

## **BILL ANALYSIS**

Senate Research Center  
77R443 BDH-F

S.B. 110  
By: Madla  
Criminal Justice  
3/15/2001  
As Filed

### **DIGEST AND PURPOSE**

Currently, the only public entities that have design-build as an option are school districts and state universities. During the interim of the 76th Legislature, the Senate Committee on Intergovernmental Relations (committee) evaluated the potential benefits offered through the “design-build” form of bidding. Based on committee findings, it was determined that the Texas Department of Criminal Justice (TDCJ) would benefit from having design-build as a procurement option. Design-build allows for an architect, engineer, and builder to form a team and bid on a construction project together with the contractor heading up the team. One firm handles all of the aspects of the project, from planning and preliminary design to the final landscaping. In this process, projects are not necessarily awarded to the lowest bidder, but are also evaluated on factors such as the design-build firm’s past experience, technical competence, and past performance record. By combining various factors in the award process, the state can select a proposal that reflects the greatest value, not just the lowest cost. As proposed, S.B. 110 authorizes the TDCJ to use design-build for the repair or construction of facilities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 495B, Government Code, by adding Section 495.025, as follows:

Section 495.025. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a) Defines “architect,” “contractor,” “design-build contract,” “design-build firm,” “design criteria package,” “engineer,” and “facility.”

(b) Authorizes the Texas Department of Criminal Justice (department) to use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. Requires the department and design-build firm to follow the procedures provided by this section.

(c) Authorizes the department to designate an engineer or architect to act as its representative in administering this section with regard to a project. Requires that if an engineer or architect is not a full-time employee of the department, then any engineer or architect will be selected on the basis of demonstrated competence and qualifications in accordance with Chapter 2254A, Government Code.

(d) Requires the department to prepare a request for qualifications that includes certain information that may assist potential design-build firms in submitting proposals for the project. Requires the department to also prepare a design criteria package for the project. Sets forth that if the preparation of the design criteria package requires the practice of engineering or architectural services under Article 3271a (Texas Engineering Practice Act), V.T.C.S. or the practice of architecture under Article 249a

(Regulation of practice of architecture), V.T.C.S., those services must be provided in accordance with the applicable law.

(e) Requires the department to evaluate statements of qualifications and select a design-build firm in two phases as provided in Subsections (f) and (g).

(f) Requires the department to prepare a request for qualifications and evaluate each offeror's experience, technical competence, capability to perform, and other appropriate factors submitted by the team or firm in response to the request. Prohibits the department from considering cost-related or price-related evaluation factors. Requires each offeror to certify that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. Prohibits the department from qualifying more than five offerors to submit additional information and, if the department chooses, to interview for final selection.

(g) Requires the department to evaluate the information submitted by the offerors on the basis of the selection criteria and the results of any interview. Authorizes the department to request additional information regarding demonstrated competence and qualifications and other factors as appropriate. Prohibits the department from requesting detailed engineering or architectural designs as part of the proposal. Requires the department to rank each proposal on the basis of the criteria set forth in the request for qualifications, and to select the design-build firm that offers the best value for the department on the basis of the criteria. Requires the department to attempt to negotiate a contract with the selected offeror, and if they are unable to negotiate a satisfactory contract, to formally and in writing end negotiations with that offeror and proceed with the next offeror in order of the selection ranking.

(h) Requires the firm's engineers or architects to complete the design, submitting all design elements for review and determination of scope compliance to the department or department's engineer or architect before or concurrently with construction.

(i) Requires, in carrying out a project under a design-build contract, that an engineer be assigned responsibility for compliance with the engineering design requirements and all other applicable requirements of Article 3271a, V.T.C.S., and that an architect be assigned responsibility for compliance with the requirements of Article 249a, V.T.C.S.

(j) Requires the department 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 department. Requires the selection of those services to be in accordance with Section 2254.004, Government Code.

(k) Requires the design-build firm to supply a signed and sealed set of construction documents for the project to the department at the conclusion of construction.

(l) Provides that a design-build contract is governed by Chapter 2253, Government Code, except that a payment or performance bond is not required for and may not provide coverage for the portion of a design-build contract that includes design services only. Provides that if a contract amount or guaranteed maximum price has not been determined at the time a contract is awarded, then the performance bond and payment bond 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 to the department no later than the 10th day after the date the firm executes the contract unless the firm furnishes a bid bond or other financial security to the department to ensure that the firm will furnish the required performance and payment bonds when a guaranteed maximum

price is established.

SECTION 2. Effective date: September 1, 2001.  
Makes application of this Act prospective.