

## **I HAVE TO CERTIFY WHAT?**

A review of House Bill 1050, 83<sup>rd</sup> Legislature

The 83<sup>rd</sup> Texas Legislature recently adopted H.B. 1050 sponsored by Rep. Callegari. H.B. 1050 places additional requirements on local governments that purchase construction related services through a cooperative purchasing program.

The bill prohibits a local governmental entity, such as a school district, municipality, or county, from entering into a contract to purchase construction-related goods or services through a purchasing cooperative under the Interlocal Cooperation Act, chapter 791, Texas Government Code, in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that: (1) the project for which construction-related goods or services are being procured does not require the preparation of plans and specifications by a licensed architect or engineer; or (2) required plans and specifications have been prepared. *TEX. GOV'T CODE § 791.011 (j)*. The bill defines purchasing cooperative to mean a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors. *Id.*

H.B. 1050 is silent as to who from the governmental entity must make the certification; presumably, however, it should be an employee or other elected official of the entity. As a practical matter, most small and mid-sized governmental entities do not have a licensed engineer or architect on staff that is qualified to make the certifications required under H.B. 1050. Thus, those entities that do not already have a relationship with an architectural or engineering firm are faced with a conundrum, engage the services of a licensed architect or engineer to determine whether it is necessary to engage an architect or engineer to prepare plans and specifications, or simply designate an employee of the entity to make the determination based upon the employee's analysis of the project.

For obvious reasons, neither option is ideal. However, most cautious entities will be unwilling to certify that plans and specifications are unnecessary without first consulting a qualified professional. On the other hand, H.B. 1050 does not provide any express penalties if an entity fails to make the required certification. Therefore, it is unclear what the consequences, if any, will be if an entity fails to follow H.B. 1050.

Any entity that is considering purchasing construction related services from a purchasing cooperative in excess of \$50,000 that is not already utilizing the services of a licensed architect or engineer is well advised to consult with the entities legal counsel before proceeding.