter does not apply to a regional tollway authority under  
20 Chapter 366, Transportation Code.

21 Sec. 2267.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT  
22 CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to  
23 an improvement project undertaken by or through a local government  
24 corporation exempt from competitive bidding requirements or  
25 restrictions under Section 431.110, Transportation Code.

26 Sec. 2267.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES.  
27 This chapter does not apply to a regional mobility authority under

1 Chapter 370, Transportation Code.

2 [Sections 2267.009-2267.050 reserved for expansion]

3 SUBCHAPTER B. GENERAL POWERS AND DUTIES

4 Sec. 2267.051. RULES. A governmental entity may adopt  
5 rules as necessary to implement this chapter.

6 Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental  
7 entity shall advertise or publish notice of requests for bids,  
8 proposals, or qualifications in a manner prescribed by law.

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

14 (c) For a contract entered into by a municipality, river  
15 authority, conservation and reclamation district created pursuant  
16 to Section 59, Article XVI, Texas Constitution, and located in a  
17 county with a population of more than 250,000, or defense base  
18 development authority under any of the methods provided by this  
19 chapter, the municipality, river authority, conservation and  
20 reclamation district created pursuant to Section 59, Article XVI,  
21 Texas Constitution, and located in a county with a population of  
22 more than 250,000, or defense base development authority shall  
23 publish notice of the time and place the bids or proposals, or the  
24 responses to a request for qualifications, will be received and  
25 opened. The notice must be published in a newspaper of general  
26 circulation in the county in which the defense base development  
27 authority's or municipality's central administrative office is

1 located or the county in which the greatest amount of the river  
2 authority's or such conservation and reclamation district's  
3 territory is located once each week for at least two weeks before  
4 the deadline for receiving bids, proposals, or responses. If there  
5 is not a newspaper of general circulation in that county, the notice  
6 shall be published in a newspaper of general circulation in the  
7 county nearest the county seat of the county in which the defense  
8 base development authority's or municipality's central  
9 administrative office is located or the county in which the  
10 greatest amount of the river authority's or such conservation and  
11 reclamation district's territory is located. In a two-step  
12 procurement process, the time and place the second step bids,  
13 proposals, or responses will be received are not required to be  
14 published separately.

15 (d) For a contract entered into by a county under any of the  
16 methods provided by this chapter, the county shall publish notice  
17 of the time and place the bids or proposals, or the responses to a  
18 request for qualifications, will be received and opened. The  
19 notice must be published in a newspaper of general circulation in  
20 the county once each week for at least two weeks before the deadline  
21 for receiving bids, proposals, or responses. If there is not a  
22 newspaper of general circulation in the county, the notice shall  
23 be:

24 (1) posted at the courthouse door of the county; and  
25 (2) published in a newspaper of general circulation in  
26 the nearest county.

27 Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing

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

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

9 Sec. 2267.054. RIGHT TO WORK. (a) This section applies to  
10 a governmental entity when the governmental entity is engaged in:

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

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

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

23 Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining  
24 the award of a contract under this chapter, the governmental entity  
25 may consider:

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

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

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

5           (5) the offeror's safety record;

6           (6) the offeror's proposed personnel;

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

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

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

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

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

20           Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING  
21 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

22           (a) The governing body of a governmental entity that considers a  
23 construction contract using a method authorized by this chapter  
24 other than competitive bidding must, before advertising, determine  
25 which method provides the best value for the governmental entity.

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



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

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

8 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An  
9 architect or engineer required to be selected or designated under  
10 this chapter has full responsibility for complying with Chapter  
11 1051 or 1001, Occupations Code, as applicable.

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

17 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.

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

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

27 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS

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

3 [Sections 2267.060-2267.100 reserved for expansion]

4 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

5 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE  
6 BIDDING. (a) In this chapter, "competitive bidding" is a  
7 procurement method by which a governmental entity contracts with a  
8 contractor for the construction, alteration, rehabilitation, or  
9 repair of a facility by awarding the contract to the lowest  
10 responsible bidder.

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

17 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The  
18 governmental entity shall select or designate an architect or  
19 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
20 as applicable, to prepare the construction documents required for a  
21 project to be awarded by competitive bidding.

22 Sec. 2267.103. PREPARATION OF REQUEST. The governmental  
23 entity shall prepare a request for competitive bids that includes  
24 construction documents, estimated budget, project scope, estimated  
25 project completion date, and other information that a contractor  
26 may require to submit a bid.

27 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental

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

3 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the  
4 seventh day after the date the contract is awarded, the  
5 governmental entity shall document the basis of its selection and  
6 shall make the evaluations public.

7 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
8 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
9 specifically provided by this section, Subchapter B, Chapter 271,  
10 Local Government Code, does not apply to a competitive bidding  
11 process conducted under this chapter. Sections 271.026,  
12 271.027(a), and 271.0275, Local Government Code, apply to a  
13 competitive bidding process conducted under this chapter by a  
14 governmental entity as defined by Section 271.021, Local Government  
15 Code.

16 [Sections 2267.107-2267.150 reserved for expansion]

17 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

18 Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE  
19 SEALED PROPOSALS. (a) In this chapter, "competitive sealed  
20 proposals" is a procurement method by which a governmental entity  
21 requests proposals, ranks the offerors, negotiates as prescribed,  
22 and then contracts with a general contractor for the construction,  
23 rehabilitation, alteration, or repair of a facility.

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

27 Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The

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

3 Sec. 2267.153. PREPARATION OF REQUEST. The governmental  
4 entity shall prepare a request for competitive sealed proposals  
5 that includes construction documents, selection criteria and the  
6 weighted value for each criterion, estimated budget, project scope,  
7 estimated project completion date, and other information that a  
8 contractor may require to respond to the request.

9 Sec. 2267.154. EVALUATION OF OFFERORS. (a) The  
10 governmental entity shall receive, publicly open, and read aloud  
11 the names of the offerors and any monetary proposals made by the  
12 offerors.

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

17 Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental  
18 entity shall select the offeror that submits the proposal that  
19 offers the best value for the governmental entity based on:

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

23 (2) its ranking evaluation.

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

1 change associated with the modification.

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

8 [Sections 2267.156-2267.200 reserved for expansion]

9 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

10 Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
11 MANAGER-AGENT. (a) In this chapter, the "construction  
12 manager-agent method" is a delivery method by which a governmental  
13 entity contracts with a construction manager-agent to provide  
14 consultation or administrative services during the design and  
15 construction phase and to manage multiple contracts with various  
16 construction prime contractors.

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

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

27 Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION

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

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

9 Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A  
10 construction manager-agent may not:

- 11 (1) self-perform any aspect of the construction,  
12 rehabilitation, alteration, or repair of the facility;  
13 (2) be a party to a construction subcontract for the  
14 construction, rehabilitation, alteration, or repair of the  
15 facility; or  
16 (3) provide or be required to provide performance and  
17 payment bonds for the construction, rehabilitation, alteration, or  
18 repair of the facility.

19 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION  
20 MANAGER-AGENT. A construction manager-agent represents the  
21 governmental entity in a fiduciary capacity.

22 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or  
23 before the selection of a construction manager-agent, the  
24 governmental entity shall select or designate an architect or  
25 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
26 as applicable, to prepare the construction documents for the  
27 project.

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

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

16       Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental  
17 entity using the construction manager-agent method shall procure,  
18 in accordance with applicable law and in any manner authorized by  
19 this chapter, a general contractor or trade contractors who will  
20 serve as the prime contractor for their specific portion of the work  
21 and provide performance and payment bonds to the governmental  
22 entity in accordance with applicable laws.

23       Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
24 governmental entity shall select a construction manager-agent on  
25 the basis of demonstrated competence and qualifications in the same  
26 manner that an architect or engineer is selected under Section  
27 2254.004.

1       Sec. 2267.208. INSURANCE. A construction manager-agent  
2 selected under this subchapter shall maintain professional  
3 liability or errors and omissions insurance in the amount of at  
4 least \$1 million for each occurrence.

5           [Sections 2267.209-2267.250 reserved for expansion]

6           SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

7       Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
8 MANAGER-AT-RISK. (a) In this chapter, the "construction  
9 manager-at-risk method" is a delivery method by which a  
10 governmental entity contracts with an architect or engineer for  
11 design and construction phase services and contracts separately  
12 with a construction manager-at-risk to serve as the general  
13 contractor and to provide consultation during the design and  
14 construction, rehabilitation, alteration, or repair of a facility.

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

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

26       Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or  
27 before the selection of a construction manager-at-risk, the



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

3 (b) The governmental entity's architect or engineer for a  
4 project may not serve, alone or in combination with another person,  
5 as the construction manager-at-risk unless the architect or  
6 engineer is hired to serve as the construction manager-at-risk  
7 under a separate or concurrent selection process conducted in  
8 accordance with this subchapter. This subsection does not prohibit  
9 the governmental entity's architect or engineer from providing  
10 customary construction phase services under the architect's or  
11 engineer's original professional service agreement in accordance  
12 with applicable licensing laws.

13 Sec. 2267.253. SELECTION PROCESS. (a) The governmental  
14 entity shall select the construction manager-at-risk in a one-step  
15 or two-step process.

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

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

22 (2) general information on the project site, project  
23 scope, schedule, selection criteria and the weighted value for each  
24 criterion, and estimated budget and the time and place for receipt  
25 of the proposals or qualifications; and

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

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

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

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

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

17       (g) Not later than the 45th day after the date on which the  
18 final proposals are opened, the governmental entity shall evaluate  
19 and rank each proposal submitted in relation to the criteria set  
20 forth in the request for proposals.

21       Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental  
22 entity shall select the offeror that submits the proposal that  
23 offers the best value for the governmental entity based on the  
24 published selection criteria and on its ranking evaluation.

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

27       (c) If the governmental entity is unable to negotiate a

1 satisfactory contract with the selected offeror, the governmental  
2 entity shall, formally and in writing, end negotiations with that  
3 offeror and proceed to negotiate with the next offeror in the order  
4 of the selection ranking until a contract is reached or  
5 negotiations with all ranked offerors end.

6 (d) Not later than the seventh day after the date the  
7 contract is awarded, the governmental entity shall make the  
8 rankings determined under Section 2267.253(g) public.

9 Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction  
10 manager-at-risk shall publicly advertise for bids or proposals and  
11 receive bids or proposals from trade contractors or subcontractors  
12 for the performance of all major elements of the work other than the  
13 minor work that may be included in the general conditions.

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

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

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

22 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The  
23 construction manager-at-risk shall review all trade contractor or  
24 subcontractor bids or proposals in a manner that does not disclose  
25 the contents of the bid or proposal during the selection process to  
26 a person not employed by the construction manager-at-risk,  
27 architect, engineer, or governmental entity. All bids or proposals

1 shall be made available to the governmental entity on request and to  
2 the public after the later of the award of the contract or the  
3 seventh day after the date of final selection of bids or proposals.

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

13 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected  
14 trade contractor or subcontractor defaults in the performance of  
15 its work or fails to execute a subcontract after being selected in  
16 accordance with this subchapter, the construction manager-at-risk  
17 may itself fulfill, without advertising, the contract requirements  
18 or select a replacement trade contractor or subcontractor to  
19 fulfill the contract requirements.

20 Sec. 2267.258. PERFORMANCE OR PAYMENT BOND. (a) If a  
21 fixed contract amount or guaranteed maximum price has not been  
22 determined at the time the contract is awarded, the penal sums of  
23 the performance and payment bonds delivered to the governmental  
24 entity must each be in an amount equal to the construction budget,  
25 as specified in the request for proposals or qualifications.

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

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

6 [Sections 2267.259-2267.300 reserved for expansion]

7 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

8 Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In  
9 this chapter, "design-build" is a project delivery method by which  
10 a governmental entity contracts with a single entity to provide  
11 both design and construction services for the construction,  
12 rehabilitation, alteration, or repair of a facility.

13 Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
14 EXCEPTIONS. This subchapter applies only to a facility that is a  
15 building or an associated structure, including an electric utility  
16 structure. This subchapter does not apply to:

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

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

24 Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
25 governmental entity may use the design-build method for the  
26 construction, rehabilitation, alteration, or repair of a building  
27 or associated structure only as provided by this subchapter. In

1 using that method, the governmental entity shall enter into a  
2 single contract with a design-build firm for the design and  
3 construction of the building or associated structure.

4 Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm  
5 under this subchapter must be a sole proprietorship, partnership,  
6 corporation, or other legal entity or team that includes an  
7 architect or engineer and a construction contractor.

8 Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT  
9 REPRESENTATIVE. The governmental entity shall select or designate  
10 an architect or engineer independent of the design-build firm to  
11 act as the governmental entity's representative for the duration of  
12 the project.

13 Sec. 2267.306. PREPARATION OF REQUEST. (a) The  
14 governmental entity shall prepare a request for qualifications that  
15 includes general information on the project site, project scope,  
16 budget, special systems, selection criteria and the weighted value  
17 for each criterion, and other information that may assist potential  
18 design-build firms in submitting proposals for the project.

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

27 (c) The design criteria package must include a set of

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

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

18 Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For  
19 each design-build firm that responded to the request for  
20 qualifications, the governmental entity shall evaluate the firm's  
21 experience, technical competence, and capability to perform, the  
22 past performance of the firm and members of the firm, and other  
23 appropriate factors submitted by the firm in response to the  
24 request for qualifications, except that cost-related or  
25 price-related evaluation factors are not permitted.

26 (b) Each firm must certify to the governmental entity that  
27 each architect or engineer that is a member of the firm was selected

1 based on demonstrated competence and qualifications, in the manner  
2 provided by Section 2254.004.

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

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

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

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

26 Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The  
27 governmental entity shall select the design-build firm that submits



1 the proposal offering the best value for the governmental entity on  
2 the basis of the published selection criteria and on its ranking  
3 evaluations.

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

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

12 (d) Not later than the seventh day after the date the  
13 contract is awarded, the governmental entity shall make the  
14 rankings determined under Section 2267.307(f) public.

15 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After  
16 selection of the design-build firm, that firm's architects or  
17 engineers shall submit all design elements for review and  
18 determination of scope compliance to the governmental entity or the  
19 governmental entity's architect or engineer before or concurrently  
20 with construction.

21 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The  
22 design-build firm shall supply a set of construction documents for  
23 the completed project to the governmental entity at the conclusion  
24 of construction. The documents must note any changes made during  
25 construction.

26 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
27 or performance bond is not required and may not provide coverage for

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

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

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

15 [Sections 2267.312-2267.350 reserved for expansion]

16 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS  
17 PROJECTS

18 Sec. 2267.351. DEFINITIONS. In this subchapter:

19 (1) "Civil works project" means:

20 (A) roads, streets, bridges, utilities, water  
21 supply projects, water plants, wastewater plants, water  
22 distribution and wastewater conveyance facilities, desalination  
23 projects, wharves, docks, airport runways and taxiways, storm  
24 drainage and flood control projects, or transit projects;

25 (B) types of projects or facilities related to  
26 those described by Paragraph (A) and associated with civil  
27 engineering construction; and

1           (C) buildings or structures that are incidental  
2 to projects or facilities that are described by Paragraphs (A) and  
3 (B) and that are primarily civil engineering construction projects.

4           (2) "Design-build firm" means a partnership,  
5 corporation, or other legal entity or team that includes an  
6 engineer and a construction contractor qualified to engage in civil  
7 works construction in Texas.

8           (3) "Design criteria package" means a set of documents  
9 that:

10           (A) provides sufficient information to convey  
11 the intent, goals, criteria, and objectives of the civil works  
12 project; and

13           (B) permits a design-build firm to:

14                   (i) assess the scope of work and the risk  
15 involved; and

16                   (ii) submit a proposal on the project.

17           Sec. 2267.352. APPLICABILITY. This subchapter applies to a  
18 governmental entity that:

19           (1) has a population of more than 100,000 within the  
20 entity's geographic boundary or service area; or

21           (2) is a board of trustees governed by Chapter 54,  
22 Transportation Code.

23           Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:  
24 DESIGN-BUILD. (a) A governmental entity may use the design-build  
25 method for the construction, rehabilitation, alteration, or repair  
26 of a civil works project. In using this method and in entering into  
27 a contract for the services of a design-build firm, the contracting

1 governmental entity and the design-build firm shall follow the  
2 procedures provided by this subchapter.

3 (b) A contract for a project under this subchapter may cover  
4 only a single integrated project. A governmental entity may not  
5 enter into a contract for aggregated projects at multiple  
6 locations. For purposes of this subsection:

7 (1) if a metropolitan transit authority created under  
8 Chapter 451, Transportation Code, enters into a contract for a  
9 project involving a bus rapid transit system created under Chapter  
10 451, Transportation Code, the bus rapid transit system is a single  
11 integrated project; and

12 (2) a water treatment plant, including a desalination  
13 plant, that includes treatment facilities, well fields, and  
14 pipelines is a single integrated project.

15 (c) A governmental entity shall use the following criteria  
16 as a minimum basis for determining the circumstances under which  
17 the design-build method is appropriate for a project:

18 (1) the extent to which the entity can adequately  
19 define the project requirements;

20 (2) the time constraints for the delivery of the  
21 project;

22 (3) the ability to ensure that a competitive  
23 procurement can be held; and

24 (4) the capability of the entity to manage and oversee  
25 the project, including the availability of experienced personnel or  
26 outside consultants who are familiar with the design-build method  
27 of project delivery.

1       (d) A governmental entity shall make a formal finding on the  
2 criteria described by Subsection (c) before preparing a request for  
3 qualifications under Section 2267.357.

4       Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a)  
5 Before September 1, 2013:

6           (1) a governmental entity with a population of 500,000  
7 or more within the entity's geographic boundary or service area  
8 may, under this subchapter, enter into contracts for not more than  
9 three projects in any fiscal year; and

10          (2) a municipally owned water utility with a separate  
11 governing board appointed by the governing body of a municipality  
12 with a population of 500,000 or more may:

13           (A) independently enter into a contract for not  
14 more than one civil works project in any fiscal year; and

15           (B) enter into contracts for additional civil  
16 works projects in any fiscal year, but not more than the number of  
17 civil works projects prescribed by the limit in Subdivision (1) for  
18 the municipality, provided that:

19            (i) the additional contracts for the civil  
20 works projects entered into by the utility under this paragraph are  
21 allocated to the number of contracts the municipality that appoints  
22 the utility's governing board may enter under Subdivision (1); and

23            (ii) the governing body of the municipality  
24 must approve the contracts.

25       (b) Before September 1, 2015, a governmental entity that has  
26 a population of 100,000 or more but less than 500,000 or is a board  
27 of trustees governed by Chapter 54, Transportation Code, may enter

1 into contracts under this subchapter for not more than two projects  
2 in any fiscal year.

3 (c) After the period described by Subsection (a) or (b):

4 (1) a governmental entity with a population of 500,000  
5 or more within the entity's geographic boundary or service area  
6 may, under this subchapter, enter into contracts for not more than  
7 six projects in any fiscal year;

8 (2) a municipally owned water utility with a separate  
9 governing board appointed by the governing body of a municipality  
10 with a population of 500,000 or more may:

11 (A) independently enter into contracts for not  
12 more than two civil works projects in any fiscal year; and

13 (B) enter into contracts for additional civil  
14 works projects in any fiscal year, but not more than the number of  
15 civil works projects prescribed by the limit in Subdivision (1) for  
16 the municipality, provided that:

17 (i) the additional contracts for the civil  
18 works projects entered into by the utility under this paragraph are  
19 allocated to the number of contracts the municipality that appoints  
20 the utility's governing board may enter under Subdivision (1); and

21 (ii) the governing body of the municipality  
22 must approve the contracts; and

23 (3) a governmental entity that has a population of  
24 100,000 or more but less than 500,000 or is a board of trustees  
25 governed by Chapter 54, Transportation Code, may enter into  
26 contracts under this subchapter for not more than four projects in  
27 any fiscal year.

1       (d) For purposes of determining the number of eligible  
2 projects under this section, a municipally owned water utility with  
3 a separate governing board appointed by the governing body of the  
4 municipality is considered part of the municipality.

5       Sec. 2267.355. USE OF ENGINEER. (a) The governmental  
6 entity shall select or designate an engineer who is independent of  
7 the design-build firm to act as its representative for the  
8 procurement process and for the duration of the work on the civil  
9 works project. The selected or designated engineer has full  
10 responsibility for complying with Chapter 1001, Occupations Code.

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

15       Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.

16 (a) The governmental entity shall provide or contract for,  
17 independently of the design-build firm, the following services as  
18 necessary for the acceptance of the civil works project by the  
19 entity:

20               (1) inspection services;

21               (2) construction materials engineering and testing;

22 and

23               (3) verification testing services.

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

27       Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The

1 governmental entity shall prepare a request for qualifications that  
2 includes:

- 3 (1) information on the civil works project site;
- 4 (2) project scope;
- 5 (3) project budget;
- 6 (4) project schedule;
- 7 (5) criteria for selection under Section 2267.359 and  
8 the weighting of the criteria; and
- 9 (6) other information that may assist potential  
10 design-build firms in submitting proposals for the project.

11 (b) The governmental entity shall also prepare a design  
12 criteria package as described by Section 2267.358.

13 Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A  
14 design criteria package may include, as appropriate:

- 15 (1) budget or cost estimates;
- 16 (2) information on the site;
- 17 (3) performance criteria;
- 18 (4) special material requirements;
- 19 (5) initial design calculations;
- 20 (6) known utilities;
- 21 (7) capacity requirements;
- 22 (8) quality assurance and quality control  
23 requirements;
- 24 (9) the type, size, and location of structures; and
- 25 (10) notice of any ordinances, rules, or goals adopted  
26 by the governmental entity relating to awarding contracts to  
27 historically underutilized businesses.



1       Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The  
2 governmental entity shall receive proposals and shall evaluate each  
3 offeror's experience, technical competence, and capability to  
4 perform, the past performance of the offeror's team and members of  
5 the team, and other appropriate factors submitted by the team or  
6 firm in response to the request for qualifications, except that  
7 cost-related or price-related evaluation factors are not permitted  
8 at this stage.

9       (b) Each offeror must:

10           (1) select or designate each engineer that is a member  
11 of its team based on demonstrated competence and qualifications, in  
12 the manner provided by Section 2254.004; and

13           (2) certify to the governmental entity that each  
14 selection or designation was based on demonstrated competence and  
15 qualifications, in the manner provided by Section 2254.004.

16       (c) The governmental entity shall qualify offerors to  
17 submit additional information and, if the entity chooses, to  
18 interview for final selection.

19       Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The  
20 governmental entity shall select a design-build firm using a  
21 combination of technical and cost proposals as provided by Section  
22 2267.361.

23       Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND  
24 COST PROPOSALS. (a) A governmental entity shall request proposals  
25 from design-build firms identified under Section 2267.359(c). A  
26 firm must submit a proposal not later than the 180th day after the  
27 date the governmental entity makes a public request for the

1 proposals from the selected firms. The request for proposals must  
2 include:

3 (1) a design criteria package;

4 (2) if the project site is identified, a geotechnical  
5 baseline report or other information that provides the design-build  
6 firm minimum geotechnical design parameters to submit a proposal;

7 (3) detailed instructions for preparing the technical  
8 proposal and the items to be included, including a description of  
9 the form and level of completeness of drawings expected; and

10 (4) the relative weighting of the technical and price  
11 proposals and the formula by which the proposals will be evaluated  
12 and ranked.

13 (b) The technical proposal is a component of the proposal  
14 under this section.

15 (c) Each proposal must include a sealed technical proposal  
16 and a separate sealed cost proposal.

17 (d) The technical proposal must address:

18 (1) project approach;

19 (2) anticipated problems;

20 (3) proposed solutions to anticipated problems;

21 (4) ability to meet schedules;

22 (5) conceptual engineering design; and

23 (6) other information requested by the governmental  
24 entity.

25 (e) The governmental entity shall first open, evaluate, and  
26 score each responsive technical proposal submitted on the basis of  
27 the criteria described in the request for proposals and assign

1 points on the basis of the weighting specified in the request for  
2 proposals. The governmental entity may reject as nonresponsive any  
3 firm that makes a significant change to the composition of its firm  
4 as initially submitted. The governmental entity shall subsequently  
5 open, evaluate, and score the cost proposals from firms that  
6 submitted a responsive technical proposal and assign points on the  
7 basis of the weighting specified in the request for proposals. The  
8 governmental entity shall select the design-build firm in  
9 accordance with the formula provided in the request for proposals.

10 Sec. 2267.362. NEGOTIATION. After selecting the  
11 highest-ranked design-build firm under Section 2267.361, the  
12 governmental entity shall first attempt to negotiate a contract  
13 with the selected firm. If the governmental entity is unable to  
14 negotiate a satisfactory contract with the selected firm, the  
15 entity shall, formally and in writing, end all negotiations with  
16 that firm and proceed to negotiate with the next firm in the order  
17 of the selection ranking until a contract is reached or  
18 negotiations with all ranked firms end.

19 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental  
20 entity shall assume:

21 (1) all risks and costs associated with:

22 (A) scope changes and modifications, as  
23 requested by the governmental entity;

24 (B) unknown or differing site conditions unless  
25 otherwise provided by the governmental entity in the request for  
26 proposals and final contract;

27 (C) regulatory permitting, if the governmental

1 entity is responsible for those risks and costs by law or contract;  
2 and

3 (D) natural disasters and other force majeure  
4 events unless otherwise provided by the governmental entity in the  
5 request for proposals and final contract; and

6 (2) all costs associated with property acquisition,  
7 excluding costs associated with acquiring a temporary easement or  
8 work area associated with staging or construction for the project.

9 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

10 (a) Unless a stipend is paid under Subsection (c), the  
11 design-build firm retains all rights to the work product submitted  
12 in a proposal. The governmental entity may not release or disclose  
13 to any person, including the successful offeror, the work product  
14 contained in an unsuccessful proposal. The governmental entity  
15 shall return all copies of the proposal and other information  
16 submitted to an unsuccessful offeror. The governmental entity or  
17 its agents may not make use of any unique or nonordinary design  
18 element, technique, method, or process contained in the  
19 unsuccessful proposal that was not also contained in the successful  
20 proposal at the time of the original submittal, unless the entity  
21 acquires a license from the unsuccessful offeror.

22 (b) A violation of this section voids the contract for the  
23 project entered into by the governmental entity. The governmental  
24 entity is liable to any unsuccessful offeror, or any member of the  
25 design-build team or its assignee, for one-half of the cost savings  
26 associated with the unauthorized use of the work product of the  
27 unsuccessful offeror. Any interested party may bring an action for

1 an injunction, declaratory relief, or damages for a violation of  
2 this section. A party who prevails in an action under this  
3 subsection is entitled to reasonable attorney's fees as approved by  
4 the court.

5 (c) The governmental entity may offer an unsuccessful  
6 design-build firm that submits a response to the entity's request  
7 for additional information under Section 2267.361 a stipend for  
8 preliminary engineering costs associated with the development of  
9 the proposal. The stipend must be one-half of one percent of the  
10 contract amount and must be specified in the initial request for  
11 proposals. If the offer is accepted and paid, the governmental  
12 entity may make use of any work product contained in the proposal,  
13 including the techniques, methods, processes, and information  
14 contained in the proposal. The use by the governmental entity of  
15 any design element contained in an unsuccessful proposal is at the  
16 sole risk and discretion of the entity and does not confer liability  
17 on the recipient of the stipend under this subsection.

18 (d) Notwithstanding other law, including Chapter 552, work  
19 product contained in an unsuccessful proposal submitted and  
20 rejected under this subchapter is confidential and may not be  
21 released unless a stipend offer has been accepted and paid as  
22 provided by Subsection (c).

23 Sec. 2267.365. COMPLETION OF DESIGN. (a) Following  
24 selection of a design-build firm under this subchapter, the firm's  
25 engineers shall submit all design elements for review and  
26 determination of scope compliance to the governmental entity before  
27 or concurrently with construction.

1       (b) An appropriately licensed design professional shall  
2 sign and seal construction documents before the documents are  
3 released for construction.

4       Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the  
5 conclusion of construction, the design-build firm shall supply to  
6 the governmental entity a record set of construction documents for  
7 the project prepared as provided by Chapter 1001, Occupations Code.

8       Sec. 2267.367. PERFORMANCE OR PAYMENT BOND. (a) A  
9 performance or payment bond is not required for the portion of a  
10 design-build contract under this section that includes design  
11 services only.

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

18       (c) If the governmental entity awards a design-build  
19 contract under Section 2267.362, the design-build firm shall  
20 deliver the bonds not later than the 10th day after the date the  
21 design-build firm executes the contract unless the design-build  
22 firm furnishes a bid bond or other financial security acceptable to  
23 the governmental entity to ensure that the design-build firm will  
24 furnish the required performance and payment bonds before the  
25 commencement of construction.

26       [Sections 2267.368-2267.400 reserved for expansion]

1           SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

2           Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,  
3 "job order contracting" is a procurement method used for  
4 maintenance, repair, alteration, renovation, remediation, or minor  
5 construction of a facility when the work is of a recurring nature  
6 but the delivery times, type, and quantities of work required are  
7 indefinite.

8           Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
9 EXCEPTIONS. This subchapter applies only to a facility that is a  
10 building, the design and construction of which is governed by  
11 accepted building codes, or a structure or land, whether improved  
12 or unimproved, that is associated with a building. This subchapter  
13 does not apply to:

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

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

21           Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR  
22 FACILITIES. (a) A governmental entity may award job order  
23 contracts for the maintenance, repair, alteration, renovation,  
24 remediation, or minor construction of a facility if:

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

27           (2) indefinite quantities and orders are awarded

1 substantially on the basis of predescribed and prepriced tasks.

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

4 (c) The governing body of a governmental entity shall  
5 approve each job, task, or purchase order that exceeds \$500,000.

6 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental  
7 entity may establish contractual unit prices for a job order  
8 contract by:

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

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

15 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
16 governmental entity may use the competitive sealed proposal method  
17 under Subchapter D for job order contracts.

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

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

23 Sec. 2267.406. AWARDING OF JOB ORDER CONTRACTS. The  
24 governmental entity may award job order contracts to one or more job  
25 order contractors in connection with each solicitation of  
26 proposals.

27 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order



1 contract may be used to accomplish work only for the governmental  
2 entity that awards the contract unless:

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

5 (2) the governmental entity enters into an interlocal  
6 agreement that provides otherwise.

7 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order  
8 contract or an order issued under the contract requires  
9 architectural or engineering services that constitute the practice  
10 of architecture within the meaning of Chapter 1051, Occupations  
11 Code, or the practice of engineering within the meaning of Chapter  
12 1001, Occupations Code, the governmental entity shall select or  
13 designate an architect or engineer to prepare the construction  
14 documents for the project.

15 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a  
16 job order contract may not exceed two years. The governmental  
17 entity may renew the contract annually for not more than three  
18 additional years.

19 Sec. 2267.410. JOB ORDERS. (a) An order for a job or  
20 project under a job order contract must be signed by the  
21 governmental entity's representative and the contractor.

22 (b) The order may be:

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

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

1       Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The  
2 contractor shall provide payment and performance bonds, if required  
3 by law, based on the amount or estimated amount of any order.

4       [Sections 2267.412-2267.450 reserved for expansion]

5                               SUBCHAPTER J. ENFORCEMENT

6       Sec. 2267.451. VOID CONTRACT. A contract, including a job  
7 order, entered into in violation of this chapter is voidable as  
8 against public policy.

9       Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
10 chapter may be enforced through an action for declaratory or  
11 injunctive relief filed not later than the 10th day after the date  
12 on which the contract is awarded.

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

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

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

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

27       Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before

1 the governing body of an issuer may enter into a contract requiring  
2 an expenditure by or imposing an obligation or liability on the  
3 issuer, or on a subdivision of the issuer if the issuer is a county,  
4 of more than \$50,000, the governing body must:

5           (1) submit the proposed contract to competitive  
6 procurement; or

7           (2) use an alternate method of project delivery  
8 authorized by Chapter 2267, Government Code.

9           SECTION 2.12. Section 271.060, Local Government Code, is  
10 amended by amending Subsection (b) and adding Subsection (c) to  
11 read as follows:

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

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

25           ARTICLE 3. ADDITIONAL EXEMPTIONS

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

1        (j) Chapter 2267, Government Code, does not apply to this  
2 section.

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

5        (k) Chapter 2267, Government Code, does not apply to this  
6 section.

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

9        (k) Chapter 2267 does not apply to this section.

10       SECTION 3.04. Chapter 302, Local Government Code, is  
11 amended by adding Section 302.007 to read as follows:

12       Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW.  
13 Chapter 2267, Government Code, does not apply to this chapter.

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

16       Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.  
17 Chapter 2267, Government Code, does not apply to this chapter.

18       SECTION 3.06. Subchapter Q, Chapter 451, Transportation  
19 Code, is amended by adding Section 451.8025 to read as follows:

20       Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.  
21 Chapter 2267, Government Code, does not apply to this subchapter.

22       SECTION 3.07. Subchapter C, Chapter 452, Transportation  
23 Code, is amended by adding Section 452.1095 to read as follows:

24       Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR  
25 CERTAIN AUTHORITIES. (a) Chapter 2267, Government Code, does not  
26 apply to an authority consisting of one subregion governed by a  
27 subregional board created under Subchapter O.

1        (b) An authority to which this section applies may adopt  
2 design-build procedures that do not materially conflict with  
3 Subchapter H, Chapter 2267, Government Code.

4        SECTION 3.08. Section 60.401, Water Code, is amended by  
5 adding Subsection (d) to read as follows:

6        (d) Chapter 2267, Government Code, does not apply to this  
7 subchapter.

8        SECTION 3.09. Section 60.452(c), Water Code, is amended to  
9 read as follows:

10        (c) Chapter 2267, [Subchapter J, Chapter 271, Local]  
11 Government Code, does not apply to this subchapter.

12                    ARTICLE 4. CONFORMING AMENDMENTS

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

15        (a) Before a municipality may enter into a contract that  
16 requires an expenditure of more than \$50,000 from one or more  
17 municipal funds, the municipality must:

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

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

23                    (3) comply with a method described by Chapter 2267,  
24 Government Code [Subchapter H or J, Chapter 271].

25        SECTION 4.02. Section 252.022(d), Local Government Code, is  
26 amended to read as follows:

27        (d) This chapter does not apply to an expenditure described

1 by Section 252.021(a) if the governing body of a municipality  
2 determines that a method described by Chapter 2267, Government Code  
3 [~~Subchapter H, Chapter 271~~], provides a better value for the  
4 municipality with respect to that expenditure than the procedures  
5 described in this chapter and the municipality adopts and uses a  
6 method described in that subchapter with respect to that  
7 expenditure.

8 SECTION 4.03. Sections 252.043(d-1) and (e), Local  
9 Government Code, are amended to read as follows:

10 (d-1) A contract for construction of a project described by  
11 Subsection (d) that requires an expenditure of \$1.5 million or less  
12 may be awarded using the competitive sealed proposal procedure  
13 prescribed by Subchapter D, Chapter 2267, Government Code [~~Section~~  
14 ~~271.116~~].

15 (e) If the competitive sealed bidding requirement applies  
16 to the contract for construction of a facility, as that term is  
17 defined by Section 2267.001, Government Code [~~Section 271.111~~], the  
18 contract must be awarded to the lowest responsible bidder or  
19 awarded under the method described by Chapter 2267, Government Code  
20 [~~Subchapter H, Chapter 271~~].

21 SECTION 4.04. Sections 262.023(a) and (b-1), Local  
22 Government Code, are amended to read as follows:

23 (a) Before a county may purchase one or more items under a  
24 contract that will require an expenditure exceeding \$50,000, the  
25 commissioners court of the county must:

26 (1) comply with the competitive bidding or competitive  
27 proposal procedures prescribed by this subchapter;

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

3           (3) comply with a method described by Chapter 2267,  
4 Government Code [~~Subchapter H, Chapter 271~~].

5           (b-1) A county that complies with a method described by  
6 Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~], as  
7 provided by Subsection (a)(3), to enter into a contract for which  
8 payment will be made through anticipation notes authorized by  
9 Chapter 1431, Government Code, may not issue anticipation notes for  
10 the payment of that contract in an amount that exceeds the lesser  
11 of:

12           (1) 20 percent of the county's budget for the fiscal  
13 year in which the county enters into the contract; or

14           (2) \$10 million.

15           SECTION 4.05. Section 1002.110, Special District Local Laws  
16 Code, is amended to read as follows:

17           Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the  
18 construction of public works, the district has all of the powers and  
19 duties conferred on a municipality under Chapter 2267, [~~Subchapter  
20 H, Chapter 271, Local~~] Government Code, with respect to the  
21 construction of a facility. To the extent of any conflict, this  
22 section prevails over any other law relating to the construction of  
23 public works engaged in by the district.

24           SECTION 4.06. Section 1024.105(b), Special District Local  
25 Laws Code, is amended to read as follows:

26           (b) The board may act as a governmental entity under Chapter  
27 2267, [~~Subchapter H, Chapter 271, Local~~] Government Code, for

1 purposes of using the procurement procedures authorized by that  
2 chapter. For purposes of this subsection, notice under Section  
3 2267.052(c), [~~271.112(d), Local~~] Government Code, must be provided  
4 by the district in the same manner as provided for a conservation  
5 and reclamation district created under Section 59, Article XVI,  
6 Texas Constitution.

7 SECTION 4.07. Section 366.185(d-1), Transportation Code,  
8 is amended to read as follows:

9 (d-1) The rules adopted under Subsection (d) may not  
10 materially conflict with the design-build procedures provided by  
11 Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]  
12 Government Code, and shall provide materially similar injunctive  
13 and declaratory action enforcement rights regarding the improper  
14 disclosure or use of unique or nonordinary information as provided  
15 in that subchapter.

16 SECTION 4.08. Section 370.314(b), Transportation Code, is  
17 amended to read as follows:

18 (b) Procedures adopted under Subsection (a) may not  
19 materially conflict with the design-build procedures provided by  
20 Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]  
21 Government Code.

22 SECTION 4.09. Sections 460.406(c) and (d), Transportation  
23 Code, are amended to read as follows:

24 (c) The board of directors may authorize the negotiation of  
25 a contract without competitive sealed bids or proposals if:

26 (1) the aggregate amount involved in the contract is  
27 \$25,000 or less;



1           (2) the contract is for construction for which not  
2 more than one bid or proposal is received;

3           (3) the contract is for services or property for which  
4 there is only one source or for which it is otherwise impracticable  
5 to obtain competition;

6           (4) the contract is to respond to an emergency for  
7 which the public exigency does not permit the delay incident to the  
8 competitive process;

9           (5) the contract is for personal or professional  
10 services or services for which competitive bidding is precluded by  
11 law;

12           (6) the contract, without regard to form and which may  
13 include bonds, notes, loan agreements, or other obligations, is for  
14 the purpose of borrowing money or is a part of a transaction  
15 relating to the borrowing of money, including:

16                   (A) a credit support agreement, such as a line or  
17 letter of credit or other debt guaranty;

18                   (B) a bond, note, debt sale or purchase, trustee,  
19 paying agent, remarketing agent, indexing agent, or similar  
20 agreement;

21                   (C) an agreement with a securities dealer,  
22 broker, or underwriter; and

23                   (D) any other contract or agreement considered by  
24 the board of directors to be appropriate or necessary in support of  
25 the authority's financing activities;

26           (7) the contract is for work that is performed and paid  
27 for by the day as the work progresses;

1           (8) the contract is for the purchase of land or a  
2 right-of-way;

3           (9) the contract is for the purchase of personal  
4 property sold:

5                   (A) at an auction by a state licensed auctioneer;

6                   (B) at a going out of business sale held in  
7 compliance with Subchapter F, Chapter 17, Business & Commerce Code;  
8 or

9                   (C) by a political subdivision of this state, a  
10 state agency, or an entity of the federal government;

11           (10) the contract is for services performed by blind  
12 or severely disabled persons;

13           (11) the contract is for the purchase of electricity;  
14 or

15           (12) the contract is one awarded for alternate project  
16 delivery under Subchapters E, F, and G, Chapter 2267, [Sections  
17 271.117-271.119, Local] Government Code.

18           (d) For the purposes of entering into a contract authorized  
19 by Subsection (c)(12), an authority is considered a "governmental  
20 entity" as described [~~defined~~] by Section 2267.002, [271.111,  
21 ~~Local]~~ Government Code.

22                                   ARTICLE 5. REPEALER

23           SECTION 5.01. The following are repealed:

24                   (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,  
25 44.039, 44.040, and 44.041, Education Code;

26                   (2) Sections     2166.2511,     2166.2526,     2166.2531,  
27 2166.2532, 2166.2533, and 2166.2535, Government Code;

1           (3) Subchapters H and J, Chapter 271, Local Government  
2 Code; and

3           (4) Section 431.101(e), Transportation Code.

4           ARTICLE 6. TRANSITION; EFFECTIVE DATE

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

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

16          SECTION 6.02. This Act takes effect September 1, 2011.