

109TH CONGRESS
1ST SESSION

H. R. 942

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2005

Ms. KILPATRICK of Michigan (for herself, Mr. McDERMOTT, and Ms. NORTON) 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

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 2005”.

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 2007 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 otherwise be incurred by
21 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.

○