

AN ACT

relating to bond requirements for privatized maintenance contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 223.042, Transportation Code, as amended by Chapters 28 and 274, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 223.042. PRIVATIZATION OF MAINTENANCE CONTRACTS. (a) Of the amount spent in a fiscal year by the department for maintenance projects, the department shall spend not less than 50 percent through contracts awarded by competitive bids.

(b) Money spent for maintenance projects to which this section does not apply is [~~are~~] included when computing the amount of expenditures for maintenance projects in a fiscal year.

(c) The department may award a contract under this section as a purchase of service under Subtitle D, Title 10, Government Code, if the department:

(1) estimates that the contract will involve an amount less than \$15,000; and

(2) determines that the competitive bidding procedure in this chapter is not practical.

(d) The department shall consider all of its direct and indirect costs in determining the cost of providing the services. The department shall use the cost accounting procedures and

1 instructions developed by the State Council on Competitive
2 Government under Section 2162.102(c)(2), Government Code, in
3 determining its cost. On request, the State Council on Competitive
4 Government shall provide technical assistance to the department
5 about the cost accounting procedures and instructions.

6 (e) Subsection (a) does not apply unless the department
7 determines that a function of comparable quality and quantity can
8 be purchased or performed at a savings by using private sector
9 contracts.

10 (f) The department shall file a report with the Legislative
11 Budget Board on September 1 of each fiscal year detailing the
12 contracts awarded by the department under this section during the
13 previous fiscal year.

14 (g) The commission shall adopt rules to administer this
15 section.

16 (h) In this section, "maintenance project" means any
17 routine or preventive maintenance activity. The term includes
18 mowing, concrete removal and replacement, illumination
19 maintenance, guardrail repair, fence repair, litter pick-up,
20 herbicide spraying, pothole repair, silt and erosion control or
21 repair, sign installation, highway overlaying, paint and bead
22 striping, rest area maintenance, and installation of raised
23 pavement markings.

24 (i) This section does not apply to the purchase of
25 materials for maintenance projects.

26 (j) [~~(i)~~] As an alternative to the requirements of Sections
27 2253.021(b) and (c) [~~Section 2253.021~~], Government Code, the

1 department may require that a performance or payment bond [~~securing~~
2 ~~a contractor's performance~~] under a contract awarded under this
3 section for a [~~routine~~] maintenance project [~~activity~~]:

4 (1) be in an amount equal to the greatest annual
5 amount to be paid the contractor under the contract and remain in
6 effect for one year from the day work is resumed after any default
7 by the contractor; or

8 (2) be in an amount equal to the amount to be paid the
9 contractor during the term of the bond and be for a term of two
10 years, renewable annually in two-year increments.

11 (k) [~~(j)~~] A claim against a performance or payment bond
12 issued under this section must be filed against the bond in effect
13 on the date the basis for the claim arose [~~bond posted under~~
14 ~~Subsection (i) must:~~

15 [~~(1) be solely for the protection of the department,~~
16 ~~and~~

17 [~~(2) be conditioned on the faithful performance of the~~
18 ~~maintenance work in accordance with the contract requirements].~~

19 SECTION 2. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2659 was passed by the House on April 14, 2005, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2659 was passed by the Senate on May 19, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor