

BILL ANALYSIS

Senate Research Center

C.S.S.B. 487

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State Affairs

3-13-2001

Committee Report (Substituted)

DIGEST AND PURPOSE

The 75th Texas Legislature authorized the Texas Department of Transportation to establish an electronic bidding system that allows bidders on a highway improvement contract to submit bids electronically. While bids may be submitted electronically, there is currently no provision authorizing the required bid guaranty to also be submitted electronically. Without an electronic bid guaranty process, the goal of electronic bidding could be compromised because a physical cashier's check, teller's check, or money order would have to be submitted before the bid deadline, while the bid itself is handled through electronic means. C.S.S.B. 487 allows for the electronic submission of the bid guaranty which completes the link for the electronic bidding system. This bill continues to allow for bids and bid guarantees to be submitted manually. C.S.S.B. 487 also restricts the awarding of contracts to certain bidders.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1 (Section 223.014, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 223A, Transportation Code, by adding Sections 223.014 and 223.015, as follows:

Sec. 223.014. **BID GUARANTY.** Requires the Texas Transportation Commission (commission) to provide by rule certain methods by which a bidder may submit a bid guaranty. Authorizes the Texas Department of Transportation (department) to require the payment of a discount or service charge for the use of a credit card. Authorizes the department to establish one or more escrow accounts in the state highway fund for the prepayment of bid guaranties. Requires the bid guaranties and any fees the department establishes to administer this subsection to be administered in accordance with an agreement approved by the department. Requires any available accumulated interest and other income, notwithstanding any other law and as specified in the agreement, earned on money in an escrow account to be paid to the bidder or credited to the escrow account. Requires the department to deposit each administrative fee and discount and service charge collected to the credit of the state highway fund. Prohibits the commission's rules from prohibiting a bidder from submitting a bid guaranty by use of a cashier's check, money order, or teller's check.

Sec. 223.015. **DEPOSIT AND INVESTMENT OF BID GUARANTY.** Provides that the department may authorize the use of a trust account for the purpose of providing a required bid guaranty. Requires the guaranty to be deposited in accordance with a trust agreement, prescribed by the department to protect the interests of this state, with a state or nationally chartered financial institution that has its main office or a branch office in this state and that is selected by the bidder. Requires interest earned under the trust agreement to be paid to the bidder unless specified otherwise in the trust agreement. Provides that the applicable financial institution is responsible for all amounts resulting from the deposit of the guaranty until released

from that responsibility in accordance with the trust agreement. Requires the bidder to pay all expenses incident to the deposit and all charges imposed by the financial institution for custody of the guaranties and forwarding of interest on a bid guaranty. Prohibits the expenses from being included in the bid and provides that they are not otherwise the responsibility of the state. Authorizes the financial institution, on the request of a bidder, to reinvest the guaranty amounts in a certificate of deposit or another similar instrument prescribed by the trust agreement. Requires the certificate of deposit or other instruments to be issued by a state or nationally chartered financial institution that has its main office or a branch office in this state. Requires the financial institution, on request, to certify and verify to the department the amount on deposit. Requires the trust agreement to specify the method for providing the required information.

SECTION 2. Amends Section 223.0041, Chapter 223A, Transportation Code, to prohibit the commission, unless by a unanimous vote of members present, from awarding a contract to a bidder that has a total amount under contract that equals more than 40 percent of the total amount of highway construction under contract in the highway district in which the highway project under bid is located.

SECTION 3. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from As Filed version by adding a new SECTION 2 to restrict the awarding of contracts to certain bidders. Renumbers As Filed version SECTION 2 as SECTION 3.