

SUBJECT: Bid guaranty rules for state highway improvement contracts

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Alexander, Siebert, Y. Davis, Edwards, Hamric, Hawley, Hill, Uher
0 nays
1 absent — Noriega

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 8 — 30-0

WITNESSES: None

BACKGROUND: The Texas Department of Transportation (TxDOT) accepts bid guaranties from companies that bid for state highway construction and maintenance projects. A bid guaranty commits a company to enter into a contract for the bid price if TxDOT selects the company's bid. If the company does not accept the project, TxDOT confiscates the funds in the bid guaranty.

DIGEST: CSSB 514 would require TxDOT to adopt rules for the submission of bid guaranties for state highway projects. The rules could authorize the use of checks, electronic fund transfers, credit cards, money orders, and escrow accounts to submit bid guaranties. TxDOT could require the payment of a discount or service charge for the use of a credit card. Bidders could not be prohibited from submitting a bid guaranty payable to TxDOT by cashier's check, money order, or teller's check.

TxDOT could establish one or more escrow accounts in the state highway fund for prepayment of bid guaranty funds. TxDOT would have to deposit into the state highway fund all administrative fees, discounts, and service charges collected from the submission of bid guaranties.

TxDOT could authorize bidders to use a trust account for providing a required bid guaranty. To enter into a trust agreement, TxDOT would have to use a state or nationally chartered financial institution selected by the bidder with a main office or branch office in Texas. The bidder would earn all

interest earned in the trust account unless specified otherwise in the agreement.

The financial institution would be responsible for all funds in the account until released from responsibility by the trust agreement. The bidder would be responsible for all expenses and charges related to the deposit and forwarding of interest on a bid guaranty account. The financial institution could reinvest the guaranty amounts in a certificate of deposit or other similar instrument prescribed by the trust agreement if requested by the bidder. The financial institution would have to certify to TxDOT the amount on deposit in a bid guaranty account if requested by the bidder. The trust agreement would have to specify the method for providing the required information.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

TxDOT needs the statutory authority to accept bid guaranties through electronic fund transfers. The use of electronic transfers would greatly improve the efficiency of the bidding process for state highway projects. CSSB 514 would codify bid guaranty rules that TxDOT already uses.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The House committee substitute would require TxDOT to adopt rules for submission of bid guaranties, whereas the Senate engrossed bill would have required TxDOT to “provide a method” for submission. The substitute also added the requirement that discounts and service fees for credit card use be deposited in the state highway fund.

The substitute removed a requirement that money collected through administrative fees, discounts, and service charges be used only to administer bid guaranties. It specifically would allow a bidder to submit a bid guaranty payable by cashier’s check, money order, or teller’s check. The substitute also would require financial institutions involved in trust agreements to have a main office or branch office located in Texas.