

SUBJECT: Contracting methods for navigation districts and port authorities

COMMITTEE: Transportation — favorable, without amendment

VOTE: 8 ayes — Alexander, Hawley, Y. Davis, Hamric, Hill, Noriega, Pickett, Swinford

0 nays

1 absent — Edwards

SENATE VOTE: On final passage, March 19 — 29-0

WITNESSES: For — *Registered but did not testify*: Scott Forbes, Port of Houston Authority; Paula Littles, Texas AFL-CIO; Danny Tilley, Texas Building Trades Council

Against — None

BACKGROUND: Education Code, ch. 44 authorizes school districts to use several contracting methods for purchases, including competitive bidding, competitive sealed proposals, design-build, manager-at-risk, and manager agent.

DIGEST: SB 925 would authorize a navigation district or port authority to enter into a contract or make a purchase for \$25,000 or more by any method available to a school district that provided the best value to the district or port authority. This authority would not apply to a purchase or contract for the construction of highways, public roads and streets, bridges, water supply projects, water plants, wastewater plants, or electric generation facilities, or to projects the district or port authority built for another political subdivision.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY: SB 925 would help Texas' navigation districts and port authorities compete with ports in other states by giving them the same flexibility in purchasing

and contracting, including design-build, that is available in other major port states. Ports often are approached by maritime industry companies interested in transporting cargo or people through the port, but these companies may take their business elsewhere if the port cannot build quickly the necessary infrastructure to handle the increase or the type of cargo. Texas ports have been at a disadvantage in obtaining this business because they do not have the authority to use the design-build construction method that ports in other states use to save construction time and money. By authorizing navigation districts and port authorities to use any contracting method available to school districts, SB 925 would allow these entities to use the design-build method to compete with ports in other states.

Design-build authority is not new. Since 1995, the Legislature has approved these methods for use by school districts and universities. Across the United States, about one-third of construction is now conducted through design-build. These methods reduce the risk to governmental agencies by creating a single point of accountability responsible for completing the project on time, on budget, and to specifications. Unlike in traditional methods, where a contractor is not responsible for flaws in a project's design, the design-build method ensures that the contractor, rather than the governmental entity, is responsible for these kinds of problems. Research by major universities has found that the design-build method of contracting is one-third faster and 6 percent cheaper and that it results in half as many claims and litigation as with traditional design and low-bid contracting.

SB 925 would not require a navigation district or port authority to use any of these alternative methods. If the entities decided that these methods were too complex or increased costs, they could continue to use traditional contracting methods. The bill would not decrease contracts to historically underutilized businesses (HUBs), because all laws relating to HUBs still would apply.

Navigation districts and port authorities would be accountable to a city's voters, either directly or indirectly, for any contracts created under design-build. Some of these governing boards are elected, such as that of the Freeport navigation district, and are therefore directly accountable to voters for their decisions. Appointed boards remain accountable to the local officials who appointed them, and who have the authority to remove them, thus ensuring that they follow the will of elected officials.

OPPONENTS
SAY:

Unlike school districts, which are run by elected boards, some navigation districts and port authorities are governed by appointed boards that are unaccountable to voters. These entities should not have the same authority to use the design-build method, which, by allowing the consideration of subjective criteria, may increase the cost of a project compared to a lowest-bid procedure and can create an opportunity for favoritism in the process of awarding a contract. Because these subjective criteria allow more flexibility in price considerations, they encourage the participation of larger contractors and can cut out small contractors, including many HUBs.

The design-build method is more complex than traditional contracting methods and requires more oversight, especially as the contractor's cost estimate is not based on a full design, which can lead to disputes over what was implied in the documents. Design-build contractors may make cost-cutting decisions that reduce building quality without input from the governmental entity unless very specific quality and performance standards are defined.