

H.B. No. 2475

1 AN ACT

2 relating to the establishment of the center for alternative finance
3 and procurement within the Texas Facilities Commission and to
4 public and private partnerships; authorizing a fee.

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

6 SECTION 1. Subchapter C, Chapter 2152, Government Code, is
7 amended by adding Section 2152.110 to read as follows:

8 Sec. 2152.110. CENTER FOR ALTERNATIVE FINANCE AND
9 PROCUREMENT. The commission shall establish the center for
10 alternative finance and procurement to consult with governmental
11 entities regarding best practices for procurement and the financing
12 of qualifying projects and to assist governmental entities in the
13 receipt of proposals, negotiation of interim and comprehensive
14 agreements, and management of qualifying projects under Chapters
15 2267 and 2268.

16 SECTION 2. Section 2267.001, Government Code, is amended by
17 amending Subdivision (1-a) and adding Subdivision (1-b) to read as
18 follows:

19 (1-a) "Center" means the center for alternative
20 finance and procurement established under Section 2152.110 by the
21 Texas Facilities Commission.

22 (1-b) "Commission" means the Partnership Advisory
23 Commission established under Chapter 2268.

24 SECTION 3. Section 2267.051, Government Code, is amended to

1 read as follows:

2 Sec. 2267.051. APPROVAL REQUIRED [~~+~~ SUBMISSION OF PROPOSAL
3 ~~FOR QUALIFYING PROJECT~~]. [(a)] A person may not develop or operate
4 a qualifying project unless the person obtains the approval of and
5 contracts with the responsible governmental entity under this
6 chapter. [~~The person may initiate the approval process by~~
7 ~~submitting a proposal requesting approval under Section~~
8 ~~2267.053(a), or the responsible governmental entity may request~~
9 ~~proposals or invite bids under Section 2267.053(b)~~.

10 [(b)] A person submitting a proposal requesting approval of a
11 ~~qualifying project shall specifically and conceptually identify~~
12 ~~any facility, building, infrastructure, or improvement included in~~
13 ~~the proposal as a part of the qualifying project.~~

14 [(c)] On receipt of a proposal submitted by a person
15 ~~initiating the approval process under Section 2267.053(a), the~~
16 ~~responsible governmental entity shall determine whether to accept~~
17 ~~the proposal for consideration in accordance with Sections 2267.052~~
18 ~~and 2267.065 and the guidelines adopted under those sections. A~~
19 ~~responsible governmental entity that determines not to accept the~~
20 ~~proposal for consideration shall return the proposal, all fees, and~~
21 ~~the accompanying documentation to the person submitting the~~
22 ~~proposal.~~

23 [(d)] The responsible governmental entity may at any time
24 ~~reject a proposal initiated by a person under Section 2267.053(a).~~

25 SECTION 4. Sections 2267.052(b), (c), and (c-1), Government
26 Code, are amended to read as follows:

27 (b) The guidelines for a responsible governmental entity

1 described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

3 (A) make a representative of the entity available
4 to meet with persons who are considering submitting a proposal; and
5 (B) provide notice of the representative's
6 availability;

7 (2) provide reasonable criteria for choosing among
8 competing proposals;

9 (3) contain suggested timelines for selecting
10 proposals and negotiating an interim or comprehensive agreement;

11 (4) allow the responsible governmental entity to
12 accelerate the selection, review, and documentation timelines for
13 proposals involving a qualifying project considered a priority by
14 the entity;

15 (5) include financial review and analysis procedures
16 that at a minimum consist of:

17 (A) a cost-benefit analysis;

18 (B) an assessment of opportunity cost;

19 (C) consideration of the degree to which
20 functionality and services similar to the functionality and
21 services to be provided by the proposed project are already
22 available in the private market; and

23 (D) consideration of the results of all studies
24 and analyses related to the proposed qualifying project;

25 (6) allow the responsible governmental entity to
26 consider the nonfinancial benefits of a proposed qualifying
27 project;

5 (8) include criteria for:

6 (A) the qualifying project, including the scope,
7 costs, and duration of the project and the involvement or impact of
8 the project on multiple public entities;

9 (B) the creation of and the responsibilities of
10 an oversight committee, with members representing the responsible
11 governmental entity, that acts as an advisory committee to review
12 the terms of any proposed interim or comprehensive agreement; and

13 (C) the center's role in the review, analysis, or
14 evaluation of the qualifying project [compliance with the
15 requirements of Chapter 2268];

16 (9) require the responsible governmental entity to
17 analyze the adequacy of the information to be released by the entity
18 when seeking competing proposals and require that the entity
19 provide more detailed information, if the entity determines
20 necessary, to encourage competition, subject to Section
21 2267.053(g); and

22 (10) establish criteria, key decision points, and
23 approvals required to ensure that the responsible governmental
24 entity considers the extent of competition before selecting
25 proposals and negotiating an interim or comprehensive agreement [+]
26 and

[11] require the posting and publishing of public

1 ~~notice of a proposal requesting approval of a qualifying project,~~
2 ~~including:~~

3 ~~[(A) specific information and documentation~~
4 ~~regarding the nature, timing, and scope of the qualifying project,~~
5 ~~as required under Section 2267.053(a);~~

6 ~~[(B) a reasonable period, as determined by the~~
7 ~~responsible governmental entity, of not less than 45 days or more~~
8 ~~than 180 days, or a longer period specified by the governing body of~~
9 ~~the responsible governmental entity to accommodate a large-scale~~
10 ~~project, to encourage competition and partnerships with private~~
11 ~~entities and other persons in accordance with the goals of this~~
12 ~~chapter, during which the responsible governmental entity must~~
13 ~~accept submission of competing proposals for the qualifying~~
14 ~~project; and~~

15 ~~[(C) a requirement for advertising the notice on~~
16 ~~the governmental entity's Internet website and on TexasOnline or~~
17 ~~the state's official Internet website].~~

18 (c) The guidelines of a responsible governmental entity
19 described by Section 2267.001(5)(B) must include:

20 (1) the provisions required under Subsection (b); and
21 (2) a requirement that the governmental entity engage
22 the services of qualified professionals, including an architect,
23 professional engineer, or registered municipal advisor ~~[certified~~
24 ~~public accountant]~~, not otherwise employed by the governmental
25 entity, or the center to provide independent analyses regarding the
26 specifics, advantages, disadvantages, and long-term and short-term
27 costs of ~~[any proposal requesting approval of]~~ a qualifying project

1 unless the governing body of the governmental entity determines
2 that the analysis [~~of the proposal~~] is to be performed by similarly
3 qualified employees of the governmental entity.

4 (c-1) For a proposal with an estimated cost of \$5 million or
5 more for [~~the~~] construction or renovation of a qualifying
6 [~~structure or~~] project, the analysis conducted under Subsection
7 (c)(2) must include review [~~of the proposal~~] by an architect, a
8 professional engineer, and a registered municipal advisor
9 [~~certified public accountant~~] not otherwise employed by the
10 governmental entity.

11 SECTION 5. Section [2267.053](#)(d), Government Code, is amended
12 to read as follows:

13 (d) The responsible governmental entity may charge a
14 reasonable fee to cover the costs of processing, reviewing, and
15 evaluating the proposal, including reasonable legal fees, [and]
16 fees for financial and[~~and~~] technical[~~, and other necessary~~] advisors
17 or consultants, and fees for the center's review or consultation.

18 SECTION 6. Section [2267.058](#)(g), Government Code, is amended
19 to read as follows:

20 (g) The comprehensive agreement must provide that a
21 security document or other instrument purporting to mortgage,
22 pledge, encumber, or create a lien, charge, or security interest on
23 or against the contracting party's interest may not extend to or
24 affect the fee simple interest of the state in the qualifying
25 project or the state's rights or interests under the comprehensive
26 agreement. Any holder of debt shall acknowledge that the mortgage,
27 pledge, or encumbrance or a lien, charge, or security interest on or

1 against the contracting party's interest is subordinate to the fee
2 simple interest of the state in the qualifying project [and the
3 state's rights or interests under the comprehensive agreement].

4 SECTION 7. Section 2267.065(b), Government Code, is amended
5 to read as follows:

6 (b) A responsible governmental entity may enter into a
7 comprehensive agreement only in accordance with guidelines that
8 require the contracting person to design and construct the
9 qualifying project in accordance with procedures that do not
10 materially conflict with those specified in:

11 (1) Subchapter G, Chapter 2269, for facilities
12 projects described by Section 2269.302 [2166.2531]; or

13 (2) Subchapter H, Chapter 2269 [Section 44.036,
14 Education Code,

15 [+(3) Section 51.780, Education Code;

16 [+(4) Section 271.119, Local Government Code; or

17 [+(5) Subchapter J, Chapter 271, Local Government
18 Code], for civil works projects as defined by Section 2269.351
19 [271.181(2), Local Government Code].

20 SECTION 8. Section 2267.066(a), Government Code, is amended
21 to read as follows:

22 (a) Not later than the 10th day after the date a responsible
23 governmental entity accepts a proposal submitted in accordance with
24 Section 2267.053(b) [2267.053(a) or (b)], the responsible
25 governmental entity shall provide notice of the proposal as
26 follows:

27 (1) for a responsible governmental entity described by

1 Section 2267.001(5)(A), by posting the proposal on the entity's
2 Internet website; and

3 (2) for a responsible governmental entity described by
4 Section 2267.001(5)(B), by:

5 (A) posting a copy of the proposal on the
6 entity's Internet website; or

7 (B) publishing in a newspaper of general
8 circulation in the area in which the qualifying project is to be
9 performed a summary of the proposal and the location where copies of
10 the proposal are available for public inspection.

11 SECTION 9. Section 2268.001, Government Code, is amended by
12 amending Subdivision (1) and adding Subdivision (1-a) to read as
13 follows:

14 (1) "Center" means the center for alternative finance
15 and procurement established under Section 2152.110 by the Texas
16 Facilities Commission.

17 (1-a) "Commission" means the Partnership Advisory
18 Commission.

19 SECTION 10. Section 2268.056(d), Government Code, is
20 amended to read as follows:

21 (d) The center [~~Texas Facilities Commission~~], using the
22 qualifying project fees authorized under Section 2165.353, shall
23 provide, on a cost recovery basis, professional services [~~of its~~
24 ~~architectural, engineering, and real estate staff and the~~
25 ~~expertise~~] of financial, technical, and other necessary advisors
26 and consultants, authorized under Section 2267.053(d), as
27 necessary to support the Partnership Advisory Commission in its

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1 review and evaluation of proposals, including financial and risk
2 allocation analysis and ongoing contract performance monitoring of
3 qualifying projects. The center [~~Texas Facilities Commission~~]
4 shall assign staff and contracted advisors and consultants
5 necessary to perform the duties required by this subsection.

6 SECTION 11. Section [2268.059](#), Government Code, is amended
7 to read as follows:

8 Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS
9 SUBMITTED TO COMMISSION. Records and information afforded
10 protection under Section [552.153](#) that are provided by a responsible
11 governmental entity to the commission and the presiding officer of
12 the House Appropriations Committee and of the Senate Finance
13 Committee, or their designees, shall continue to be protected from
14 disclosure when in the possession of the commission and the
15 presiding officers or their designees.

16 SECTION 12. The following provisions of the Government Code
17 are repealed:

18 (1) Section [2267.002\(e\)](#); and
19 (2) Sections [2267.053\(a\)](#) and (a-1).

20 SECTION 13. As soon as practicable after the effective date
21 of this Act, the Texas Facilities Commission shall adopt the rules
22 necessary to establish the center for alternative finance and
23 procurement in accordance with Section 2152.110, Government Code,
24 as added by this Act.

25 SECTION 14. This Act takes effect September 1, 2015.

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President of the Senate

Speaker of the House

I certify that H.B. No. 2475 was passed by the House on May 15, 2015, by the following vote: Yeas 123, Nays 6, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2475 on May 28, 2015, by the following vote: Yeas 139, Nays 5, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2475 was passed by the Senate, with amendments, on May 26, 2015, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor