

1 AN ACT

2 relating to the authority of metropolitan rapid transit authorities  
3 to use a hybrid delivery system for certain construction projects.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 451, Transportation Code, is amended by  
6 adding Subchapter Q to read as follows:

7 SUBCHAPTER Q. HYBRID DELIVERY SYSTEM FOR CERTAIN CONSTRUCTION  
8 PROJECTS

9 Sec. 451.801. DEFINITIONS. In this subchapter:

10 (1) "Civil works components" means:

11 (A) underground utilities;

12 (B) paving;

13 (C) drainage;

14 (D) structures, including elevated platforms and  
15 bridges;

16 (E) components related to vehicular traffic;

17 (F) primary power distribution systems;

18 (G) transfer stations, depots, and other  
19 architectural features, including related mechanical, electrical,  
20 and plumbing systems; and

21 (H) all other aspects of a project not defined as  
22 system components.

23 (2) "System components" means the components of a  
24 transit system that are related directly to system operations,

1 including rolling stock, tracks, guideway systems, and special  
2 signal and communications systems.

3 (3) "Design development" means drawings and other  
4 documents that are:

5 (A) approximately 30 percent complete; and

6 (B) sufficient to fix and describe the size and  
7 character of the project as to civil work, architectural systems,  
8 structural systems, mechanical and electrical systems, materials,  
9 equipment, and technology, including schematic layouts and  
10 conceptual design criteria.

11 (4) "Facility" means a single transit project:

12 (A) with a proposed cost of more than \$100  
13 million; or

14 (B) as identified in a referendum approved by the  
15 voters.

16 (5) "Facility provider" means a partnership,  
17 corporation, joint venture, consortium, special purchase company,  
18 or other legal entity or team responsible for:

19 (A) providing and installing the system  
20 components for a facility; and

21 (B) constructing the associated civil works  
22 components.

23 (6) "Hybrid delivery system" means the alternative  
24 procurement procedure provided by this subchapter.

25 Sec. 451.802. APPLICABILITY. This subchapter applies only  
26 to an authority in which the principal municipality has a  
27 population of more than 1.2 million.

1       Sec. 451.803. USE PERMITTED. Notwithstanding any other  
2 law, an authority may use a hybrid delivery system for construction  
3 of a facility as provided by this subchapter.

4       Sec. 451.804. SELECTION OF ENGINEER OR TEAM. (a) An  
5 authority shall select an engineer or an engineering and  
6 architecture team for the design of the civil works components of  
7 the facility. The authority shall select an engineer or team in  
8 accordance with Section 2254.004, Government Code.

9       (b) A selected engineer or team shall comply with Chapter  
10 1001, Occupations Code.

11       (c) The authority shall enter into a contract with the  
12 selected engineer or team to provide planning and design  
13 development services and an estimate of final design costs. The  
14 contract may also include construction management.

15       Sec. 451.805. REQUEST FOR PROPOSALS. After the completion  
16 of design development documents by the engineer or team, the  
17 authority shall issue requests for proposals from facility  
18 providers. The request for proposals shall include general  
19 information on the project site, project scope, budget, schedule,  
20 system criteria, selection criteria, and any other information that  
21 may assist potential facility providers in submitting proposals for  
22 the project.

23       Sec. 451.806. EVALUATION OF PROPOSALS. (a) For each  
24 proposal submitted by a facility provider in response to a request  
25 for proposals, the authority shall evaluate:

- 26           (1) the provider's experience and qualifications;  
27           (2) the provider's technical competence and capability

1 to perform;

2 (3) the provider's past performance, including past  
3 performance of members of the provider's team;

4 (4) proposed technology;

5 (5) feasibility of implementing the project as  
6 proposed;

7 (6) costing methodology; and

8 (7) other information submitted on the basis of the  
9 selection criteria stated in the request for proposals.

10 (b) The authority shall rank two to four facility providers  
11 that best meet the selection criteria.

12 Sec. 451.807. SELECTION OF FACILITY PROVIDER. (a) The  
13 authority shall select the facility provider that submits the  
14 proposal that offers the best value for the authority on the basis  
15 of the published selection criteria and price.

16 (b) The authority shall first attempt to negotiate a  
17 contract with the first-ranked provider in the order of the ranking  
18 established under Section 451.806(b). The authority and the  
19 engineer or team selected under Section 451.804 may discuss with  
20 the selected provider options for a scope or time modification and  
21 any price change associated with the modification before finalizing  
22 a contract with the selected provider. If the authority is unable  
23 to negotiate a contract with the selected provider, the authority  
24 shall end negotiations with the selected provider in writing and  
25 proceed to negotiate a contract with the next provider in the order  
26 of the ranking established under Section 451.806(b) until a  
27 contract is entered into or all proposals are rejected.

1       Sec. 451.808. FINAL DESIGN CONTRACTS. (a) In consultation  
2 with the selected facility provider, the authority shall negotiate  
3 with the engineer or team selected under Section 451.804 on the:

4           (1) scope of work and fees associated with final  
5 design of the civil works components; and

6           (2) integration of system components and civil works  
7 components of the facility.

8       (b) A contract for final design shall be incorporated into  
9 the authority's contract with the selected facility provider. Any  
10 subsequent changes to a contract with the engineer or team must be  
11 approved by the facility provider and the authority.

12       (c) In a contract with a selected facility provider, the  
13 authority shall provide a mechanism under which issues of design  
14 quality, quality assurance, code compliance, value engineering, or  
15 life cycle costing may be communicated directly by the engineer or  
16 team to the facility provider and the authority with the intent of  
17 seeking the authority's approval of proposed action.

18       (d) The selected facility provider's oversight of the  
19 engineer or team is limited to:

20           (1) design management;

21           (2) coordination of the civil works components;

22           (3) integration of the design of system components  
23 into the civil works; and

24           (4) the acceptance of items listed under Subdivisions  
25 (1)-(3) with regard to the facility provider's assumption of  
26 responsibility for contract compliance, performance warranties and  
27 guarantees, and other risk-related items as stipulated in the

1 contract between the selected facility provider and the authority.

2 (e) Fees associated with the items listed in Subsection (d)  
3 may not exceed eight percent of final design fees unless otherwise  
4 amended by the engineer or team through allocation of a portion of  
5 the engineer or team fee to the selected facility provider for  
6 specialty design assistance.

7 Sec. 451.809. USE OF OTHER PROFESSIONAL SERVICES. (a) If  
8 the authority performs periodic audits of its construction  
9 materials, the authority, independent of the selected facility  
10 provider, shall contract for the inspection and testing of  
11 construction materials and other verification testing services  
12 necessary for the acceptance of the facility by the authority.

13 (b) A contract under Subsection (a) does not alleviate the  
14 selected facility provider's responsibility to provide the  
15 services described by Subsection (a) under a contract entered into  
16 under this subchapter.

17 (c) A contract described by Subsection (a) and any  
18 additional contract for engineering or architecture services  
19 entered into by the selected facility provider for the design and  
20 construction of the facility must be entered into in accordance  
21 with Section 2254.004, Government Code.

22 Sec. 451.810. CONSTRUCTION WORK SUBCONTRACTED. (a) The  
23 authority may require that the selected facility provider publicly  
24 advertise for and receive bids or proposals from trade contractors  
25 or subcontractors for the construction of civil works components of  
26 the facility.

27 (b) The selected facility provider may submit a bid or

1 proposal for the work described in Subsection (a) in the same manner  
2 as other trade contractors or subcontractors.

3 Sec. 451.811. LOCAL PREFERENCE. To the maximum extent  
4 permitted by law, the authority shall use vendors and providers of  
5 services with an established office in the principal municipality.

6 Sec. 451.812. EXPIRATION. This subchapter expires on  
7 August 31, 2015.

8 SECTION 2. Section 451.110(a), Transportation Code, is  
9 amended to read as follows:

10 (a) Except as provided by Subsection (c) and by Subchapter  
11 Q, a board may not contract for the construction of an improvement  
12 or the purchase of any property, except through competitive bidding  
13 after notice of the contract proposal. The notice must be published  
14 in a newspaper of general circulation in the area in which the  
15 authority is located at least once each week for two consecutive  
16 weeks before the date set for receiving the bids. The first notice  
17 must be published at least 15 days before the date set for receiving  
18 bids.

19 SECTION 3. Section 451.111(a), Transportation Code, is  
20 amended to read as follows:

21 (a) Except as provided by Subchapter Q, unless ~~Unless~~ the  
22 posting requirement in Subsection (b) is satisfied, a board may not  
23 let a contract that is:

- 24 (1) for more than \$25,000; and  
25 (2) for:  
26 (A) the purchase of real property; or  
27 (B) consulting or professional services.

1 SECTION 4. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2300 was passed by the House on May 13, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 2300 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor