

SUBJECT: Requiring acceptance of bid bonds as bid deposit for construction projects

COMMITTEE: Natural Resources — favorably without amendment

VOTE: 6 ayes — Puente, Hamilton, Creighton, Guillen, Laubenberg, O'Day

0 nays

3 absent — Gattis, Gallego, Hilderbran

WITNESSES: For — Bill King, Suretec; Buddy Jimerson

Against — None

On — Marilyn Hamilton, Texas Department of Insurance

BACKGROUND: Water Code, sec. 49.271 sets the requirements for construction project contracts with certain districts, including municipal utility districts, water conservation districts, and reclamation districts. To demonstrate that a potential contractor has the capital to complete the project, a person who bids for a contract of \$25,000 or more must submit either:

- a certified or cashier's check on a responsible Texas bank equal to at least 2 percent of total amount of the bid; or
- a "bid bond," or security bond, of at least 2 percent of the total amount of the bid issued by a surety or guarantor legally authorized to business in Texas.

If the successful bidder does not accept the contract or fails to furnish required payment and performance bonds, the bidder forfeits the deposit.

DIGEST: HB 576 would require a district to accept a bid bond in the amount required by the district as a bid deposit if the bid bond adhered to other requirements of Water Code, sec. 49.271.

HB 576 would apply only to a construction contract deposit made on or after the bill's effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 576 would benefit construction companies by no longer requiring them to render so much of their company's net worth inaccessible during the bidding process. Current law does not require a district to accept a bid bond. Further, while it allows a district to accept 2 percent of the bid in a cashier's check, this is a minimum amount. Many districts set the amount at 5 percent, and during the bidding process, a water district can keep the certified or cashier's check for up to 30 days after the check was submitted. This creates a heavy burden for some construction companies that simply cannot afford to tie up such significant portions of their net worth in the bidding process.

HB 576 would allow construction companies to go through the vetting process with a surety company to demonstrate that they had the capital available to perform the construction job, affording them the freedom to actually use their capital to grow the business or undertake other construction jobs. Surety companies would prequalify construction companies before they bid to determine whether the company had the capital to complete the job. This would be especially helpful to smaller construction companies in their efforts to compete for contracts.

The bill would not create a hardship for districts in requiring them to accept bid bonds. The state and most counties currently do not require construction companies to submit certified or cashier's checks. Most counties in Texas already require that construction companies submit bid bonds when bidding on a construction job.

**OPPONENTS
SAY:**

This bill inappropriately would require districts to accept bid bonds. Requiring a certified or cashier's check is an effective way of determining whether a company truly is financially capable of completing a construction job. Companies that have difficulty producing a check up front for 2 percent of the bid are unlikely to be able to complete a complex and expensive construction job.