

BILL ANALYSIS

Senate Research Center

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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, cities, counties, school districts, universities, and other agencies have several alternatives to traditional low-bid delivery of certain construction projects. These alternatives include construction manager-agent, competitive sealed proposals for construction services (or negotiated contracting), construction manager-at-risk, design-build, and job order contracting. Similar procedures apply to different entities but the language is scattered across multiple state codes – Chapter 44, Education Code for public schools; Chapter 51, Education Code, for universities, Chapter 271, Local Government Code, for cities, counties and river authorities; and Chapter 2166, Government Code, for the state Building and Procurement Commission. In addition, under current law, the authorization to use alternative project delivery is limited to vertical, or architectural, construction – e.g., buildings.

This legislation will:

- Consolidate alternate project delivery processes into a single chapter of the Government Code. This is similar to the legal approach to procurement of professional services, under which the same process applies to all governmental entities procuring services.
- Expand the types of entities that may use these procedures to include hospital districts, transit authorities, and others.
- Allow construction manager-at-risk and competitive sealed proposals for construction services to be used for all types of projects including water, wastewater, transportation, utilities and other improvements to real property.
- Make other cleanup and consistency changes.

The result is to significantly expand the tools that governmental entities have at their disposal to expedite projects.

RULEMAKING AUTHORITY

Rulemaking authority previously granted is to the Texas Building and Procurement Commission is rescinded in SECTION 2 (Section 2166.2525, Government Code) of this bill.

Rulemaking authority is expressly granted, in SECTION 2 (Section 2264.051, Government Code) of this bill, to any governmental entity or quasi-governmental entity authorized by state law to make a public work contract.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2253.021, Government Code, by adding Subsection (h), as follows:

(h) Prohibits a reverse auction procedure from being used to obtain goods or services in a public work contract for which a bond is required under this section. Defines "reverse auction procedure."

SECTION 2. Amends Section 2166.2525, Government Code, as follows:

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. Provides that the method of contracting allowed under this subchapter for design and construction services is any method provided by Chapter 2264, rather than requiring the Texas Building and Procurement Commission to adopt rules that determine the circumstances for use of each method of contracting allowed under this subchapter for design and construction services. Deletes the requirement that in developing the rules, the commission must solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.

SECTION 3. Amends Subtitle F, Title 10, Government Code, by adding Chapter 2264, as follows:

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR
CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. Defines "architect," "engineer," "facility," and "general conditions."

Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. Specifies those governmental entities and quasi-governmental entities authorized by state law to make a public work contract, to which this chapter applies.

Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. Provides that, except as provided by this section, this chapter prevails over any other law relating to public works contracts. Provides that this chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business. Provides that this chapter does not prevail over a conflicting provision in a charter of a home-rule municipality, or a rule of a county, river authority or any other type of water district, or defense base development authority that requires the use of competitive bidding. Authorizes the governing body of a municipality, county, river authority, or defense base development authority to which Subsection (c) applies to elect to have this chapter overrule the conflicting provision in the charter or rule.

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

[Reserves Sections 2264.005-2264.050 for expansion.]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2264.051. RULES. Authorizes a governmental entity to adopt rules as necessary to implement this chapter.

Sec. 2264.052. DELEGATION OF AUTHORITY. Authorizes the governing body of a governmental entity to delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person. Requires the entity to provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications, or in an addendum to the request. Provides that, if the entity fails to provide notice under Subsection (b), a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the entity's governing body in an open public meeting is advisory only.

Sec. 2264.053. RIGHT TO WORK. Provides that this section applies to a governmental entity when the governmental entity is engaged in procuring goods or services under this

chapter; awarding a contract under this chapter; or overseeing procurement or construction for a public work or public improvement under this chapter. Prohibits a governmental entity, while engaging in an activity to which this section applies, from considering whether a person is a member of or has another relationship with any organization. Requires a governmental entity to ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

[Reserves Sections 2264.054-2264.100 for expansion.]

SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES

Sec. 2264.101. **CRITERIA TO CONSIDER.** Sets forth those criteria, in determining the award of a contract under this chapter, that the governmental entity may consider.

Sec. 2264.102. **USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS.** Requires the governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding to, before advertising, determine which method provides the best value for the governmental entity. Requires the governmental entity to base its selection among offerors on applicable criteria listed in Section 2264.101. Requires the governmental entity to publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors. Requires the governmental entity to document the basis of its selection and make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 2264.103. **ARCHITECT OR ENGINEER SERVICES.** Provides that an architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1001 (Engineers) or 1051 (Texas Board Of Architectural Examiners), Occupations Code, as applicable. Requires the governmental entity, if the selected or designated architect or engineer is not a full-time employee of the governmental entity, to select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor).

Sec. 2264.104. **RESPONSIBILITIES OF CONTRACTORS.** Provides that, in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility under this chapter, a contractor is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price.

Sec. 2264.105. **COMPETITIVE BIDDING.** Authorizes a governmental entity, except as otherwise provided by this chapter or other law, to contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives sealed competitive bids, and awards the contract to the lowest responsible bidder, or the bidder offering the best value to the governmental entity according to the selection criteria established by the governmental entity in the request for bids. Requires the governmental entity to document the basis of its selection and make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 2264.106. **APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.** Provides that, except as otherwise specifically provided by this section, Subchapter B (Competitive Bidding On Certain Public Works Contracts), Chapter 271 (Purchasing And Contracting Authority Of Municipalities, Counties, And Certain Other Local Governments), Local Government Code, does not apply to a competitive bidding process made under this chapter. Provides that certain sections of the Local Government Code apply to a competitive bidding process made under this chapter by a governmental entity as defined by Section 271.021 (Definitions), Local Government Code.

Sec. 2264.107. USE OF ARCHITECT OR ENGINEER. Requires the governmental entity to select or designate an architect or engineer in accordance with Chapter 1001 (Engineers) or 1051 (Texas Board Of Architectural Examiners), Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

[Reserves Sections 2264.108-2264.150 expansion.]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. Authorizes a governmental entity to use the competitive sealed proposal method to select a contractor for the construction, rehabilitation, alteration, or repair of a facility. Requires a governmental entity, in selecting a contractor through competitive sealed proposals, to follow the procedures provided by this subchapter.

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

Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. Requires the governmental entity to provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. Requires the governmental entity to select the services for which it contracts under this section in accordance with Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor).

Sec. 2264.154. PREPARATION OF REQUEST. Requires the governmental entity to prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request. Requires the governmental entity to state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Sec. 2264.155. EVALUATION OF OFFERORS. Requires the governmental entity to receive, publicly open, and read aloud the names of the offerors. Requires the governmental entity, by a certain date, to evaluate and rank each proposal submitted in relation to the published selection criteria.

Sec. 2264.156. SELECTION OF OFFEROR. Requires the governmental entity to select the offeror that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. Provides that, in determining best value for the governmental entity, the governmental entity is not restricted to considering price alone but may consider any other factor stated in the selection criteria. Requires the governmental entity to first attempt to negotiate a contract with the selected offeror. Authorizes the governmental entity and its engineer or architect to discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. Requires the governmental entity, if it is unable to negotiate a contract with the selected offeror, to formally and in writing end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

[Reserves Sections 2264.157-2264.200 for expansion.]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT SERVICES. Provides that a construction manager-agent is a sole

proprietorship, partnership, corporation, or other legal entity that provides consultation services to the governmental entity regarding construction, rehabilitation, alteration, or repair of a facility. Authorizes a governmental entity to retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Sec. 2264.202. **CONTRACT PROVISIONS OF CONSTRUCTION MANAGER-AGENT.** Authorizes the contract between the governmental entity and the construction manager-agent to require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this subchapter, on-site management, and other services specified in the contract. Prohibits a construction manager-agent from self-performing the construction, rehabilitation, alteration, or repair of the facility.

Sec. 2264.203. **FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT.** Provides that a construction manager-agent represents the governmental entity in a fiduciary capacity.

Sec. 2264.204. **USE OF ARCHITECT OR ENGINEER.** Requires the governmental entity, on or before the selection of a construction manager-agent, to select or designate an architect or engineer to prepare the construction documents for the project. Prohibits the governmental entity's architect or engineer from serving, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. Provides that this subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws. Requires, to the extent that the construction manager-agent's services are defined as part of the practice of engineering or architecture under Chapter 1001 (Engineers) or 1051 (Texas Board Of Architectural Examiners), Occupations Code, those services to be conducted by a person licensed under the applicable chapter.

Sec. 2264.205. **USE OF OTHER PROFESSIONAL SERVICES.** Requires the governmental entity or the construction manager-agent to procure, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. Requires the governmental entity or the construction manager-agent to select the services for which it contracts under this section in accordance with Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor).

Sec. 2264.206. **SELECTION OF CONSTRUCTION MANAGER-AGENT.** Requires a governmental entity to select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor), except that the governmental entity must advertise the availability of the contract.

Sec. 2264.207. **SELECTION OF CONTRACTORS.** Requires a governmental entity using the construction manager-agent method to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

[Reserves Sections 2264.208-2264.250 for expansion.]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2264.251. **CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK.** Provides that a construction manager-at-risk is a sole proprietorship, partnership,

corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. Authorizes a governmental entity to use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Sec. 2264.252. **USE OF ARCHITECT OR ENGINEER.** Requires the governmental entity, on or before the selection of a construction manager-at-risk, to select or designate an architect or engineer to prepare the construction documents for the project. Prohibits a governmental entity's engineer or architect for a project from serving, alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process conducted in accordance with this subchapter. Provides that this subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

Sec. 2264.253. **USE OF OTHER PROFESSIONAL SERVICES.** Requires the governmental entity to provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. Requires the governmental entity to select the services for which it contracts under this section in accordance with Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor).

Sec. 2264.254. **SELECTION PROCESS.** (a) Requires the governmental entity to select the construction manager-at-risk in a one-step or two-step process.

(b) Requires the governmental entity to prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes certain information.

(c) Requires the governmental entity to state the selection criteria in the request for proposals or qualifications. Authorizes the selection criteria to include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk.

(d) Authorizes the governmental entity, if a one-step process is used, to request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) Prohibits the governmental entity, if a two-step process is used, from requesting fees or prices in step one. Authorizes the governmental entity, in step two, to request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and price for fulfilling the general conditions.

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

(g) Requires the governmental entity, by a certain date, to evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

Sec. 2264.255. **SELECTION OF OFFEROR.** Requires the governmental entity to select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. Requires the governmental entity to first attempt to negotiate a contract with the selected offeror.

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

Sec. 2264.256. **PERFORMANCE OF WORK.** Requires a construction manager-at-risk to publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. Authorizes a construction manager-at-risk to seek to perform portions of the work itself if certain conditions are met.

Sec. 2264.257. **REVIEW OF BIDS OR PROPOSALS.** Requires the construction manager-at-risk and the governmental entity to review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or governmental entity. Requires all bids or proposals to be made public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. Requires the governmental entity, if the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, to compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

Sec. 2264.258. **DEFAULT; PERFORMANCE OF WORK.** Authorizes the governmental entity, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, to itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Sec. 2264.259. **PERFORMANCE OR PAYMENT BOND.** Requires, if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the request for proposals or qualifications. Requires the construction manager-at-risk to deliver the bonds by a certain date unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

[Reserves Sections 2264.260-2264.300 for expansion.]

SUBCHAPTER G. DESIGN-BUILD METHOD

Sec. 2264.301. **APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS.** Provides that this subchapter applies only to a facility that is a building or an associated structure. Provides that this subchapter does not apply to: a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Sec. 2264.302. **CONTRACTS FOR BUILDINGS: DESIGN-BUILD.** Authorizes a governmental entity to use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. Requires the governmental entity, in using that method, to enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Sec. 2264.303. DESIGN-BUILD FIRMS. Requires a design-build firm under this subchapter to be a partnership, corporation, or other legal entity or team that includes an engineer or architect and a construction contractor.

Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. Requires the governmental entity to select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the work on the facility.

Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. Requires the governmental entity to provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. Requires the governmental entity to select the services for which it contracts under this section in accordance with Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor).

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

(b) Requires the governmental entity to also prepare the design criteria package that includes more detailed information on the project. Requires those services, if the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001 (Engineers), Occupations Code, or the practice of architecture within the meaning of Chapter 1051 (Texas Board Of Architectural Examiners), Occupations Code, to be provided in accordance with the applicable law.

(c) Requires the design criteria package to include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. Requires the design criteria package to specify criteria the governmental entity considers necessary to describe the project, including certain requirements, and any other requirement.

(d) Prohibits the governmental entity from requiring offerors to submit detailed engineering or architectural designs as part of a proposal or a response to a request for qualifications.

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

(b) Requires each firm to certify to the governmental entity that each engineer or architect that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004 (Contract For Professional Services Of Architect, Engineer, Or Surveyor).

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

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

(e) Authorizes the governmental entity to request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. Defines "costing methodology;" specifies that the term does not include a guaranteed maximum price or bid for overall design or construction.

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

Sec. 2264.308. **SELECTION OF DESIGN-BUILD FIRM.** Requires the governmental entity to select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations. Requires the governmental entity to first attempt to negotiate a contract with the selected firm. Requires the governmental entity, if it is unable to negotiate a satisfactory contract with the selected firm, to, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

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

Sec. 2264.310. **FINAL CONSTRUCTION DOCUMENTS.** Requires the design-build firm to supply a signed and sealed set of construction documents for the project to the governmental entity at the conclusion of construction.

Sec. 2264.311. **PERFORMANCE OR PAYMENT BOND.** Provides that a payment or performance bond is not required and may not provide coverage for the portion of the design-build contract with the design-build firm under this subchapter that includes design services only. Provides that, if a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the design criteria package. Requires the design-build firm to deliver the bonds by a certain date unless certain conditions are met.

[Reserves Sections 2264.312-2264.350 for expansion.]

SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

Sec. 2264.351. **JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR.** Authorizes a governmental entity to award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if certain conditions are met.

Sec. 2264.352. **CONTRACTUAL UNIT PRICES.** Authorizes the governmental entity to establish contractual unit prices for a job order contract by specifying one or more published construction unit price books and the applicable divisions or line items; or providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

Sec. 2264.353. **SEALED PROPOSALS METHOD.** Requires the governmental entity to advertise for, receive, and publicly open sealed proposals for job order contracts. Authorizes the governmental entity to require offerors to submit information in addition

to rates, including experience, past performance, and proposed personnel and methodology.

Sec. 2264.354. **AWARDING OF JOB CONTRACTS.** Authorizes the governmental entity to award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Sec. 2264.355. **USE OF ARCHITECT OR ENGINEER.** Requires, if a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of engineering within the meaning of Chapter 1001 (Engineers), Occupations Code, or the practice of architecture within the meaning of Chapter 1051 (Texas Board Of Architectural Examiners), Occupations Code, those services to be provided in accordance with applicable law.

Sec. 2264.356. **JOB ORDER CONTRACT TERM.** Provides that a job order contract is for the base term and with any renewal options that the governmental entity sets forth in the request for proposals. Provides that if the governmental entity fails to advertise the base term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

Sec. 2264.357. **JOB ORDERS.** Requires an order for a job or project under a job order contract to be signed by the governmental entity's representative and the contractor. Authorizes the order to be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or a unit price order based on the quantities and line items delivered.

Sec. 2264.358. **PAYMENT AND PERFORMANCE BONDS.** Requires the contractor to provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

[Reserves Sections 2264.359-2264.400 for expansion.]

SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

Sec. 2264.401. **NOTICE REQUIREMENTS FOR CERTAIN LOCAL GOVERNMENTS.** (a) Requires a municipality or authority, for a contract entered into by a defense base development authority, municipality, or river authority under a method provided by this chapter, to publish notice of the time and place the bids or proposals or the responses to a request for qualifications will be received and opened.

(b) Requires the notice to be published in a newspaper of general circulation in the county in which the defense base development authority's or municipality's central administrative office is located or in the county in which the greatest amount of the river authority's territory is located. Requires the notice, if there is not a newspaper of general circulation in that county, to be published in a newspaper of general circulation in the county nearest the county seat of the county in which the defense base development authority's or municipality's central administrative office is located or the county seat of the county in which the greatest amount of the river authority's territory is located.

(c) Requires the notice to be published once each week for at least two weeks before the deadline for receiving bids, proposals, or responses.

(d) Provides that, in a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

Sec. 2264.402. **NOTICE REQUIREMENTS FOR COUNTIES.** Requires a county, for a contract entered into by a county under a method provided by this chapter, to publish notice of the time and place the bids or proposals or request for qualifications will be received and opened. Requires the notice to be published in a newspaper of general

circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. Requires the notice, if there is not a newspaper of general circulation in the county, to be posted at the courthouse door of the county and published in a newspaper of general circulation in the county nearest the county seat of the county publishing the notice.

[Reserves Sections 2264.403-2264.425 for expansion.]

SUBCHAPTER J. ENFORCEMENT

Sec. 2264.426. VOID CONTRACT. Provides that a contract entered into in violation of this chapter is void as against public policy.

Sec. 2264.427. DECLARATORY OR INJUNCTIVE RELIEF. Authorizes this chapter to be enforced through an action for declaratory or injunctive relief filed not later than the 30th day after the date on which the contract is awarded.

SECTION 4. Amends Sections 44.031(a) and (f), Education Code, as follows:

(a) Exempts school district contracts made under Chapter 2264, Government Code, among other certain contracts, valued at \$25,000 or more in the aggregate for each 12-month period, except as provided by this subchapter, from certain requirements.

Requires all school district contracts, except as provided by this subchapter and except for certain contracts, to be made by the method, of one of a number of certain methods, that provides the best value for the district, including the method provided by Chapter 2264, Government Code, but not including a design/build contract; a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility. Makes nonsubstantive changes.

(f) Provides that this section does not apply to a contract for professional services rendered, including the services of an engineer, among others.

SECTION 5. Amends Section 44.901, Education Code, by adding Subsection (j), to provide that Chapter 2264, Government Code, does not apply to this section.

SECTION 6. Amends Section 51.927, Education Code, by adding Subsection (k), to provide that Chapter 2264, Government Code, does not apply to this section.

SECTION 7. Amends Section 2166.406, Government Code, by adding Subsection (k), to provide that Chapter 2264 does not apply to this section.

SECTION 8. Amends Subchapter A, Chapter 2254, Government Code, by adding Section 2254.007, as follows:

Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. Authorizes this subchapter to be enforced through an action for declaratory or injunctive relief filed not later than the 30th day after the date on which the contract is awarded.

SECTION 9. Amends Section 252.021(a), Local Government Code, to require a municipality, before it may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, to, among other requirements, comply with a method described by Chapter 2264, Government Code, rather than Subchapter H, Chapter 271.

SECTION 10. Amends Chapter 302, Local Government Code, by adding Section 302.006, as follows:

Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW. Provides that Chapter 2264, Government Code, does not apply to this chapter.

SECTION 11. Amends Section 22.074, Transportation Code, by adding Subsection (f), to provide that Chapter 2264, Government Code, does not apply to a joint board whose constituent agencies are populous home-rule municipalities.

SECTION 12. Amends Section 60.452, Water Code, as added by Chapter 307, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (c), to provide that Chapter 2264, Government Code, does not apply to this subchapter.

SECTION 13. Repealer:

- (1) Sections 44.0312, 44.0315, 44.035-44.041, and 44.043, Education Code;
- (2) Subchapter T, Chapter 51, Education Code;
- (3) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code; and
- (4) Subchapter H, Chapter 271, Local Government Code.

SECTION 14. Makes application of this Act prospective.

SECTION 15. Effective date: September 1, 2005.