

BILL ANALYSIS

Senate Research Center
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H.B. 2634
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law allows governmental entities to use alternative construction for public works contracts. Under Chapter 2269, Government Code, a governmental entity is required currently to conduct two separate procurements for a construction project: selecting an engineer or architect to prepare and manage design under one contract and selecting a construction manager-at-risk to manage and perform construction services under a separate contract. If the engineer or architect is not an employee of the governmental entity, the selection is based on qualifications set out in state law and the selected engineer or architect may also serve as the construction manager-at-risk if a separate procurement is conducted. This provision is a departure from best practices and allows the possibility for the governmental entity's engineer or architect to influence selection criteria in favor of related entities as construction managers-at-risk, which may constitute a conflict of interest and create competitive disadvantages.

H.B. 2634 would eliminate the loophole related to the procurement and use of the construction manager-at-risk method in design and construction services for governmental agencies.

H.B. 2634 amends current law relating to the construction manager-at-risk used by a governmental entity.

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 Section 2269.252, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits the governmental entity's architect or engineer for a project, or an entity related to the governmental entity's architect or engineer, from serving, alone or in combination with another person, as the construction manager-at-risk, rather than prohibits the governmental entity's architect or engineer 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.

(c) Provides that an entity, for purposes of Subsection (b), is related to the governmental entity's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the governmental entity's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the governmental entity.

SECTION 2. Provides that this Act applies only to a contract for the services of a construction manager-at-risk entered into on or after the effective date of this Act. Provides that a contract entered into for the services of a construction manager-at-risk before the effective date of this

Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2015.