

## **BILL ANALYSIS**

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C.S.H.B. 447  
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Government Organization  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, cities, counties, school districts, 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, construction manager-at-risk, design-build, and job order contracting.

Similar procedures for construction projects apply to different entities, but the language is scattered across multiple state codes, such as the Education Code for public schools; the Local Government Code for cities, counties, and river authorities; and the Government Code for the Texas Building and Procurement Commission. In addition, under current law, the authorization to use alternative project delivery is limited to vertical or architectural construction.

C.S.H.B. 447 consolidates alternate project delivery processes for most governmental entities into a single chapter of the Government Code and expands the types of entities that may use these procedures and the types of projects for which these procedures are used. This bill prohibits reverse auctions for certain contracts where bonds are required. This bill also clarifies bidding procedures and contract requirements. This bill redefines a "public works contract." The bill also gives school districts authority to use competitive bidding and competitive sealed proposals for services other than construction services and requires governmental entities to consider historically underutilized businesses when awarding contracts. This bill clarifies that counties can use alternative bidding procedures for counties that issue certificates of obligation to pay for construction projects.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to a governmental entity in SECTION 2.10 (Section 2264.051, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Building and Procurement Commission is rescinded in Section 2.07 (Section 2166.2525, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS**

SECTION 1.01. Amends Section 2253.021, Government Code, by adding Subsection (h), to prohibit a reverse auction procedure from being used to obtain services related to a public work contract for which a bond is required under this section and to define "reverse auction procedure."

#### **ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES**

SECTION 2.01. Amends Sections 44.031(a) and (f), Education Code, as follows:

- (a) Requires all school district contracts for the purchase of goods and services, except as provided by this subchapter and except for contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period to be made using certain methods that provide the best value for the district, including competitive bidding and competitive sealed proposals for services other than construction services and a method provided by Chapter 2264, Government Code. Deletes existing

text providing a design/build contract and a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager as methods to make school district contracts under this subsection.

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

SECTION 2.02. Amends Subchapter B, Chapter 44, Education Code, by adding Section 44.0351, as follows:

Sec. 44.0351. **COMPETITIVE BIDDING.** (a) Authorizes a school district to use competitive bidding to select a vendor as authorized by Section 44.031(a)(1) (relating to certain school district contracts made by competitive bidding), except to the extent prohibited by other law and to the extent consistent with this subchapter (Purchases; Contracts).

(b) Provides that, except as provided by this subsection, Subchapter B (Competitive Bidding on Certain Public Works Contracts), Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Provides that Sections 271.026 (Opening of Bids), 271.027(a) (entitling the governmental entity to reject any and all bids), and 271.0275 (Safety Record of Bidder Considered), Local Government Code, apply to a competitive bidding process under this subchapter.

(c) Requires a school district to award a competitively bid contract at the bid amount to the bidder offering the best value for the district. Provides that the district is not restricted to considering price alone in determining the best value for the district, but authorizes the district to consider any other factors stated in the selection criteria. Authorizes the selection criteria to include the factors listed in Section 44.031(b) (relating to the factors that the district may consider in determining to whom to award a contract).

SECTION 2.03. Amends Subchapter B, Chapter 44, Education Code, by adding Section 44.0361, as follows:

Sec. 44.0361. **COMPETITIVE SEALED PROPOSALS.** (a) Requires a school district to follow the procedures prescribed by this section in selecting a vendor through competitive sealed proposals as authorized by Section 44.031(a)(2) (relating to certain school district contracts made by competitive sealed proposals).

(b) Requires the district to prepare a request for competitive sealed proposals that includes information that vendors may need in order to respond to the request. Requires the district to state the selection criteria that will be used in selecting the successful offeror in the request.

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

(d) Requires the district to select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. Requires the district to first attempt to negotiate with the selected offeror a contract. Authorizes the district to discuss specific modification options with the selected offeror. Requires the district, if a negotiation between the district and selected offeror does not occur, to end negotiations with that offeror, formally and in writing, and proceed to the next offeror in a specific order until a contract is reached or all proposals are rejected.

(e) Provides that the district is not restricted to considering price alone in determining the best value for the district, but authorizes the district to consider any other factors stated in the selection criteria.

SECTION 2.04. Amends Subchapter B, Chapter 44, Education Code, by adding Section 44.0411, as follows:

Sec. 44.0411. CHANGE ORDERS. (a) Authorizes the district to approve change orders making the changes if certain changes in plans or specifications are necessary after the performance of the contract is begun.

(b) Prohibits the total contract price from being increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

(c) Authorizes the district to grant general authority to an administrative official to approve the change orders.

(d) Prohibits a contract with an original contract price of \$1 million or more from being increased under this section by more than 25 percent. Prohibits subsequent change orders from increasing the revised contract amount by more than 25 percent if a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more.

SECTION 2.05. Amends Subchapter A, Chapter 46, Education Code, by adding Section 46.0111, as follows:

Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL FACILITY. (a) Defines "net proceeds" and "state's share."

(b) Requires a school district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter (Instructional Facilities Allotment) to provide the commissioner of education (commissioner) with written notice of the action.

(c) Authorizes the commissioner to join in the action on behalf of the state to protect the state's share in the action.

(d) Requires a school district to use the net proceeds from an action brought by the district for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Provides that Section 46.008 (Standards) applies to the repair.

(e) Provides that the state's share is state property. Requires the school district to send to the comptroller of public accounts (comptroller) any portion of the state's share not used by the school district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Provides that Section 42.258 (Recovery of Overallocated Funds) applies to the state's share under this subsection.

SECTION 2.06. Amends Section 791.011, Government Code, by amending Subsection (e) and adding Subsections (h) and (i), as follows:

(e) Provides that this subsection (relating to compensation of a performing party via an interlocal contractual payment) does not prohibit a local government from being

reimbursed for its expenses or from sharing in the profits or revenue of the performing party if the reimbursement or sharing assists in the management of a local government.

(h) Prohibits an interlocal contract from being used to purchase engineering or architectural services unless the services are in connection with the design or construction of a specific facility to be jointly owned, used, or financed by the parties to the contract.

(i) Prohibits an interlocal contract from being used to purchase construction services unless the services are in connection with the design or construction of a specific facility to be jointly owned, used, or financed by the parties to the contract or the services are in connection with a job order contract, the governing body of the governmental entity approves the purchase in open session, public notice is provided in a certain manner, and work orders under the contract comply with Section 2264.353.

SECTION 2.07. Amends Section 2166.2525, Government Code, as follows:

Sec 2166.2525. DETERMINATION OF CONTRACTING METHOD. Describes the method of contracting allowed under this subchapter for design and construction services as any method provided by Chapter 2264, regarding contracting and delivery procedures for construction projects. Deletes existing text regarding the adoption of rules by the Texas Building and Procurement Commission.

SECTION 2.08. Amends Section 2254.003(b), Government Code, to prohibit the professional fees under the contract from exceeding any maximum provided by law and deleting text concerning preexisting requirements for the fees.

SECTION 2.09. Amends Subchapter A, Chapter 2254, Government Code, by adding Section 2254.007, as follows:

Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) Authorizes the enforcement of this subchapter through an action for declaratory or injunctive relief filed on or before the 10th day after the date the contract is awarded.

(b) Provides that this section does not apply to enforcement of a contract entered into by a state agency that has a formal administrative appeal process regarding the award of the contract. Defines "state agency."

SECTION 2.10. 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," "general conditions," "general contractor," and "public work contract."

Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. Provides that this chapter applies to a public work contract made by a governmental or quasi-governmental entity authorized by state law to make a public work contract that includes a state agency a state agency, a local government, a public junior college, any entity owned by a municipality, and any other entity that owns or operates a facility for the benefit of the municipality or county.

Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Provides that this chapter prevails over any other law relating to a public work contract, except as provided by this section.

(b) Provides that this chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.

(c) Provides that this chapter does not prevail over a conflicting provision that requires the use of competitive bidding in a charter of a home-rule municipality, a rule of a county, defense base development authority, or a conservation and reclamation district that includes a river authority or water district.

(d) Authorizes the governing body of a governmental entity to which Subsection (c) applies to elect to have this chapter overrule the conflicting provision in the charter or rule.

(e) Provides that this chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section 252.022(c), Local Government Code, that requires the use of competitive bidding or competitive sealed proposals or prescribes a design-build procurement procedure that conflicts with this chapter.

Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS. Provides that this chapter does not apply to a contract entered into by the Texas Department of Transportation or a project that receives money from a state or federal highway fund.

Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER EDUCATION. (a) Defines "institution of higher education," "public junior college," and "university system."

(b) Provides that this chapter applies to a public junior college but does not apply to any other institutions of higher education or a university system.

[Reserves Sections 2264.006-2264.050 for expansion.]

#### SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

Sec. 2264.052. NOTICE REQUIREMENTS. (a) Requires an entity to advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) Requires the entity to publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law for a contract entered into by an entity under a method provided by this chapter.

Sec. 2264.053. DELEGATION OF AUTHORITY. (a) Permits the governing body of an entity to delegate its authority regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) Requires the entity to provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Sec. 2264.054. RIGHT TO WORK. (a) Provides that this section applies to an entity when the entity is engaged in certain activities under this chapter.

(b) Prohibits an 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 and requires an 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.

Sec. 2264.055. **CRITERIA TO CONSIDER.** Authorizes the entity to consider certain factors in determining the award of a contract under this chapter.

Sec. 2264.056. **USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.** (a) Requires the governing body of an entity using an authorized method other than competitive bidding to determine which method provides the best value for the entity before advertising.

(b) Requires the entity to base its selection among offerors on applicable criteria listed for the particular method used. Requires the entity to publish the criteria for evaluation in the request for proposals or qualifications.

(c) Requires the entity to document the basis of its selection and requires the entity to make the evaluations public not later than seven days after the date the contract is awarded.

Sec. 2264.057. **ARCHITECT OR ENGINEER SERVICES.** (a) Provides that an architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects) or 1001 (Engineers), Occupations Code, as applicable.

(b) Requires the entity to select the architect or engineer on the basis of qualifications and competence as provided by Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), if the selected person is not a full-time employee of the entity.

Sec. 2264.058. **USE OF OTHER PROFESSIONAL SERVICES.** (a) Requires the entity to provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary, independently of the contractor, construction manager-at-risk, or design-build firm.

(b) Requires the entity to select the services for which it contracts for professional services as provided by Section 2254.004, the Professional Procurement Act.

Sec. 2264.059. **SEALED BIDS, PROPOSALS, OR QUALIFICATIONS REQUIRED.** Requires a person who submits a bid, proposal, or qualification to an entity to seal it before delivery.

[Reserves Sections 2264.060-2264.100 for expansion.]

#### SUBCHAPTER C. COMPETITIVE BIDDING METHOD

Sec. 2264.101. **CONTRACTS FOR FACILITIES: COMPETITIVE BIDDING.** (a) Defines "competitive bidding."

(b) Authorizes an entity to contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder, except as otherwise provided by this chapter or other law.

Sec. 2264.102. **USE OF ARCHITECT OR ENGINEER.** Requires the entity to select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations

Code, as applicable, relating to practice provisions for architects and engineers, respectively, to prepare the construction documents mandated for a project to be awarded by competitive bidding.

Sec. 2264.103. PREPARATION OF REQUEST. Requires the entity to prepare a request for competitive bids that includes certain information.

Sec. 2264.104. EVALUATION OF OFFERORS. Requires the entity to receive, publicly open, and read aloud the names of the offerors and their bids.

Sec. 2264.105. SELECTION OF OFFEROR. Requires the 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 Subchapter B, Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, regarding purchasing and contracting authority of municipalities, counties, and certain other local governments, does not apply to a competitive bidding process conducted under this chapter, except as otherwise specifically provided by this section. Provides that Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process conducted under this chapter by an entity defined by Section 271.021 (Definitions), Local Government Code.

[Reserves Sections 2264.107-2264.150 for expansion.]

#### SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE SEALED PROPOSALS. (a) Defines "competitive sealed proposals."

(b) Requires an entity to follow the procedures provided by this subchapter in selecting a contractor through competitive bidding.

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

Sec. 2264.153. PREPARATION OF REQUEST. Requires the entity to prepare a request for competitive sealed proposals that includes certain information.

Sec. 2264.154. EVALUATION OF OFFERORS. (a) Requires the entity to receive, publicly open, and read aloud the names and any monetary proposals of the offerors.

(b) Requires the entity to evaluate and rank each submitted proposal in relation to the published selection criteria not later than 45 days after the date of opening the proposals.

Sec. 2264.155. SELECTION OF OFFEROR. (a) Requires the entity to select the offeror that proposes the best value based on the selection criteria and the weighted value for those criteria and its ranking evaluation.

(b) Requires the entity to first attempt to negotiate a contract with the selected offeror and authorizes the entity, architect, or engineer to discuss options for a scope or time modification and the associated price changes with the offeror.

(c) Requires the entity, in formal writing, to end negotiations with the offeror if the two parties are unable to negotiate a contract and proceed with the next ordered offeror until a contract is reached or all proposals are rejected.

[Reserves Section 2264.156-2264.200 for expansion.]

## SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2264.201. **CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT.** (a) Defines "construction manager-agent."

(b) Sets forth the duties of the construction manager-agent (manager-agent).

(c) Authorizes an entity to retain a 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 entity and the manager-agent to require the manager-agent to provide certain personnel, equipment, on-site management, and services.

Sec. 2264.203. **LIMITS ON CONSTRUCTION MANAGER-AGENT.** Prohibits a manager-agent from being involved in a certain manner with the facility's construction, rehabilitation, alteration, or repair.

Sec. 2264.204. **FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT.** Provides that a manager-agent represents the entity in a fiduciary capacity.

Sec. 2264.205. **USE OF ARCHITECT OR ENGINEER.** (a) Requires the entity to select or designate an architect or engineer to prepare the construction project documents on or before the selection of a manager-agent.

(b) Prohibits the entity's architect or engineer from serving, alone or in combination with another person, as the manager-agent unless the architect or engineer is hired to serve as the manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. Provides that this subsection does not prohibit the 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.

(c) Requires the manager-agent's services to be conducted by a person licensed under Chapter 1051 or 1001, Occupations Code, to the extent that the services are defined as part of the practice of architecture or engineering under the applicable chapter.

Sec. 2264.206. **SELECTION OF CONTRACTORS.** Requires an entity using a manager-agent method to procure, in accordance with law, certain contractors who will serve as the prime contractor for their specific portion of the work.

Sec. 2264.207. **SELECTION OF CONSTRUCTION MANAGER-AGENT.** Requires an entity to select a manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Section 2254.004.

Sec. 2264.208. **INSURANCE.** Requires a manager-agent under this subchapter to maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

[Reserves Sections 2264.209-2264.250 for expansion.]

## SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2264.251. **CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK.** (a) Defines "construction manager-at-risk method."



(b) Provides the duties of the construction manager-at-risk (manager-at-risk). Authorizes the contracted price to be a guaranteed maximum price.

(c) Authorizes an entity to use the manager-at-risk method in selecting a general contractor the construction, rehabilitation, alteration, or repair of a facility only as provided by this chapter.

Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) Requires the entity to select or designate an architect or engineer to prepare the construction project documents on or before the selection of a manager-at-risk.

(b) Prohibits the entity's architect or engineer for a project from serving, alone or in combination with another person, as the manager-at-risk unless the architect or engineer is hired to serve as the manager-at-risk under a separate or concurrent selection process conducted in accordance with this subchapter. Provides that this subsection does not prohibit the 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. SELECTION PROCESS. (a) Requires the entity to select the manager-at-risk in a one-step or two-step process.

(b) Requires the 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 entity to state selection criteria in the request for proposals or qualifications.

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

(e) Prohibits the entity from requesting fees or prices in step one, if a two-step process is used. Authorizes the entity, in step two, to request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information.

(f) Requires the entity to receive, publicly open, and read aloud the names of the offerors at each step. Requires the 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 entity to evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals not later than 45 days after the date of opening the final proposals.

Sec. 2264.254. SELECTION OF OFFEROR. (a) Requires the entity to select the offeror that submits the proposal that offers the best value for the entity based on the published selection criteria and on its ranking evaluation.

(b) Requires the entity to first attempt to negotiate a contract with the selected offeror.

(c) Requires the entity, in formal writing, to end negotiations with the offeror if the two parties are unable to negotiate a contract and proceed with the next ordered offeror until a contract is reached or all proposals are rejected.

(d) Requires the entity, not later than the seventh day after the date the contract is awarded, to make the rankings determined under Section 2264.253(g).

Sec. 2264.255. PERFORMANCE OF WORK. (a) Requires a manager-at-risk to publicly advertise for bids or proposals and receive them from certain contractors for all

major work elements other than minor elements that may be included in the general conditions.

(b) Authorizes the manager-at-risk to seek to perform portions of the work under certain circumstances.

Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) Requires the manager-at-risk to review all contractor bids or proposals in a manner that does not disclose the contents of the bid or proposal to anyone not employed by certain individuals or the entity, and requires that all bids or proposals be made available to the entity on request and to the public after the later of the contract award or seven days after the final selection.

(b) Requires the entity to compensate the manager-at-risk for any additional costs or risk incurred due to a requirement by the entity that another bid or proposal be accepted.

Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. Authorizes the manager-at-risk to fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to do so if a selected contractor defaults in the work performance or fails to execute a subcontract after selection.

Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) Requires the penal sums of the performance and payment bonds delivered to the entity to be equal to the construction budget, as specified in the request for proposals or qualifications, if a fixed contract amount or guaranteed maximum price has not been determined when the contract is awarded.

(b) Requires the manager-at-risk to deliver bonds not later than 10 days after the date the manager-at-risk executes the contract, unless certain conditions are met.

[Reserves Sections 2264.259-2264.300 for expansion.]

#### SUBCHAPTER G. DESIGN-BUILD METHOD

Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN BUILD. Defines "design build."

Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. Provides that this subchapter applies only to a facility that is a building or an associated structure (structure), including an electric utility structure, and provides that this subchapter does not apply to certain projects, buildings, and structures.

Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. Authorizes an entity to use the design-build method for the construction, rehabilitation, alteration, or repair of a building or structure only as provided by this subchapter and requires the entity, in using that method, to enter into one contract with a design-build firm (firm).

Sec. 2264.304. DESIGN-BUILD FIRMS. Requires a firm to be one of certain kinds of teams that includes an architect or engineer and a construction contractor.

Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE. Requires the entity to select or designate an architect or engineer independent of the firm to act as the entity's representative during the project.

Sec. 2264.306. PREPARATION OF REQUEST. (a) Requires the entity to prepare a request for qualifications that includes certain information that may assist potential firms in submitting project proposals.

(b) Requires the entity to prepare the design criteria package that includes more detailed information on the project and provides that if the package requires architectural or engineering services within Chapters 1051 or 1001, Occupations

Code, relating to practice provisions for architects and engineers respectively, those services are to be provided in accordance with applicable law.

(c) Requires the package to include a set of documents that contain certain information to permit the firm to prepare a response to the entity's request for qualifications and the criteria that the entity is permitted to consider, and sets forth specific criteria that may be required by the entity to be included within the design criteria package.

(d) Prohibits the entity from requiring offerors to submit detailed architectural or engineering 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 entity to evaluate certain aspects of each responding firm, except cost or price-related evaluation factors.

(b) Requires each firm to certify that each architect or engineer employed by the firm was selected based on competence and qualifications in the manner provided by Section 2254.004 (Professional Consulting Services).

(c) Requires the entity to qualify no more than five responders to submit proposals that contain additional information and to conduct an interview for final selection, if the entity chooses.

(d) Requires the entity to evaluate the additional information using the selection criteria stated in the request for qualifications and the results of any interview.

(e) Authorizes the entity to request certain additional information. Defines "costing methodology."

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

Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) Requires the entity to select the firm that proposes the best value for the entity based on the selection criteria and its ranking evaluation.

(b) Requires the entity to first attempt to negotiate a contract with the selected firm.

(c) Requires the entity to, in formal writing, end negotiations with the firm and proceed with the next ordered firm if the two parties are unable to negotiate a contract until a contract is reached or negotiations with all ranked firms end.

(d) Requires the entity to make the rankings public not more than seven days after the date the contract is awarded.

Sec. 2264.309. SUBMISSION OF DESIGN AFTER SELECTION. Requires the selected firm's architects or engineers to submit all elements for review and determination of scope compliance to the entity or the entity's architect or engineer before or concurrently with construction.

Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. Requires the firm to supply a set of construction documents for the completed project to the entity at the conclusion of construction and requires that the documents note any changes made during construction.

Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) Provides that a payment or performance bond is not required and prohibits it from providing coverage for the design portion of the contract with the firm under this subchapter.

(b) Requires the penal sums of the performance and payment bonds delivered to the entity to be equal to the construction budget, as specified in the design criteria package, if a fixed contract amount or guaranteed maximum price has not been determined by the time the contract is awarded.

(c) Requires the firm to deliver the bonds not later than ten days after the date the firm executes the contract unless the firm furnishes a bid bond or other financial security to the entity to ensure that the firm will furnish the required performance and payment bonds before construction begins.

[Reserves Sections 2264.312-2264.350 for expansion.]

#### SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

Sec. 2264.351. JOB ORDER CONTRACTING. Defines "job order contracting."

Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. (a) Provides that this subchapter applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. Provides that this subchapter does not apply to certain projects, buildings, or structures.

(b) Provides that this subchapter does not prohibit the procurement of commercial unitary and applied heating, ventilation, and air conditioning (HVAC) equipment, parts, and associated services, including temporary cooling services, to complete the maintenance, repair, alteration, renovation, remediation, or construction of a facility or prepurchase of HVAC equipment and commissioning services through an interlocal contract.

Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) Authorizes an entity to award job order contracts (contracts) for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility under certain circumstances.

(b) Requires the entity to establish the maximum aggregate contract price when it advertises the proposal.

(c) Requires the governing body of an entity to approve each job order that exceeds \$500,000 under the contract or a lesser amount as established by the governing body.

Sec. 2264.354. CONTRACTUAL UNIT PRICES. Authorizes the entity to establish contractual unit prices in a certain manner for a contract.

Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) Authorizes an entity to use the competitive sealed proposal method under Subchapter D for contracts.

(b) Requires an entity to advertise for, receive, and publicly open sealed proposals for contracts.

(c) Authorizes an entity to require offerors to submit additional information.

Sec. 2264.356. AWARDING OF JOB ORDER CONTRACTS. Authorizes an entity to award contracts to one or more contractors in connection with each solicitation of proposals.

Sec. 2264.357. USE OF JOB ORDER CONTRACT. Authorizes a job order contract to be used to accomplish work only for the governmental entity that awards the contract unless the solicitation for the job order contract and the contract specifically provide for

use by other persons or the governmental entity enters into an interlocal agreement that provides otherwise.

Sec. 2264.358. **USE OF ARCHITECT OR ENGINEER.** Requires the entity to select or designate an architect or engineer to prepare the construction documents for the project if a contract or order issued under it requires services that constitute the practice of architecture or engineering under Chapter 1051 or 1001, Occupations Code.

Sec. 2264.359. **JOB ORDER CONTRACT TERM.** Prohibits the base term for a contract from exceeding two years and authorizes an entity to renew the contract annually for not more than three additional years.

Sec. 2264.360. **JOB ORDERS.** (a) Requires an order for a job or project under a contract to be signed by the entity's representative and the contractor.

(b) Authorizes the order to be priced in a certain manner based on quantities and line items delivered.

Sec. 2264.361. **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 2264.362-2264.400 for expansion ]

#### SUBCHAPTER I. ENFORCEMENT

Sec. 2264.401. **VOID CONTRACT.** (a) Provides that a contract entered into in violation of this chapter and any bonds issued in connection with the contract are voidable as against public policy.

(b) Provides that an action to void a contract under this section does not excuse an obligation of the entity to pay for services performed or materials delivered in good faith by certain individuals before the date on which the contract is determined to be void.

Sec. 2264.402. **DECLARATORY OR INJUNCTIVE RELIEF.** (a) Authorizes enforcement of this chapter through an action for declaratory or injunctive relief filed no later than 10 days after the date the contract is awarded.

(b) Provides that this section does not apply to enforcement of a contract entered into by a state agency. Defines "state agency."

SECTION 2.11. Amends Section 252.048, Local Government Code, by adding Subsection (c-1), as follows:

(c-1) Authorizes the governing body of a municipality with a population of 500,000 or more to grant general authority to an administrative official of the municipality to approve a change order for a public works contract involving a decrease or increase of \$100,000 or less or a lesser amount as provided by ordinance.

SECTION 2.12. Amends Section 271.054, Local Government Code, as follows:

Sec. 271.054. **COMPETITIVE BIDDING REQUIREMENT.** Requires the governing body of an issuer to submit the proposed contract to competitive bidding or use an alternate method of project delivery authorized by Chapter 2264, Government Code, before the governing body is authorized to enter into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, of more than \$25,000.

SECTION 2.13. Amends Section 271.060, Local Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Creates Subsection (c) from a portion of this subsection.

(c) Creates this subsection from part of existing Subsection (b). Prohibits a contract with an original contract price of \$1 million or more from being increased by more than 25 percent. Prohibits subsequent changes orders from increasing the revised contract amount by more than 25 percent if a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more. Deletes existing text prohibiting the original price from being decreased by more than 25 percent without the consent of the contractor.

SECTION 2.14. Amends Section 431.101(g), Transportation Code, to require a local government corporation to comply with all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government that created the corporation. Deletes existing text that limited applicability of this subsection to a local government corporation created by a navigation district.

SECTION 2.15. Amends Subchapter D, Chapter 431, Transportation Code, by adding Section 431.110, as follows:

Sec. 431.110. **COMPETITIVE BIDDING EXCEPTION FOR CERTAIN IMPROVEMENTS.** Provides that any competitive bidding requirement or restriction on a local government that created a local government corporation does not apply to an expenditure by the local government corporation for certain improvements.

### ARTICLE 3. ADDITIONAL EXEMPTIONS

SECTION 3.01. Amends Section 44.901, Education Code, by adding Subsection (j) to provide that Chapter 2264, Government Code, does not apply to this section.

SECTION 3.02. Amends Section 51.927, Education Code, by adding Subsection (k) to provide that Chapter 2264, Government Code, does not apply to this section.

SECTION 3.03. Amends Section 2166.406, Government Code, by adding Subsection (k) to provide that Chapter 2264, Government Code, does not apply to this section.

SECTION 3.04. 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 3.05. Amends Subchapter E, Chapter 335, Local Government Code, by adding Section 335.077, as follows:

Sec. 335.077. **EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.** Provides that Chapter 2264, Government Code, does not apply to this chapter.

SECTION 3.06. Amends Section 22.084, Transportation Code, by adding Subsection (c), to provide that Chapter 2264, Government Code, does not apply to an agreement entered into under this section.

SECTION 3.07. Amends Section 370.305, Transportation Code, by adding Subsection (c-1) to provide that Chapter 2264, Government Code, does not apply to agreements entered into pursuant to this section (Comprehensive Development Agreements).

SECTION 3.08. Amends Subchapter Q, Chapter 451, Transportation Code, by adding Section 451.8025, as follows:

Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW. Provides that Chapter 2264, Government Code, does not apply to this subchapter (Hybrid Delivery System for Certain Construction Projects).

SECTION 3.09. Amends Subchapter C, Chapter 452, Transportation Code, by adding Section 452.1095, as follows:

Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR CERTAIN AUTHORITIES. Provides that Chapter 2264, Government Code, does not apply to an authority consisting of one subregion governed by a subregional board created under Subchapter O (Subregional Board in Subregion Having Principal Municipality With Population of More Than 800,000).

SECTION 3.10. Amends Section 60.452, Water Code, by adding Subsection (c) to provide that Chapter 2264, Government Code, does not apply to this subchapter (Purchase Contracts).

#### ARTICLE 4. CONFORMING AMENDMENT

SECTION 4.01. Amends Section 252.021(a), Local Government Code, to require a municipality to take certain actions before entering into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, including, among other things, to comply with a method described by Chapter 2264, Government Code, rather than Subchapter H (Alternative Project Delivery Methods for Certain Projects), Chapter 271.

#### ARTICLE 5. REPEALER

SECTION 5.01. (a)(1) Repealer: Sections 44.0315 (Definitions), 44.035 (Evaluation of Bids and Proposals for Construction Services), 44.036 (Design-Build Contracts for Facilities), 44.037 (Contracts for Facilities: Construction Manager-Agent), 44.038 (Contracts for Facilities: Construction Manager-at-risk), 44.039 (Selecting Contractor For Construction Services Through Competitive Sealed Proposals), 44.040 (Selecting Contractor For Construction Services Through Competitive Bidding), and 44.041 (Job Order Contracts For Facilities Construction or Repair), Education Code.

(2) Repealer: Sections 2166.2511 (Definitions), 2166.2526 (Evaluation of Bids and Proposals For Construction Services), 2166.2531 (Design-Build Method), 2166.2532 (Construction Manager-at-risk Method), 2166.2533 (Competitive Sealed Proposal Method), and 2166.2535 (Construction Manager-Agent), Government Code.

(3) Repealer: Section 252.043(d-1) (relating to the award of a bid to the lowest bidder for a contract to construct certain projects, buildings, and structures), Local Government Code.

(4) Repealer: Subchapter H (Alternative Project Delivery Methods For Certain Projects), Chapter 271, Local Government Code.

(5) Repealer: Section 431.101(e) (relating to property and improvements owned by a local government corporation), Transportation Code.

(b) Repealer: Section 1 (defining "regulating"), Chapter 359, Acts of the 78th Legislature, Regular Session, 2003, and any provision enacted by Section 1 of that chapter.

#### ARTICLE 6. TRANSITION; EFFECTIVE DATE

SECTION 6.01. Makes application of this Act prospective.

SECTION 6.02. Effective date: September 1, 2007.