

By: Pickett

H.B. No. 2801

A BILL TO BE ENTITLED

AN ACT

relating to comprehensive development agreements of the Texas Department of Transportation that include the financing, design, and construction of a project.

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

SECTION 1. Section 223.201(b), Transportation Code, is amended to read as follows:

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the financing, design, and construction~~[, rehabilitation, expansion, or improvement]~~ of a project described in Subsection (a) and may also provide for the ~~[financing,]~~ acquisition, maintenance, or operation of a project described in Subsection (a). For purposes of this subsection, construction of a project includes rehabilitation, expansion, or improvement of a project.

SECTION 2. Section 223.203, Transportation Code, is amended by amending Subsections (a), (c), (d), (e), (f), (g), (l), and (o) and adding Subsections (f-2) and (l-1) to read as follows:

(a) If the department enters into a comprehensive development agreement, the department shall use a competitive procurement process that provides the best value for the department. ~~[The department may accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.]~~

1 (c) If the department decides to issue a request for
2 qualifications for a proposed project, the [The] department shall
3 publish a notice advertising a request for competing proposals and
4 qualifications in the Texas Register that includes the criteria to
5 be used to evaluate the proposals, the relative weight given to the
6 criteria, and a deadline by which proposals must be received [~~if:~~

7 ~~[(1) the department decides to issue a request for~~
8 ~~qualifications for a proposed project; or~~

9 ~~[(2) the department authorizes the further evaluation~~
10 ~~of an unsolicited proposal].~~

11 (d) A proposal submitted in response to a request published
12 under Subsection (c) must contain, at a minimum, information
13 regarding the private entity's qualifications, experience,
14 technical competence, and capability to develop the project [~~the~~
15 ~~information required by Subsections (b)(2) and (3)].~~

16 (e) The department may interview a private entity
17 [~~submitting an unsolicited proposal or~~] responding to a request
18 under Subsection (c). The department shall evaluate each proposal
19 based on the criteria described in the request for competing
20 proposals and qualifications and may qualify or shortlist private
21 entities to submit detailed proposals under Subsection (f). The
22 department must qualify or shortlist at least two private entities
23 to submit detailed proposals for a project under Subsection (f)
24 unless the department does not receive more than one proposal or one
25 response to a request under Subsection (c).

26 (f) After obtaining environmental clearance for a project,
27 the [The] department shall issue a request for detailed proposals

1 from all private entities qualified or shortlisted under Subsection
2 (e) ~~[or prequalified under Subsection (e-1) if the department~~
3 ~~proceeds with the further evaluation of a proposed project]~~. A
4 request under this subsection may require additional information
5 relating to:

6 (1) the private entity's qualifications and
7 demonstrated technical competence;

8 (2) the feasibility of developing the project as
9 proposed;

10 (3) engineering or architectural designs;

11 (4) the private entity's ability to meet schedules;

12 (5) a financial plan, including costing methodology
13 and cost proposals; or

14 (6) any other information the department considers
15 relevant or necessary.

16 (f-2) A private entity responding to a request for detailed
17 proposals issued under Subsection (f) must identify:

18 (1) companies that will fill key project roles,
19 including project management, lead design firm, quality control
20 management, and quality assurance management; and

21 (2) entities that will serve as key task leaders for
22 geotechnical, hydraulics and hydrology, structural, environmental,
23 utility, and right-of-way issues.

24 (g) In issuing a request for detailed proposals under
25 Subsection (f), the department may solicit input from entities
26 qualified under Subsection (e) or any other person. The department
27 may also solicit input regarding alternative technical concepts

1 after issuing a request under Subsection (f). A technical solution
2 presented with a proposal for a project must be complete and
3 demonstrate full compliance with, and have demonstrated resources
4 to be able to fulfill, all technical requirements for the project,
5 including specified quality assurance and quality control program
6 requirements, safety program requirements, and environmental
7 program requirements. A proposal that includes a technical
8 solution that does not meet those requirements is ineligible for
9 further consideration.

10 (1) A private entity selected for a comprehensive
11 development agreement may not make changes to the companies or
12 entities identified under Subsection (f-2) unless the original
13 company or entity:

14 (1) is no longer in business, is unable to fulfill its
15 legal, financial, or business obligations, or can no longer meet
16 the terms of the teaming agreement with the private entity;

17 (2) voluntarily removes itself from the team;

18 (3) fails to provide a sufficient number of qualified
19 personnel to fulfill the duties identified during the proposal
20 stage; or

21 (4) fails to negotiate in good faith in a timely manner
22 in accordance with provisions established in the teaming agreement
23 proposed for the project.

24 (1-1) If the private entity makes team changes in violation
25 of Subsection (1), any cost savings resulting from the change
26 accrue to the state and not to the private entity. ~~[The department~~
27 ~~may require that an unsolicited proposal be accompanied by a~~

~~nonrefundable fee sufficient to cover all or part of its cost to review the proposal.]~~

(o) All teaming agreements and subconsultant agreements must be executed and provided to the department before the execution of the comprehensive development agreement. ~~[Subchapter A of this chapter and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.]~~

SECTION 3. Section 223.204(a), Transportation Code, is amended to read as follows:

(a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information described by Section 223.203(d) ~~[provided under Sections 223.203(b)(1) and (2)]~~, unless the private entity consents to the disclosure of the information;

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement, unless the private entity consents to the disclosure of the information or material; and

(3) information created or collected by the department or its agent during consideration of a proposal for a comprehensive

1 development agreement.

2 SECTION 4. Sections 223.201(f), (h), and (i) and
3 223.203(b), (e-1), and (e-2), Transportation Code, are repealed.

4 SECTION 5. The changes in law made by this Act to Section
5 223.203, Transportation Code, apply only to a comprehensive
6 development agreement entered into on or after the effective date
7 of this Act.

8 SECTION 6. This Act takes effect September 1, 2011.