

SUBJECT: Establishing guidelines for school district construction contracts

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Sadler, Dutton, Culberson, Hernandez, Hochberg, Price, Rhodes, Uher
0 nays
1 absent — Williamson

SENATE VOTE: On final passage, April 8 — 31-0

WITNESSES: For — Steve Nelson, Faulkner Construction; Steve Nelson, Texas Building Branch, Association of General Contractors; Gerhardt Schulle, Texas Society of Professional Engineers; Steve Stagner, Consulting Engineers of Texas
Against — None
On — James A. Broaddus, Director, University of Texas Planning and Construction; Paul Colbert; Susan Lee Voss

BACKGROUND : As part of the 1995 revision of the Education Code, the Legislature provided a list of methods by which school districts could contract for goods and services valued at more than \$25,000. School districts are authorized to select the method of contracting that provides the best value to the district. These methods include competitive bidding, competitive sealed proposals, a request for proposals, a catalogue purchase, an interlocal contract, or a design-build contract. A design-build contract is a contract with a single firm for the design and construction of a facility.

However, a series of attorney general's opinions have held that public entities cannot use design-build contracts because the practice is incompatible with the Professional Services Procurement Act, which prohibits competitive bidding for professional services.

Since the Education Code authorizes design-build contracts but does not specify the procedures to be used in procuring these contracts, it is unclear how the two statutes fit together. Institutions of higher education currently do not have authority to enter into design-build contracts.

DIGEST:

CSSB 583 would establish procedures for school districts and higher education institutions to use in entering into design-build contracts for the construction, rehabilitation, alteration or repair of facilities.

The bill would establish guidelines for competitive bidding through sealed proposals and procedures for entering into design-build contracts. The procedures would require a request for qualifications and a two-phase evaluation process that would include such considerations as the safety and long-term durability of the project, the feasibility of implementing the project, and the ability of the bidder to meet schedules and cost estimates.

CSSB 583 would establish guidelines for arrangements involving construction manager-agents and construction managers-at-risk. A construction manager-agent would be defined as a legal entity that provided consultation regarding construction, rehabilitation, alteration or repair of a facility, and represents the district in a fiduciary capacity. A construction manager-at-risk would serve as a general contractor for the project and provide consultation during and after the design of the facility.

The bill would also authorize school districts and institutions of higher education to enter into job order contracts for minor repair work. Districts and institutions of higher education would be required to competitively bid these job order contracts. The contracts could be awarded to one or more contractors based on such factors as price proposals, experience, past performance and safety record.

CSSB 583 would take effect September 1, 1997, and would apply to contracts for which requests for bids, proposals or qualifications were published on or after that date.

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NOTES: The committee substitute added procedures for contracting with construction manager-agents and construction managers-at-risk and for awarding job order contracts for minor facilities repair.