

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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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), (b), and (f), Education  
11 Code, 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           (b) Except as provided by this subchapter, in determining to  
10 whom to award a contract, the district shall consider:

11           (1) the purchase price;

12           (2) the reputation of the vendor and of the vendor's  
13 goods or services;

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

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

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

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

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

23           (8) for a contract for goods and services, other than  
24 goods and services related to telecommunications and information  
25 services, building construction and maintenance, or instructional  
26 materials, whether the vendor or the vendor's ultimate parent  
27 company or majority owner:

1                   (A) has its principal place of business in this  
2 state; or

3                   (B) employs at least 500 persons in this state;  
4 and

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

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

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

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

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

25           (c) A school district shall award a competitively bid  
26 contract at the bid amount to the bidder offering the best value for  
27 the district. In determining the best value for the district, the

1 district is not restricted to considering price alone but may  
2 consider any other factors stated in the selection criteria. The  
3 selection criteria may include the factors listed in Section  
4 44.031(b).

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

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

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

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

1 shall, formally and in writing, end negotiations with that offeror  
2 and proceed to the next offeror in the order of the selection  
3 ranking until a contract is reached or all proposals are rejected.

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) A school district shall use the net proceeds from an  
27 action brought by the district for the defective design,

1 construction, renovation, or improvement of an instructional  
2 facility financed by bonds for which the district receives state  
3 assistance under this subchapter to repair the defective design,  
4 construction, renovation, or improvement of the instructional  
5 facility on which the action is brought or to replace the facility.  
6 Section 46.008 applies to the repair.

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

14 SECTION 2.06. Section 2155.502(c), Government Code, is  
15 amended to read as follows:

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

19 (1) are available from only one vendor;

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

22 (3) are commodity items as defined by Section  
23 2157.068(a); or

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

27 SECTION 2.07. Section 2166.2525, Government Code, is



1 amended to read as follows:

2           Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The  
3 ~~[commission shall adopt rules that determine the circumstances for~~  
4 ~~use of each]~~ method of contracting allowed under this subchapter  
5 for design and construction services is any method provided by  
6 Chapter 2267. ~~[In developing the rules, the commission shall~~  
7 ~~solicit advice and comment from design and construction~~  
8 ~~professionals regarding the criteria the commission will use in~~  
9 ~~determining which contracting method is best suited for a project.]~~

10           SECTION 2.08. Subtitle F, Title 10, Government Code, is  
11 amended by adding Chapter 2267 to read as follows:

12           CHAPTER 2267. CONTRACTING AND DELIVERY PROCEDURES FOR

13                           CONSTRUCTION PROJECTS

14                                   SUBCHAPTER A. GENERAL PROVISIONS

15           Sec. 2267.001. DEFINITIONS. In this chapter:

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

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

20                   (3) "Facility" means, unless otherwise specifically  
21 provided, an improvement to real property.

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

27                   (5) "General contractor" means a sole proprietorship,

1 partnership, corporation, or other legal entity that assumes the  
2 risk for constructing, rehabilitating, altering, or repairing all  
3 or part of a facility at the contracted price.

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

7 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
8 ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public  
9 work contract made by a governmental entity authorized by state law  
10 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, or to procurement of  
19 construction services pursuant to Section 49.273, Water Code, that  
20 applies to a river authority or to a conservation and reclamation  
21 district created under Section 59, Article XVI, Texas Constitution,  
22 unless the governing body of the river authority or conservation  
23 and reclamation district elects to permit this chapter to supersede  
24 the law, rule, or regulation.

25       (e) This chapter does not prevail over a conflicting  
26 provision in a regulation that prescribes procurement procedures  
27 for construction services that is adopted by the governing board of

1 a river authority or of a conservation and reclamation district  
2 created pursuant to Section 59, Article XVI, Texas Constitution,  
3 that owns electric generation capacity in excess of 2,500  
4 megawatts, except with respect to Subchapter H.

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

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

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

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

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

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

18 (2) a university system.

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

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

27 Sec. 2267.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES.

1 This chapter does not apply to a regional mobility authority under  
2 Chapter 370, Transportation Code.

3 Sec. 2267.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This  
4 chapter does not apply to a project of a county under Chapter 284,  
5 Transportation Code, unless the county adopts an order electing to  
6 be governed by this chapter for a project to be developed by the  
7 county under Chapter 284.

8 Sec. 2267.010. EXEMPTION: COORDINATED COUNTY  
9 TRANSPORTATION AUTHORITY. This chapter does not apply to a  
10 coordinated county transportation authority under Chapter 460,  
11 Transportation Code.

12 [Sections 2267.011-2267.050 reserved for expansion]

13 SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

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

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

24 (c) For a contract entered into by a municipality, river  
25 authority, conservation and reclamation district created pursuant  
26 to Section 59, Article XVI, Texas Constitution, and located in a  
27 county with a population of more than 250,000, or defense base

1 development authority under any of the methods provided by this  
2 chapter, the municipality, river authority, conservation and  
3 reclamation district created pursuant to Section 59, Article XVI,  
4 Texas Constitution, and located in a county with a population of  
5 more than 250,000, or defense base development authority shall  
6 publish notice of the time and place the bids or proposals, or the  
7 responses to a request for qualifications, will be received and  
8 opened. The notice must be published in a newspaper of general  
9 circulation in the county in which the defense base development  
10 authority's or municipality's central administrative office is  
11 located or the county in which the greatest amount of the river  
12 authority's or such conservation and reclamation district's  
13 territory is located once each week for at least two weeks before  
14 the deadline for receiving bids, proposals, or responses. If there  
15 is not a newspaper of general circulation in that county, the notice  
16 shall be published in a newspaper of general circulation in the  
17 county nearest the county seat of the county in which the defense  
18 base development authority's or municipality's central  
19 administrative office is located or the county in which the  
20 greatest amount of the river authority's or such conservation and  
21 reclamation district's territory is located. In a two-step  
22 procurement process, the time and place the second step bids,  
23 proposals, or responses will be received are not required to be  
24 published separately.

25 (d) For a contract entered into by a county under any of the  
26 methods provided by this chapter, the county shall publish notice  
27 of the time and place the bids or proposals, or the responses to a

1 request for qualifications, will be received and opened. The  
2 notice must be published in a newspaper of general circulation in  
3 the county once each week for at least two weeks before the deadline  
4 for receiving bids, proposals, or responses. If there is not a  
5 newspaper of general circulation in the county, the notice shall  
6 be:

- 7           (1) posted at the courthouse door of the county; and  
8           (2) published in a newspaper of general circulation in  
9 the nearest county.

10           Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing  
11 body of a governmental entity may delegate its authority under this  
12 chapter regarding an action authorized or required by this chapter  
13 to a designated representative, committee, or other person.

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

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

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

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

- 27           (1) may not consider whether a person is a member of or

1 has another relationship with any organization; and

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

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

9 (1) the price;

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

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

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

15 (5) the offeror's safety record;

16 (6) the offeror's proposed personnel;

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

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

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

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

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



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

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

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

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

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

18 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An  
19 architect or engineer required to be selected or designated under  
20 this chapter has full responsibility for complying with Chapter  
21 1051 or 1001, Occupations Code, as applicable.

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

27 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.

1 (a) Independently of the contractor, construction  
2 manager-at-risk, or design-build firm, the governmental entity  
3 shall provide or contract for the construction materials  
4 engineering, testing, and inspection services and the verification  
5 testing services necessary for acceptance of the facility by the  
6 governmental entity.

7 (b) The governmental entity shall select the services for  
8 which it contracts under this section in accordance with Section  
9 2254.004.

10 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS  
11 REQUIRED. A person who submits a bid, proposal, or qualification to  
12 a governmental entity shall seal it before delivery.

13 [Sections 2267.060-2267.100 reserved for expansion]

14 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

15 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE  
16 BIDDING. (a) In this chapter, "competitive bidding" is a  
17 procurement method by which a governmental entity contracts with a  
18 contractor for the construction, alteration, rehabilitation, or  
19 repair of a facility by awarding the contract to the lowest  
20 responsible bidder.

21 (b) Except as otherwise provided by this chapter or other  
22 law, a governmental entity may contract for the construction,  
23 alteration, rehabilitation, or repair of a facility only after the  
24 entity advertises for bids for the contract in a manner prescribed  
25 by law, receives competitive bids, and awards the contract to the  
26 lowest responsible bidder.

27 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The

1 governmental entity shall select or designate an architect or  
2 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
3 as applicable, to prepare the construction documents required for a  
4 project to be awarded by competitive bidding.

5 Sec. 2267.103. PREPARATION OF REQUEST. The governmental  
6 entity shall prepare a request for competitive bids that includes  
7 construction documents, estimated budget, project scope, estimated  
8 project completion date, and other information that a contractor  
9 may require to submit a bid.

10 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental  
11 entity shall receive, publicly open, and read aloud the names of the  
12 offerors and their bids.

13 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the  
14 10th business day after the date the contract is awarded, the  
15 governmental entity shall document the basis of its selection and  
16 shall make the evaluations public.

17 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
18 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
19 specifically provided by this section, Subchapter B, Chapter 271,  
20 Local Government Code, does not apply to a competitive bidding  
21 process conducted under this chapter. Sections 271.026,  
22 271.027(a), and 271.0275, Local Government Code, apply to a  
23 competitive bidding process conducted under this chapter by a  
24 governmental entity as defined by Section 271.021, Local Government  
25 Code.

26 [Sections 2267.107-2267.150 reserved for expansion]

1           SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

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

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

11          Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The  
12 governmental entity shall select or designate an architect or  
13 engineer to prepare construction documents for the project.

14          Sec. 2267.153. PREPARATION OF REQUEST. The governmental  
15 entity shall prepare a request for competitive sealed proposals  
16 that includes construction documents, selection criteria and the  
17 weighted value for each criterion, estimated budget, project scope,  
18 estimated project completion date, and other information that a  
19 contractor may require to respond to the request.

20          Sec. 2267.154. EVALUATION OF OFFERORS. (a) The  
21 governmental entity shall receive, publicly open, and read aloud  
22 the names of the offerors and any monetary proposals made by the  
23 offerors.

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

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

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

7           (2) its ranking evaluation.

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

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

19       [Sections 2267.156-2267.200 reserved for expansion]

20       SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

21       Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
22 MANAGER-AGENT. (a) In this chapter, the "construction  
23 manager-agent method" is a delivery method by which a governmental  
24 entity contracts with a construction manager-agent to provide  
25 consultation or administrative services during the design and  
26 construction phase and to manage multiple contracts with various  
27 construction prime contractors.

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

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

11       Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION  
12 MANAGER-AGENT. The contract between the governmental entity and  
13 the construction manager-agent may require the construction  
14 manager-agent to provide:

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

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

- 22               (1) self-perform any aspect of the construction,  
23 rehabilitation, alteration, or repair of the facility;  
24               (2) be a party to a construction subcontract for the  
25 construction, rehabilitation, alteration, or repair of the  
26 facility; or  
27               (3) provide or be required to provide performance and

1 payment bonds for the construction, rehabilitation, alteration, or  
2 repair of the facility.

3 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION  
4 MANAGER-AGENT. A construction manager-agent represents the  
5 governmental entity in a fiduciary capacity.

6 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or  
7 before the selection of a construction manager-agent, the  
8 governmental entity shall select or designate an architect or  
9 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
10 as applicable, to prepare the construction documents for the  
11 project.

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

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

27 Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental

1 entity using the construction manager-agent method shall procure,  
2 in accordance with applicable law and in any manner authorized by  
3 this chapter, a general contractor or trade contractors who will  
4 serve as the prime contractor for their specific portion of the work  
5 and provide performance and payment bonds to the governmental  
6 entity in accordance with applicable laws.

7 Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
8 governmental entity shall select a construction manager-agent on  
9 the basis of demonstrated competence and qualifications in the same  
10 manner that an architect or engineer is selected under Section  
11 2254.004.

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

16 [Sections 2267.209-2267.250 reserved for expansion]

17 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

18 Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
19 MANAGER-AT-RISK. (a) In this chapter, the "construction  
20 manager-at-risk method" is a delivery method by which a  
21 governmental entity contracts with an architect or engineer for  
22 design and construction phase services and contracts separately  
23 with a construction manager-at-risk to serve as the general  
24 contractor and to provide consultation during the design and  
25 construction, rehabilitation, alteration, or repair of a facility.

26 (b) A construction manager-at-risk is a sole  
27 proprietorship, partnership, corporation, or other legal entity



1 that assumes the risk for construction, rehabilitation,  
2 alteration, or repair of a facility at the contracted price as a  
3 general contractor and provides consultation to the governmental  
4 entity regarding construction during and after the design of the  
5 facility. The contracted price may be a guaranteed maximum price.

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

10 Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or  
11 before the selection of a construction manager-at-risk, the  
12 governmental entity shall select or designate an architect or  
13 engineer to prepare the construction documents for the project.

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

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

27 (b) The governmental entity shall prepare a single request

1 for proposals, in the case of a one-step process, and an initial  
2 request for qualifications, in the case of a two-step process, that  
3 includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27       (1) the construction manager-at-risk submits its bid

1 or proposal for those portions of the work in the same manner as all  
2 other trade contractors or subcontractors; and

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

6 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The  
7 construction manager-at-risk shall review all trade contractor or  
8 subcontractor bids or proposals in a manner that does not disclose  
9 the contents of the bid or proposal during the selection process to  
10 a person not employed by the construction manager-at-risk,  
11 architect, engineer, or governmental entity. All bids or proposals  
12 shall be made available to the governmental entity on request and to  
13 the public after the later of the award of the contract or the  
14 seventh day after the date of final selection of bids or proposals.

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

24 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected  
25 trade contractor or subcontractor defaults in the performance of  
26 its work or fails to execute a subcontract after being selected in  
27 accordance with this subchapter, the construction manager-at-risk

1 may itself fulfill, without advertising, the contract requirements  
2 or select a replacement trade contractor or subcontractor to  
3 fulfill the contract requirements.

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

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

17 [Sections 2267.259-2267.300 reserved for expansion]

18 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

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

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

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

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

8           Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
9 governmental entity may use the design-build method for the  
10 construction, rehabilitation, alteration, or repair of a building  
11 or associated structure only as provided by this subchapter. In  
12 using that method, the governmental entity shall enter into a  
13 single contract with a design-build firm for the design and  
14 construction of the building or associated structure.

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

19           Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT  
20 REPRESENTATIVE. The governmental entity shall select or designate  
21 an architect or engineer independent of the design-build firm to  
22 act as the governmental entity's representative for the duration of  
23 the project.

24           Sec. 2267.306. PREPARATION OF REQUEST. (a) The  
25 governmental entity shall prepare a request for qualifications that  
26 includes general information on the project site, project scope,  
27 budget, special systems, selection criteria and the weighted value

1 for each criterion, and other information that may assist potential  
2 design-build firms in submitting proposals for the project.

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

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

26 (d) The governmental entity may not require offerors to  
27 submit architectural or engineering designs as part of a proposal

1 or a response to a request for qualifications.

2 Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For  
3 each design-build firm that responded to the request for  
4 qualifications, the governmental entity shall evaluate the firm's  
5 experience, technical competence, and capability to perform, the  
6 past performance of the firm and members of the firm, and other  
7 appropriate factors submitted by the firm in response to the  
8 request for qualifications, except that cost-related or  
9 price-related evaluation factors are not permitted.

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

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

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

22 (e) The governmental entity may request additional  
23 information regarding demonstrated competence and qualifications,  
24 considerations of the safety and long-term durability of the  
25 project, the feasibility of implementing the project as proposed,  
26 the ability of the offeror to meet schedules, or costing  
27 methodology. As used in this subsection, "costing methodology"



1 means an offeror's policies on subcontractor markup, definition of  
2 general conditions, range of cost for general conditions, policies  
3 on retainage, policies on contingencies, discount for prompt  
4 payment, and expected staffing for administrative duties. The term  
5 does not include a guaranteed maximum price or bid for overall  
6 design or construction.

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

10 Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The  
11 governmental entity shall select the design-build firm that submits  
12 the proposal offering the best value for the governmental entity on  
13 the basis of the published selection criteria and on its ranking  
14 evaluations.

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

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

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

26 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After  
27 selection of the design-build firm, that firm's architects or

1 engineers shall submit all design elements for review and  
2 determination of scope compliance to the governmental entity or the  
3 governmental entity's architect or engineer before or concurrently  
4 with construction.

5 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The  
6 design-build firm shall supply a set of construction documents for  
7 the completed project to the governmental entity at the conclusion  
8 of construction. The documents must note any changes made during  
9 construction.

10 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
11 or performance bond is not required and may not provide coverage for  
12 the design portion of the design-build contract with the  
13 design-build firm under this subchapter.

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

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

26 [Sections 2267.312-2267.350 reserved for expansion]

1 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS

2 PROJECTS

3 Sec. 2267.351. DEFINITIONS. In this subchapter:

4 (1) "Civil works project" means:

5 (A) roads, streets, bridges, utilities, water  
6 supply projects, water plants, wastewater plants, water  
7 distribution and wastewater conveyance facilities, desalination  
8 projects, wharves, docks, airport runways and taxiways, storm  
9 drainage and flood control projects, or transit projects;

10 (B) types of projects or facilities related to  
11 those described by Paragraph (A) and associated with civil  
12 engineering construction; and

13 (C) buildings or structures that are incidental  
14 to projects or facilities that are described by Paragraphs (A) and  
15 (B) and that are primarily civil engineering construction projects.

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

20 (3) "Design criteria package" means a set of documents  
21 that:

22 (A) provides sufficient information to convey  
23 the intent, goals, criteria, and objectives of the civil works  
24 project; and

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

26 (i) assess the scope of work and the risk  
27 involved; and

1                   (ii) submit a proposal on the project.

2           Sec. 2267.352. APPLICABILITY. This subchapter applies to a  
3 governmental entity that:

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

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

8           Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:

9 DESIGN-BUILD. (a) A governmental entity may use the design-build  
10 method for the construction, rehabilitation, alteration, or repair  
11 of a civil works project. In using this method and in entering into  
12 a contract for the services of a design-build firm, the contracting  
13 governmental entity and the design-build firm shall follow the  
14 procedures provided by this subchapter.

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

19                   (1) if a metropolitan transit authority created under  
20 Chapter 451, Transportation Code, enters into a contract for a  
21 project involving a bus rapid transit system created under Chapter  
22 451, Transportation Code, the bus rapid transit system is a single  
23 integrated project; and

24                   (2) a water treatment plant, including a desalination  
25 plant, that includes treatment facilities, well fields, and  
26 pipelines is a single integrated project.

27                   (c) A governmental entity shall use the following criteria

1 as a minimum basis for determining the circumstances under which  
2 the design-build method is appropriate for a project:

3 (1) the extent to which the entity can adequately  
4 define the project requirements;

5 (2) the time constraints for the delivery of the  
6 project;

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

9 (4) the capability of the entity to manage and oversee  
10 the project, including the availability of experienced personnel or  
11 outside consultants who are familiar with the design-build method  
12 of project delivery.

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

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

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

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

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

27 (B) enter into contracts for additional civil

1 works projects in any fiscal year, but not more than the number of  
2 civil works projects prescribed by the limit in Subdivision (1) for  
3 the municipality, provided that:

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

8 (ii) the governing body of the municipality  
9 must approve the contracts.

10 (b) Before September 1, 2015, a governmental entity that has  
11 a population of 100,000 or more but less than 500,000 or is a board  
12 of trustees governed by Chapter 54, Transportation Code, may enter  
13 into contracts under this subchapter for not more than two projects  
14 in any fiscal year.

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

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

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

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

25 (B) enter into contracts for additional civil  
26 works projects in any fiscal year, but not more than the number of  
27 civil works projects prescribed by the limit in Subdivision (1) for

1 the municipality, provided that:

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

6 (ii) the governing body of the municipality  
7 must approve the contracts; and

8 (3) a governmental entity that has a population of  
9 100,000 or more but less than 500,000 or is a board of trustees  
10 governed by Chapter 54, Transportation Code, may enter into  
11 contracts under this subchapter for not more than four projects in  
12 any fiscal year.

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

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

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

27 Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.

1 (a) The governmental entity shall provide or contract for,  
2 independently of the design-build firm, the following services as  
3 necessary for the acceptance of the civil works project by the  
4 entity:

- 5           (1) inspection services;  
6           (2) construction materials engineering and testing;  
7 and  
8           (3) verification testing services.

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

12           Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The  
13 governmental entity shall prepare a request for qualifications that  
14 includes:

- 15           (1) information on the civil works project site;  
16           (2) project scope;  
17           (3) project budget;  
18           (4) projectschedule;  
19           (5) criteria for selection under Section 2267.359 and  
20 the weighting of the criteria; and  
21           (6) other information that may assist potential  
22 design-build firms in submitting proposals for the project.

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

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

- 27           (1) budget or cost estimates;



- 1           (2) information on the site;
- 2           (3) performance criteria;
- 3           (4) special material requirements;
- 4           (5) initial design calculations;
- 5           (6) known utilities;
- 6           (7) capacity requirements;
- 7           (8) quality assurance and quality control
- 8 requirements;
- 9           (9) the type, size, and location of structures; and
- 10           (10) notice of any ordinances, rules, or goals adopted
- 11 by the governmental entity relating to awarding contracts to
- 12 historically underutilized businesses.

13           Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The

14 governmental entity shall receive proposals and shall evaluate each

15 offeror's experience, technical competence, and capability to

16 perform, the past performance of the offeror's team and members of

17 the team, and other appropriate factors submitted by the team or

18 firm in response to the request for qualifications, except that

19 cost-related or price-related evaluation factors are not permitted

20 at this stage.

21           (b) Each offeror must:

22                   (1) select or designate each engineer that is a member

23 of its team based on demonstrated competence and qualifications, in

24 the manner provided by Section 2254.004; and

25                   (2) certify to the governmental entity that each

26 selection or designation was based on demonstrated competence and

27 qualifications, in the manner provided by Section 2254.004.

1       (c) The governmental entity shall qualify offerors to  
2 submit additional information and, if the entity chooses, to  
3 interview for final selection.

4       Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The  
5 governmental entity shall select a design-build firm using a  
6 combination of technical and cost proposals as provided by Section  
7 2267.361.

8       Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND  
9 COST PROPOSALS. (a) A governmental entity shall request proposals  
10 from design-build firms identified under Section 2267.359(c). A  
11 firm must submit a proposal not later than the 180th day after the  
12 date the governmental entity makes a public request for the  
13 proposals from the selected firms. The request for proposals must  
14 include:

- 15               (1) a design criteria package;  
16               (2) if the project site is identified, a geotechnical  
17 baseline report or other information that provides the design-build  
18 firm minimum geotechnical design parameters to submit a proposal;  
19               (3) detailed instructions for preparing the technical  
20 proposal and the items to be included, including a description of  
21 the form and level of completeness of drawings expected; and  
22               (4) the relative weighting of the technical and price  
23 proposals and the formula by which the proposals will be evaluated  
24 and ranked.

25       (b) The technical proposal is a component of the proposal  
26 under this section.

27       (c) Each proposal must include a sealed technical proposal

1 and a separate sealed cost proposal.

2 (d) The technical proposal must address:

3 (1) project approach;

4 (2) anticipated problems;

5 (3) proposed solutions to anticipated problems;

6 (4) ability to meet schedules;

7 (5) conceptual engineering design; and

8 (6) other information requested by the governmental

9 entity.

10 (e) The governmental entity shall first open, evaluate, and  
11 score each responsive technical proposal submitted on the basis of  
12 the criteria described in the request for proposals and assign  
13 points on the basis of the weighting specified in the request for  
14 proposals. The governmental entity may reject as nonresponsive any  
15 firm that makes a significant change to the composition of its firm  
16 as initially submitted. The governmental entity shall subsequently  
17 open, evaluate, and score the cost proposals from firms that  
18 submitted a responsive technical proposal and assign points on the  
19 basis of the weighting specified in the request for proposals. The  
20 governmental entity shall select the design-build firm in  
21 accordance with the formula provided in the request for proposals.

22 Sec. 2267.362. NEGOTIATION. After selecting the  
23 highest-ranked design-build firm under Section 2267.361, the  
24 governmental entity shall first attempt to negotiate a contract  
25 with the selected firm. If the governmental entity is unable to  
26 negotiate a satisfactory contract with the selected firm, the  
27 entity shall, formally and in writing, end all negotiations with

1 that firm and proceed to negotiate with the next firm in the order  
2 of the selection ranking until a contract is reached or  
3 negotiations with all ranked firms end.

4 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental  
5 entity shall assume:

6 (1) all risks and costs associated with:

7 (A) scope changes and modifications, as  
8 requested by the governmental entity;

9 (B) unknown or differing site conditions unless  
10 otherwise provided by the governmental entity in the request for  
11 proposals and final contract;

12 (C) regulatory permitting, if the governmental  
13 entity is responsible for those risks and costs by law or contract;  
14 and

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

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

21 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

22 (a) Unless a stipend is paid under Subsection (c), the  
23 design-build firm retains all rights to the work product submitted  
24 in a proposal. The governmental entity may not release or disclose  
25 to any person, including the successful offeror, the work product  
26 contained in an unsuccessful proposal. The governmental entity  
27 shall return all copies of the proposal and other information

1 submitted to an unsuccessful offeror. The governmental entity or  
2 its agents may not make use of any unique or nonordinary design  
3 element, technique, method, or process contained in the  
4 unsuccessful proposal that was not also contained in the successful  
5 proposal at the time of the original submittal, unless the entity  
6 acquires a license from the unsuccessful offeror.

7 (b) A violation of this section voids the contract for the  
8 project entered into by the governmental entity. The governmental  
9 entity is liable to any unsuccessful offeror, or any member of the  
10 design-build team or its assignee, for one-half of the cost savings  
11 associated with the unauthorized use of the work product of the  
12 unsuccessful offeror. Any interested party may bring an action for  
13 an injunction, declaratory relief, or damages for a violation of  
14 this section. A party who prevails in an action under this  
15 subsection is entitled to reasonable attorney's fees as approved by  
16 the court.

17 (c) The governmental entity may offer an unsuccessful  
18 design-build firm that submits a response to the entity's request  
19 for additional information under Section 2267.361 a stipend for  
20 preliminary engineering costs associated with the development of  
21 the proposal. The stipend must be one-half of one percent of the  
22 contract amount and must be specified in the initial request for  
23 proposals. If the offer is accepted and paid, the governmental  
24 entity may make use of any work product contained in the proposal,  
25 including the techniques, methods, processes, and information  
26 contained in the proposal. The use by the governmental entity of  
27 any design element contained in an unsuccessful proposal is at the

1 sole risk and discretion of the entity and does not confer liability  
2 on the recipient of the stipend under this subsection.

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

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

13 (b) An appropriately licensed design professional shall  
14 sign and seal construction documents before the documents are  
15 released for construction.

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

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

24 (b) If a fixed contract amount or guaranteed maximum price  
25 has not been determined at the time a design-build contract is  
26 awarded, the penal sums of the performance and payment bonds  
27 delivered to the governmental entity must each be in an amount equal

1 to the construction budget, if commercially available and  
2 practical, as specified in the design criteria package.

3 (c) If the governmental entity awards a design-build  
4 contract under Section 2267.362, the design-build firm shall  
5 deliver the bonds not later than the 10th day after the date the  
6 design-build firm executes the contract unless the design-build  
7 firm furnishes a bid bond or other financial security acceptable to  
8 the governmental entity to ensure that the design-build firm will  
9 furnish the required performance and payment bonds before the  
10 commencement of construction.

11 [Sections 2267.368-2267.400 reserved for expansion]

12 SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

13 Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,  
14 "job order contracting" is a procurement method used for  
15 maintenance, repair, alteration, renovation, remediation, or minor  
16 construction of a facility when the work is of a recurring nature  
17 but the delivery times, type, and quantities of work required are  
18 indefinite.

19 Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
20 EXCEPTIONS. This subchapter applies only to a facility that is a  
21 building, the design and construction of which is governed by  
22 accepted building codes, or a structure or land, whether improved  
23 or unimproved, that is associated with a building. This subchapter  
24 does not apply to:

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

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

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

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

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

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

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

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

17 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental  
18 entity may establish contractual unit prices for a job order  
19 contract by:

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

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

26 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
27 governmental entity may use the competitive sealed proposal method



1 under Subchapter D for job order contracts.

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

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

7 Sec. 2267.406. AWARDING OF JOB ORDER CONTRACTS. The  
8 governmental entity may award job order contracts to one or more job  
9 order contractors in connection with each solicitation of  
10 proposals.

11 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order  
12 contract may be used to accomplish work only for the governmental  
13 entity that awards the contract unless:

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

16 (2) the governmental entity enters into an interlocal  
17 agreement that provides otherwise.

18 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order  
19 contract or an order issued under the contract requires  
20 architectural or engineering services that constitute the practice  
21 of architecture within the meaning of Chapter 1051, Occupations  
22 Code, or the practice of engineering within the meaning of Chapter  
23 1001, Occupations Code, the governmental entity shall select or  
24 designate an architect or engineer to prepare the construction  
25 documents for the project.

26 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a  
27 job order contract may not exceed two years. The governmental

1 entity may renew the contract annually for not more than three  
2 additional years.

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

6 (b) The order may be:

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

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

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

15 [Sections 2267.412-2267.450 reserved for expansion]

16 SUBCHAPTER J. ENFORCEMENT

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

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

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

1 SECTION 2.09. Section 252.048, Local Government Code, is  
2 amended by adding Subsection (c-1) to read as follows:

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

9 SECTION 2.10. Section 271.054, Local Government Code, is  
10 amended to read as follows:

11 Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before  
12 the governing body of an issuer may enter into a contract requiring  
13 an expenditure by or imposing an obligation or liability on the  
14 issuer, or on a subdivision of the issuer if the issuer is a county,  
15 of more than \$50,000, the governing body must:

16 (1) submit the proposed contract to competitive  
17 procurement; or

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

20 SECTION 2.11. Section 271.060, Local Government Code, is  
21 amended by amending Subsection (b) and adding Subsection (c) to  
22 read as follows:

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

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

9        SECTION 2.12. Subchapter B, Chapter 223, Transportation  
10 Code, is amended by adding Section 223.049 to read as follows:

11        Sec. 223.049. CONTRACT WITH LAND OWNER FOR IMPROVING ACCESS  
12 TO LAND. (a) The department may, without complying with the  
13 competitive bidding procedures of Subchapter A, contract with an  
14 owner of land, including a subdivision, adjacent to a highway that  
15 is part of the state highway system to construct an improvement on  
16 the highway right-of-way that is directly related to improving  
17 access to or from the owner's land.

18        (b) An owner that enters into a contract with the department  
19 under this section must:

20                (1) comply with applicable department design and  
21 construction standards;

22                (2) comply with all laws, rules, regulations, and  
23 ordinances, including environmental requirements, that would be  
24 applicable if the department were performing the work;

25                (3) execute a performance and payment bond in  
26 accordance with Chapter 2253, Government Code; and

27                (4) make available for inspection by the department

1 all books and other records in the possession of the owner that are  
2 related to the project.

3 (c) State and federal funds may not be used for the design,  
4 development, financing, or construction of a highway improvement  
5 under a contract described by this section.

6 ARTICLE 3. ADDITIONAL EXEMPTIONS

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

9 (j) Chapter 2267, Government Code, does not apply to this  
10 section.

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

13 (k) Chapter 2267, Government Code, does not apply to this  
14 section.

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

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

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

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

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

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

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



1 competitive sealed proposals;

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

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

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

8 (d) This chapter does not apply to an expenditure described  
9 by Section 252.021(a) if the governing body of a municipality  
10 determines that a method described by Chapter 2267, Government Code  
11 [~~Subchapter H, Chapter 271~~], provides a better value for the  
12 municipality with respect to that expenditure than the procedures  
13 described in this chapter and the municipality adopts and uses a  
14 method described in that subchapter with respect to that  
15 expenditure.

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

18 (d-1) A contract for construction of a project described by  
19 Subsection (d) that requires an expenditure of \$1.5 million or less  
20 may be awarded using the competitive sealed proposal procedure  
21 prescribed by Subchapter D, Chapter 2267, Government Code [~~Section~~  
22 ~~271.116~~].

23 (e) If the competitive sealed bidding requirement applies  
24 to the contract for construction of a facility, as that term is  
25 defined by Section 2267.001, Government Code [~~Section 271.111~~], the  
26 contract must be awarded to the lowest responsible bidder or  
27 awarded under the method described by Chapter 2267, Government Code

1 ~~[Subchapter H, Chapter 271]~~.

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

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

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

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

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

13 (b-1) A county that complies with a method described by  
14 Chapter 2267, Government Code ~~[Subchapter H, Chapter 271]~~, as  
15 provided by Subsection (a)(3), to enter into a contract for which  
16 payment will be made through anticipation notes authorized by  
17 Chapter 1431, Government Code, may not issue anticipation notes for  
18 the payment of that contract in an amount that exceeds the lesser  
19 of:

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

22 (2) \$10 million.

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

25 Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the  
26 construction of public works, the district has all of the powers and  
27 duties conferred on a municipality under Chapter 2267, ~~[Subchapter~~



1 ~~H, Chapter 271, Local~~] Government Code, with respect to the  
2 construction of a facility. To the extent of any conflict, this  
3 section prevails over any other law relating to the construction of  
4 public works engaged in by the district.

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

7 (b) The board may act as a governmental entity under Chapter  
8 2267, [~~Subchapter H, Chapter 271, Local~~] Government Code, for  
9 purposes of using the procurement procedures authorized by that  
10 chapter. For purposes of this subsection, notice under Section  
11 2267.052(c), [~~271.112(d), Local~~] Government Code, must be provided  
12 by the district in the same manner as provided for a conservation  
13 and reclamation district created under Section 59, Article XVI,  
14 Texas Constitution.

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

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

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

26 (b) Procedures adopted under Subsection (a) may not  
27 materially conflict with the design-build procedures provided by

1 Subchapter H, Chapter 2267, [Subchapter J, Chapter 271, Local]  
2 Government Code.

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

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

7 (1) the aggregate amount involved in the contract is  
8 \$25,000 or less;

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

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

14 (4) the contract is to respond to an emergency for  
15 which the public exigency does not permit the delay incident to the  
16 competitive process;

17 (5) the contract is for personal or professional  
18 services or services for which competitive bidding is precluded by  
19 law;

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

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

26 (B) a bond, note, debt sale or purchase, trustee,  
27 paying agent, remarketing agent, indexing agent, or similar

1 agreement;

2 (C) an agreement with a securities dealer,  
3 broker, or underwriter; and

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

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

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

11 (9) the contract is for the purchase of personal  
12 property sold:

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

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

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

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

21 (11) the contract is for the purchase of electricity;  
22 or

23 (12) the contract is one awarded for alternate project  
24 delivery under Subchapters E, F, and G, Chapter 2267, [Sections  
25 271.117-271.119, Local] Government Code.

26 (d) For the purposes of entering into a contract authorized  
27 by Subsection (c)(12), an authority is considered a "governmental

1 entity" as described [~~defined~~] by Section 2267.002, [~~271.111~~,  
2 ~~Local~~] Government Code.

3 ARTICLE 5. REPEALER

4 SECTION 5.01. The following are repealed:

5 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,  
6 44.039, 44.040, and 44.041, Education Code;

7 (2) Sections 2166.2511, 2166.2526, 2166.2531,  
8 2166.2532, 2166.2533, and 2166.2535, Government Code;

9 (3) Subchapters H and J, Chapter 271, Local Government  
10 Code; and

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

12 ARTICLE 6. TRANSITION; EFFECTIVE DATE

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

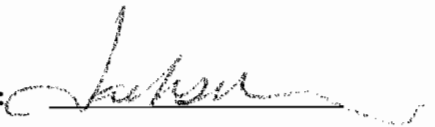
18 (b) A contract or construction project for which a  
19 governmental entity first advertises or otherwise requests bids,  
20 proposals, offers, or qualifications, or makes a similar  
21 solicitation, before the effective date of this Act is governed by  
22 the law as it existed immediately before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


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

# ADOPTED

FLOOR AMENDMENT NO. 1

MAY 24 2011

BY: 

  
Secretary of the Senate

1 Amend H.B. 628 (senate committee report) as follows:

2 In SECTION 2.02 of the bill, in amended section 44.031 (a)  
3 (4) (page 1, lines 54-55) strike "for services other than  
4 construction services."

5  
6 In SECTION 2.08 of the bill, in added section 2267.105  
7 (page 8, line 26), strike "10th business" and substitute  
8 "seventh".

**ADOPTED**

FLOOR AMENDMENT NO. 2

MAY 24, 2011

*Atay Dew*  
Secretary of the Senate

1 Amend H.B. 628 by adding the following appropriately  
2 numbered SECTIONS to the bill and renumbering the remaining  
3 SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_\_. Section 791.011, Government Code, is  
5 amended by adding Subsection (h-1) to read as follows:

6 (h-1) In this subsection, "roofing materials or services"  
7 includes materials or services for repair or replacement of a  
8 roof. An interlocal contract between a governmental entity and a  
9 purchasing cooperative may not be used to purchase roofing  
10 materials or services from a person who provided consulting  
11 services to the cooperative on the contract, including providing  
12 specifications for bids on the contract. This prohibition also  
13 applies to:

14 (1) a person that is an agent, subsidiary, or parent  
15 company of the person who consulted with the cooperative; or

16 (2) a person related in the second degree of  
17 consanguinity or affinity to a person who consulted with the  
18 cooperative.

19 SECTION \_\_\_\_\_. The change in law made by this Act to  
20 Section 791.011, Government Code, applies only to an interlocal  
21 contract or an amendment to, supplement to, or waiver of a  
22 provision of a contract made on or after the effective date of  
23 this Act. An interlocal contract or an amendment to, supplement  
24 to, or waiver of a provision of a contract made before the  
25 effective date of this Act is governed by the law in effect when  
26 the contract or amendment, supplement, or waiver was made, and  
27 the former law is continued for that purpose.

*Stephen Eggen*  
**ADOPTED**

MAY 24 2011

*Antony Lewis*  
Secretary of the Senate

1 Amend H.B. No. 628 (senate committee printing) in proposed  
2 Sec. 2267.408, Government Code, as follows:

3 (1) on page 20, line 10, after "USE OF ARCHITECT OR  
4 ENGINEER." and "If a job order" insert "(a)".

5 (2) on page 20, between lines 17 and 18, and new  
6 subsection (b) to read as follows:

7 (b) Subsection (a) does not apply to a job order contract  
8 or an order issued under the contract for industrialized  
9 housing, industrialized buildings or relocatable educational  
10 facilities subject to and approved under Chapter 1202,  
11 Occupations Code, if the contractor employs the services of an  
12 architect or engineer of record who approves the documents for  
13 the project.

# ADOPTED

MAY 24 2011

*Atay Spaw*  
Secretary of the Senate

*Deliger*

*FLOOR*  
COMMITTEE AMENDMENT NO. 4

BY: \_\_\_\_\_

Amend H.B. 628 (engrossed version) as follows:

On page 52, between lines 8 and 9, insert a new SECTION 2.12 as follows and renumber SECTIONS of the bill appropriately:

SECTION 2.12. Section 271.9051(b), Local Government Code, is amended to read as follows:

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount [an expenditure] of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.



**ADOPTED**

5

FLOOR AMENDMENT NO. \_\_\_\_\_

MAY 24 2011

BY:

Caron

Atay Spaul  
Secretary of the Senate

Amend H.B. No. 628 (senate committee report) as follows:

(1) Add the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . INDUSTRIALIZED HOUSING

SECTION \_\_\_\_ .01. Section 1202.155, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) and (b), the commission by rule may adopt another method of indicating that the designs, plans, and specifications of industrialized housing and buildings satisfy the requirements of Subsection (a)(1) and are approved in accordance with Subsection (a)(2) if the study conducted under Section 1202.1551 recommends the method.

SECTION \_\_\_\_ .02. Subchapter D, Chapter 1202, Occupations Code, is amended by adding Section 1202.1551 to read as follows:

Sec. 1202.1551. STUDY CONCERNING APPROVAL OF DESIGNS, PLANS, AND SPECIFICATIONS. (a) The council shall conduct a study to:

(1) evaluate the current method of indicating approval of designs, plans, and specifications of industrialized housing and buildings under Sections 1202.155(a) and (b); and

(2) identify and evaluate methods of indicating approval of designs, plans, and specifications of industrialized housing and buildings that are alternatives to the method described by Subdivision (1).

(b) The study may recommend for adoption by the commission an alternative method identified under Subsection (a)(2) if the council determines that the method would:

(1) ensure that the designs, plans, and

1 specifications of industrialized housing and buildings:

2 (A) meet or exceed the code standards and  
3 requirements under council interpretations and instructions; and

4 (B) are approved by the department or an  
5 approved design review agency; and

6 (2) be more efficient and cost-effective for the  
7 department or approved design review agencies.

8 (c) This section expires September 1, 2014.

9 SECTION \_\_.03. Subsection (a), Section 1202.252,  
10 Occupations Code, is amended to read as follows:

11 (a) A municipality that regulates the on-site construction  
12 or installation of industrialized housing and buildings may:

13 (1) require and review, for compliance with mandatory  
14 building codes, a complete set of designs, plans, and  
15 specifications approved by the council [~~bearing the council's~~  
16 ~~stamp of approval~~] for each installation of industrialized  
17 housing or buildings in the municipality;

18 (2) require that all applicable local permits and  
19 licenses be obtained before construction begins on a building  
20 site;

21 (3) require, in accordance with commission rules,  
22 that all modules or modular components bear an approved decal or  
23 insignia indicating inspection by the department; and

24 (4) establish procedures for the inspection of:

25 (A) the erection and installation of  
26 industrialized housing or buildings to be located in the  
27 municipality, to ensure compliance with mandatory building codes  
28 and commission rules; and

29 (B) all foundation and other on-site  
30 construction, to ensure compliance with approved designs, plans,  
31 and specifications.

1           (2) Add the following appropriately numbered SECTION to  
2 ARTICLE 6 of the bill and renumbering subsequent SECTIONS of the  
3 ARTICLE accordingly:

4           SECTION 6.\_\_\_\_. Not later than September 1, 2012, the Texas  
5 Industrialized Building Code Council shall complete the study  
6 required by Section 1202.1551, Occupations Code, as added by  
7 this Act.

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

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 24, 2011**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

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

**IN RE: HB628** by Callegari (Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.), **As Passed 2nd House**

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

The bill would amend statutes and repeal portions of statutes to revise existing rules and establish additional rules and procedures for a governmental entity regarding procedures related to a public work contract, including: reverse auctions; construction management; multiple award contracts; design and construction contracting and delivery; number of eligible public works projects in a given year; engineering oversight; and job order contracting for ongoing maintenance or minor construction projects. The provisions of this bill apply to public works projects first advertised by governmental entities on, or after, September 1, 2011.

The bill exempts certain governmental entities from the new provisions, such as the Texas Department of Transportation (TXDOT), higher education institutions and systems (other than public junior colleges), regional toll-way authorities and mobility authorities, county toll authorities, and coordinated county transportation authorities.

The bill would authorize TXDOT to contract with land owners adjacent to the state highway system for the construction of an improvement on highway right of way that is related to improving access to the land owner's property. The bill prohibits the use of state or federal funds for the construction of such an improvement.

The bill amends Occupations Code related to industrialized housing operations and requires the Texas Industrialized Building Code Council to conduct a study evaluating, and recommending improvements to, current methods of design approval.

State agencies indicated that no direct fiscal implication is anticipated from implementation of the bill; however, the Texas Facilities Commission reports that the bill's provisions could negatively impact the state's negotiating position on public works projects by disclosing the full range of competitive offers prior to negotiation and award.

**Local Government Impact**

Based on information gathered from local government entities, it is assumed that an entity would continue to choose the method of contracting that would provide the best value; therefore, no significant fiscal impact is anticipated.

**Source Agencies:** 303 Facilities Commission, 405 Department of Public Safety, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board, 802 Parks and Wildlife Department, 808 Historical Commission, 809 Preservation Board

**LBB Staff:** JOB, KY, KJG, JI, KM, KKR, JJ, PJK

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

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 17, 2011**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

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

**IN RE: HB628** by Callegari (Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.), **As Engrossed**

<b>No fiscal implication to the State is anticipated.</b>
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The bill would amend statutes and repeal portions of statutes to revise existing rules and establish additional rules and procedures for a governmental entity regarding procedures related to a public work contract, including: reverse auctions; construction management; multiple award contracts; design and construction contracting and delivery; number of eligible public works projects in a given year; engineering oversight; and job order contracting for ongoing maintenance or minor construction projects. The provisions of this bill apply to public works projects first advertised by governmental entities on, or after, September 1, 2011.

The bill exempts certain governmental entities from the new provisions, such as the Texas Department of Transportation (TXDOT), higher education institutions and systems (other than public junior colleges), regional toll-way authorities and mobility authorities, county toll authorities, and coordinated county transportation authorities.

The bill would authorize TXDOT to contract with land owners adjacent to the state highway system for the construction of an improvement on highway right of way that is related to improving access to the land owner's property. The bill prohibits the use of state or federal funds for the construction of such an improvement.

State agencies indicated that no direct fiscal implication is anticipated from implementation of the bill; however, the Texas Facilities Commission reports that the bill's provisions could negatively impact the state's negotiating position on public works projects by disclosing the full range of competitive offers prior to negotiation and award.

**Local Government Impact**

Based on information gathered from local government entities, it is assumed that an entity would continue to choose the method of contracting that would provide the best value; therefore, no significant fiscal impact is anticipated.

**Source Agencies:** 303 Facilities Commission, 405 Department of Public Safety, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board, 802 Parks and Wildlife Department, 808 Historical Commission, 809 Preservation Board

**LBB Staff:** JOB, KJG, JI, KY, KM, KKR, JJ, PJK

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 15, 2011**

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

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

**IN RE: HB628** by Callegari ( Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.), **Committee Report 1st House, Substituted**

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

The bill would amend statutes and repeal portions of statutes to revise existing rules and establish additional rules and procedures for a governmental entity regarding procedures related to a public work contract, including: reverse auctions; construction management; multiple award contracts; design and construction contracting and delivery; number of eligible public works projects in a given year; engineering oversight; and job order contracting for ongoing maintenance or minor construction projects. The provisions of this bill apply to public works projects first advertised by governmental entities on, or after, September 1, 2011.

The bill exempts certain governmental entities from the new provisions, such as the Texas Department of Transportation, higher education institutions and systems (other than public junior colleges), and regional toll-way authorities and mobility authorities.

State agencies indicated that no direct fiscal implication is anticipated from implementation of the bill; however, the Texas Facilities Commission reports that the bill's provisions could negatively impact the state's negotiating position on public works projects by disclosing the full range of competitive offers prior to negotiation and award.

**Local Government Impact**

Based on information gathered from local government entities, it is assumed that an entity would continue to choose the method of contracting that would provide the best value; therefore, no significant fiscal impact is anticipated.

**Source Agencies:** 303 Facilities Commission, 405 Department of Public Safety, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board, 802 Parks and Wildlife Department, 808 Historical Commission, 809 Preservation Board

**LBB Staff:** JOB, KM, JI, KY, KKR, JJ, PJK

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 2, 2011**

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

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

**IN RE: HB628** by Callegari (Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.), **As Introduced**

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

The bill would amend statutes and repeal portions of statutes to revise existing rules and establish additional rules and procedures for a governmental entity regarding procedures related to a public work contract, including: reverse auctions; construction management; multiple award contracts; design and construction contracting and delivery; number of eligible public works projects in a given year; engineering oversight; and job order contracting for ongoing maintenance or minor construction projects. The provisions of this bill apply to public works projects first advertised by governmental entities on, or after, September 1, 2011.

The bill exempts certain governmental entities from the new provisions, such as the Texas Department of Transportation, higher education institutions and systems (other than public junior colleges), and regional toll-way authorities.

State agencies indicated that no direct fiscal implication is anticipated from implementation of the bill; however, the Texas Facilities Commission reports that the bill's provisions could negatively impact the state's negotiating position on public works projects by disclosing the full range of competitive offers prior to negotiation and award.

**Local Government Impact**

Based on information gathered from local government entities, it is assumed that an entity would continue to choose the method of contracting that would provide the best value; therefore, no significant fiscal impact is anticipated.

**Source Agencies:** 303 Facilities Commission, 405 Department of Public Safety, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board, 802 Parks and Wildlife Department, 808 Historical Commission, 809 Preservation Board

**LBB Staff:** JOB, KM, JI, KY, KKR, JJ, PJK