

108TH CONGRESS  
1ST SESSION

# H. R. 1980

To require government agencies carrying out surface transportation projects to conduct a cost-benefit analysis before procuring architectural, engineering, and related services from a private contractor, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2003

Ms. KILPATRICK introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require government agencies carrying out surface transportation projects to conduct a cost-benefit analysis before procuring architectural, engineering, and related services from a private contractor, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safety, Accountability,  
5 and Funding Efficiency for Transportation Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) to ensure that taxpayers receive safe, high  
4 quality transportation services at the best possible  
5 price, a government agency carrying out a surface  
6 transportation project should conduct a cost-benefit  
7 analysis before procuring architectural, engineering,  
8 and related services from a private contractor; and

9 (2) by conducting the cost-benefit analysis, a  
10 government agency will be able to determine if it is  
11 cost effective and in the public interest to use a pri-  
12 vate contractor or government employees in pro-  
13 curing such services.

14 **SEC. 3. DEFINITIONS.**

15 In this Act, the following definitions apply:

16 (1) ARCHITECTURAL, ENGINEERING, AND RE-  
17 LATED SERVICES.—The term “architectural, engi-  
18 neering, and related services” means architectural,  
19 landscape architectural, environmental, engineering,  
20 land surveying, construction project management,  
21 and construction inspection services and services re-  
22 lated to permitting and environmental studies, the  
23 preparation of plans, specifications, and estimates,  
24 and the acquisition of rights-of-way.

1           (2) PRIVATE CONTRACT.—The term “private  
2 contract” means an agreement between a govern-  
3 ment agency and a private contractor.

4           (3) GOVERNMENT AGENCY.—The term “govern-  
5 ment agency” means a State, local, regional, inter-  
6 regional, or other governmental entity that receives  
7 Federal funds to carry out surface transportation  
8 projects.

9           (4) SECRETARY.—The term “Secretary” means  
10 the Secretary of Transportation.

11           (5) SURFACE TRANSPORTATION PROJECT.—The  
12 term “surface transportation project” means a  
13 project eligible for assistance under title 23, United  
14 States Code, a capital project (as defined in section  
15 5302 of title 49, United States Code), and any other  
16 project related to surface transportation that the  
17 Secretary determines appropriate.

18 **SEC. 4. COST-BENEFIT ANALYSIS.**

19           (a) IN GENERAL.—For fiscal year 2005 and each fis-  
20 cal year thereafter, Federal funds made available to carry  
21 out a surface transportation project may be used by a gov-  
22 ernment agency to enter into a private contract of  
23 \$100,000 or more to procure architectural, engineering,  
24 and related services only if the government agency con-

1 ducts a cost-benefit analysis for the private contract in  
2 accordance with the requirements of this section.

3 (b) COMPONENTS.—A cost-benefit analysis conducted  
4 by a government agency for a private contract under sub-  
5 section (a) shall contain, at a minimum, the following:

6 (1) A description of the services to be per-  
7 formed under the private contract.

8 (2) An estimate of the cost of procuring the  
9 services under the private contract, including the  
10 price of the contract, the cost to the government  
11 agency of negotiating and awarding the contract,  
12 and the cost to the government agency of inspecting,  
13 supervising, monitoring, and overseeing the contract.

14 (3) An estimate of the cost of having the serv-  
15 ices performed by the government agency (or a gov-  
16 ernment agency assisting such agency), including  
17 staff salaries and benefits, office facilities and space,  
18 equipment and materials, and other costs that can  
19 be reasonably attributed to the performance of the  
20 services and that would not be otherwise be incurred  
21 by the government agency.

22 (4) A determination as to whether the services  
23 would be procured more quickly by entering into the  
24 private contract or by having the services performed

1 by the government agency (or a government agency  
2 assisting such agency).

3 (5) A determination as to whether the govern-  
4 ment agency will provide equipment and materials  
5 under the private contract and an estimate of the  
6 cost of any such equipment and materials.

7 (6) An estimate of the cost of unemployment  
8 compensation or other benefits likely to be paid to  
9 any employees of the government agency displaced  
10 as a result of the private contract.

11 (7) An estimate of the cost to the government  
12 agency of resuming performance of the service to be  
13 performed under the private contract.

14 **SEC. 5. MATERIALS TO ACCOMPANY COST-BENEFIT ANAL-**  
15 **YSIS.**

16 (a) IN GENERAL.—If, after conducting a cost-benefit  
17 analysis for a private contract under section 4, a govern-  
18 ment agency finds that the benefits of entering into the  
19 contract outweigh the costs, the agency shall also prepare  
20 for the contract the materials required by this section.

21 (b) PERFORMANCE HISTORY.—The materials to be  
22 prepared under subsection (a) shall include a performance  
23 history of the private contractor. Such history shall in-  
24 clude, at a minimum, the following:

1           (1) A description of any work performed for the  
2           government agency by the private contractor in the  
3           preceding 5-year period or, if such work was not  
4           performed, a description of any work performed for  
5           other government agencies by the private contractor  
6           in such 5-year period.

7           (2) With respect to each private contract to  
8           which paragraph (1) applies, the amount of funds  
9           originally committed by the government agency  
10          under the contract and the amount of funds actually  
11          expended by the government agency under the con-  
12          tract.

13          (3) With respect to each private contract to  
14          which paragraph (1) applies, deadlines originally es-  
15          tablished for all work performed under the contract  
16          and the actual date or dates on which performance  
17          of the work was completed.

18          (4) Any citations, court findings, or administra-  
19          tive findings against the private contractor for a vio-  
20          lation of applicable Federal, State, and local laws,  
21          including laws governing environmental protection,  
22          employee safety and health, labor relations, and  
23          other employment requirements.

24          (5) Documentation to substantiate that the  
25          qualifications, experience, and expertise of the em-

1        ployees to be utilized by the private contractor under  
2        the private contract, including subcontractors, are at  
3        least equal to that of the government agency employ-  
4        ees who could be providing the services.

5        (c) **POLITICAL CONTRIBUTION HISTORY.**—The mate-  
6        rials to be prepared under subsection (a) shall include a  
7        political contribution history of the private contractor.  
8        Such history shall include, at a minimum, a listing of all  
9        contributions made by the private contractor to political  
10       parties and candidates for political office in the preceding  
11       5-year period.

12       (d) **CERTIFICATION OF PERFORMANCE BOND.**—The  
13       materials to be prepared under subsection (a) shall include  
14       a certification by the government agency that the agency  
15       will receive from the private contractor a performance  
16       bond or similar instrument that ensures the performance  
17       of the contractor under the private contract.

18       **SEC. 6. DISCLOSURE OF RESULTS OF COST-BENEFIT ANAL-**  
19       **YSIS.**

20       If, after conducting a cost-benefit analysis for a pri-  
21       vate contract under section 4 and preparing the accom-  
22       panying materials under section 5, a government agency  
23       finds that it is in the public interest to enter into the con-  
24       tract, the agency shall, at least 30 days before entering  
25       into the contract—

1           (1) submit the results and accompanying mate-  
2           rials to the Secretary for review;

3           (2) provide the results and accompanying mate-  
4           rials to any individual or entity that registers with  
5           the agency to receive the results; and

6           (3) make the results and accompanying mate-  
7           rials available for public inspection, including publi-  
8           cation of the results on the Internet.

9   **SEC. 7. COMMENTS.**

10          In the 15-day period following the date of publication  
11          by a government agency of the results of a cost-benefit  
12          analysis for a private contract under section 4—

13               (1) employees of the agency and other inter-  
14               ested parties may submit to the agency written com-  
15               ments refuting the accuracy of results; and

16               (2) employees of the agency may submit to the  
17               agency a competitive bid to provide the services that  
18               would otherwise be performed under the contract.

19   **SEC. 8. USE OF QUALIFICATION-BASED SELECTION CRI-**  
20                               **TERIA.**

21          In procuring architectural, engineering, and related  
22          services from private sources using Federal funds as part  
23          of a surface transportation project, a government agency  
24          shall use the procedures for procuring architectural and  
25          engineering services under chapter 11 of title 40, United

1 States Code, or equivalent State qualifications-based re-  
2 quirements.

3 **SEC. 9. SPECIALTY, EMERGENCY, TEMPORARY WORK.**

4       Upon the request of a government agency, the Sec-  
5 retary may waive the application of this Act with respect  
6 to a private contract if the Secretary determines that the  
7 government agency cannot perform the work to be con-  
8 ducted under the contract with existing or additional gov-  
9 ernment employees because the work is of an emergency,  
10 specialty, or intermittent nature and would likely cause  
11 regular periods of underutilization of government employ-  
12 ees.

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