

- SUBJECT:** Contracting methods for construction projects for local governments
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 6 ayes — Carter, Bailey, Callegari, Ehrhardt, Hill, Najera
0 nays
3 absent — Burnam, Edwards, E. Jones
- SENATE VOTE:** On final passage, March 20 — voice vote
- WITNESSES:** For — David Lancaster, Texas Society of Architects; Steve Nelson, Associated General Contractors; *Registered but did not testify:* Freddie Bustillo, Associated General Contractors; Shanna Igo, Texas Municipal League; Bob Kamm, Travis County Commissioners Court; Donald Lee, Texas Conference of Urban Counties; Mark Mendez, Tarrant County Commissioners Court; Steve Stagner, Consulting Engineers Council; Sally Velasquez, Hispanic Contractors Association

Against — None
- BACKGROUND:** Local Government Code, chapters 252 and 271 regulate the acquisition, sale, lease, and construction of property by governmental entities.

If a local government intends to spend more than \$15,000 to build, repair, or renovate a structure or road or to make an improvement to real property, it must use a competitive sealed bid process. Local governments must provide notice of the time and place that competitive sealed bids will be opened and read by placing an ad in a newspaper published in the city at least once each week for the two weeks before the unsealing. The city may reject all bids, but if the city decides to award a contract, the contract must go to the lowest responsible bidder. To determine who is a responsible bidder, a city may consider the bidder's safety record if the city has adopted a written definition of and criteria for who is a responsible bidder and has notified bidders that their safety records may be considered.

DIGEST:

CSSB 510 would allow a city, county, or river authority to use a “best value” process to award a contract to build a facility. These entities could use one of several methods to select a contractor, including a design-build contract, and could consider factors other than price in the award, such as the quality of the goods or services or the contractor’s past relationship with the governmental entity. The bill’s provisions would not apply to contracts for streets, bridges, water or wastewater projects, or other civil engineering construction projects, and conflicting provisions in the charter or regulations of a city, county, or river authority would supersede the bill’s provisions unless the entity’s governing body to have the bill supersede the charter or regulation.

The bill would establish procedures for cities, counties, and river authorities to use in entering into design-build contracts for construction, rehabilitation, alteration, or repair of facilities. The procedures would require a request for qualifications and a two-phase evaluation process that would include such considerations as the project’s safety and long-term durability, the feasibility of implementing the project, the bidder’s experience, and the bidder’s ability to meet schedules and cost estimates. The governmental entity would have to select the design-build firm that offered the best value on the basis of published selection criteria and its ranking evaluations.

CSSB 510 would establish guidelines for arrangements involving construction manager-agents and construction managers-at-risk. A construction manager-agent would provide consultation regarding construction, rehabilitation, alteration, or repair of a facility and would represent the district in a fiduciary capacity. A construction manager-at-risk would serve as a general contractor for the project and would provide consultation during and after the design of the facility.

Local governments could enter into job order contracts for minor repair work. The city, county, or river authority would have to bid these job order contracts competitively. The contracts could be awarded to one or more contractors on the basis of such factors as price proposals, experience, past performance and safety record.

The bill would take effect September 1, 2001, and would apply to contracts for which requests for bids, proposals, or qualifications were published after that date.

SUPPORTERS
SAY:

CSSB 510 would give cities, counties, and river authorities more flexibility to contract for building construction and repair by allowing them to use alternative contracting methods such as design-build, construction management-agency, and construction management-at-risk. This authority is not new; since 1995, the Legislature has approved these methods for use by school districts and universities, and this bill's provisions are nearly identical to those now in the Education Code.

The design-build and construction manager-at-risk methods have a number of benefits over the standard competitive bid procedure. These methods reduce the risk to governmental agencies by creating a single point of accountability that is responsible for completing the project on time, on budget, and to specifications. Unlike in traditional methods, where a contractor is not responsible for flaws in the design of a project, the design-build method ensures that the contractor, rather than the governmental entity, is responsible for these kinds of problems. The integration of the design and construction of the project, or the review of a project by a potential manager for bidding, provide greater examination of design documents to ensure the project's constructability. It also enables projects to be completed at lower cost, since design-build allows a project to be started earlier, before design plans are complete.

The bill would not require a city, county, or river authority to use any of these new methods. If a governmental entity decided that these methods are too complex or costly, it could continue to use traditional contracting methods. Local governments who chose to use these methods, however, would benefit from more subjective criteria, which would allow them to hire the contractor that provided the best value to the city, not just the lowest price. While price is important, it is equally important to select experienced contractors in whom the entity has confidence that a facility will be completed and whose product best fits the needs of the entity. These local governments would remain accountable to voters, however, for the price of a project. The bill would not decrease contracts to historically underutilized

businesses (HUBs), because the bill states that all laws relating to HUBs still would apply.

OPPONENTS
SAY:

By allowing the consideration of subjective criteria, these methods may increase the cost of a project compared to a lowest-bid procedure, as well as create the opportunity for favoritism in the contract award process. Because these subjective criteria allow more flexibility in price considerations, they also encourage the participation of larger contractors and can cut out small contractors, including many HUBs. The design-build method is more complex than traditional contracting methods and requires more oversight by local governments, especially as the contractor's cost estimate is not based on a full design, which can lead to disputes over what was implied in the documents. Design-build contractors may make cost-saving decisions that reduce building quality without input from the governmental entity unless very specific quality and performance standards are defined.

NOTES:

The committee substitute added river authorities to the list of local governments covered by the bill's provisions; added provisions modifying similar sections in the Education Code; and added a provision allowing a governmental entity to consider any relevant factor that a private business entity would consider in selecting a contractor.