



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2013

The Honorable Bill Callegari, P.E.
Chair, Committee on Pensions
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. GA-1028

Re: Whether the Metropolitan Transit Authority of Harris County is authorized to use the job order contracting method of procurement for construction projects, including civil works projects (RQ-1129-GA)

Dear Representative Callegari:

You ask whether the Metropolitan Transit Authority of Harris County (“METRO”) is authorized to use the job order contracting method of procurement for construction projects, including civil works projects.¹

Job order contracting is “a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.” TEX. GOV’T CODE ANN. § 2269.401 (West Supp. 2013).² The authority for certain governmental entities to use job order contracting is located in subchapter I, chapter 2269 of the Government Code. *Id.* §§ 2269.401–.411 (subchapter I).³ Chapter 2269 “applies to a public work contract made by a governmental entity authorized by state law to make a public work contract, including . . . any other special district or authority . . . and . . . any other political subdivision of this state[.]” *Id.* § 2269.002(2)(D)–(E). METRO is a governmental entity authorized by state law to make a public work contract. TEX. TRANSP. CODE ANN. §§ 451.052(a), .054(a), .055(a), .056(a)(1) (West 2013). Thus, METRO is subject to chapter 2269, including the job order contracting provisions in subchapter I.

¹See Letter from Honorable Bill Callegari, P.E., Chair, House Comm. on Pensions, to Honorable Greg Abbott, Tex. Att’y Gen. at 1 (May 22, 2013), <http://www.texasattorneygeneral.gov/opin> (“Request Letter”).

²Effective September 1, 2013, former chapter 2267 of the Government Code was redesignated as chapter 2269. Act of May 9, 2013, 83d Leg., R.S., ch. 161, §§ 22.001, 23.001, 2013 Tex. Sess. Law Serv. 623, 702, 710 (to be codified at TEX. GOV’T CODE ANN. ch. 2269).

³Some governmental entities possess job order contracting authority specified outside of chapter 2269. See TEX. EDUC. CODE ANN. § 51.784 (West 2012) (institutions of higher education); TEX. WATER CODE ANN. § 60.464(a) (West Supp. 2013) (navigation districts).

Subchapter I authorizes governmental entities such as METRO to award job order contracts for work that meets certain criteria. TEX. GOV'T CODE ANN. § 2269.403(a) (West Supp. 2013). The work allowed under subchapter I is limited in scope. This limits METRO's authority to use job order contracts. Section 2269.402 authorizes job order contracting only for certain work involving "a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land . . . that is associated with a building." *Id.* § 2269.402. Section 2269.402 prohibits job order contracting for certain other construction projects:

[Chapter 2269, subchapter I] does not apply to:

- (1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- (2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

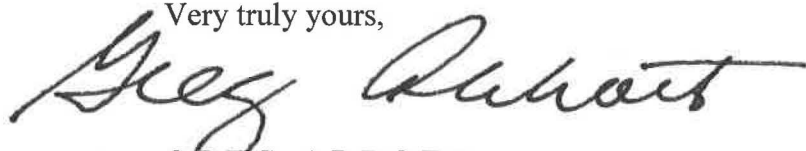
Id. You have not directed us to any other source of authority allowing METRO to use the job order contracting method of procurement, nor have we found any. Accordingly, pursuant to section 2269.402 of the Government Code, METRO may use job order contracting only for certain work pertaining to a facility that is a building or associated structures and land. Section 2269.402 explicitly prohibits METRO from using job order contracting for most other engineering projects.⁴

⁴The predecessor to chapter 2269, subchapter I of the Government Code was first made applicable "only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after" September 1, 2011. Act of May 29, 2011, 82d Leg., R.S., ch. 1129, §§ 2.08, 6.01-.02, 2011 Tex. Gen. Laws 2900, 2904-20, 2924. We express no opinion about job order contracting authority for earlier contracts or construction projects.

S U M M A R Y

Section 2269.402 of the Government Code authorizes the Metropolitan Transit Authority of Harris County ("METRO") to use job order contracting only for work involving a facility that is a building or work involving structures or land associated with a building.

Very truly yours,

A handwritten signature in black ink, appearing to read "Greg Abbott", written in a cursive style.

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JAMES D. BLACKLOCK
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

William A. Hill
Assistant Attorney General, Opinion Committee