

TEXAS TRANSPORTATION COMMISSION

BASTROP and LEE Counties

MINUTE ORDER

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AUSTIN District

On April 24, 2006, Zachry American Infrastructure (ZAI), a private entity, submitted a proposal for a pass-through toll agreement. ZAI's proposal provides for the design, construction, financing, and maintaining of 23.8 miles of US 290 East from 1.0 mile east of FM 696 in Bastrop County to Navarro Street in Giddings in Lee County, and the rehabilitation of 1.546 miles of US 290 East from 0.505 mile east of FM 141 to 2.05 miles east of FM 141 in Lee County.

Section 222.104(b), Transportation Code, authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Sections 5.54 and 5.55 of the commission's rules provide that the commission may authorize the department's executive director, upon receipt of a pass-through toll proposal from a private entity, to solicit competing proposals for the project after considering the: (1) financial benefits to the state; (2) local public support for the project; (3) whether the project is in the department's Unified Transportation Program (UTP); (4) extent to which the project will relieve congestion on the state highway system; (5) potential benefits to regional air quality that may be derived from the project; (6) compatibility of the proposed project with existing and planned transportation facilities; and (7) qualifications of the proposer to accomplish the proposed work.

After considering the factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state; (2) ZAI's proposal indicated broad support for the project and did not identify any opposition; (3) the project identified in the proposal is in the current UTP, therefore future funding sources should be identified; (4) the project identified in the proposal demonstrates the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the Capital Area Council of Governments (CAPCOG); (5) potential benefits to regional air quality must be quantified and documented by CAPCOG through the air quality conformity process in accordance with all state and federal regulations; (6) the project is compatible with existing and planned transportation facilities; and (7) ZAI's proposed team for implementation, management and completion of the project appears qualified to accomplish the proposed work.

Pursuant to Section 5.55 of the commission's rules, the department will publish notice of the request for competing proposals in the Texas Register and in one or more newspapers of general circulation. The notice will state that the department has received a proposal for a pass-through toll agreement from a private entity, that the department intends to evaluate the proposal, and that the department may negotiate a pass-through toll agreement with the proposer.

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The notice will state that the department will accept for simultaneous consideration any competing proposal received within 45 days of the publication of the notice in the Texas Register, or such additional time as authorized by the commission. The notice will summarize the proposed project, identify its location, and specify the general criteria that will be used to evaluate all proposals and the relative weight given to the criteria.

After evaluation of properly submitted proposals, the department will rank proposals and may select the private entity whose proposal provides the best value to the department. The department will negotiate a pass-through toll agreement with that proposer.

Before the project in this proposal is planned, developed, or constructed using funds administered by the department, the project: (1) must be included in the Capital Area Council of Governments' Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for the project; (3) prior to construction, must be included in the Capital Area Council of Governments' Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized and directed to issue a notice of request for competing proposals to private entities to design, construct, finance, and maintain 23.8 miles of US 290 East from 1.0 mile east of FM 696 in Bastrop County to Navarro Street in Giddings in Lee County, and the rehabilitation of 1.546 miles of US 290 East from 0.505 mile east of FM 141 to 2.05 miles east of FM 141 in Lee County under a pass-through toll agreement. In this regard staff shall consider that it is the intent of the commission that staff considers all forms of financing.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with the private entity whose proposal, based on the department's evaluation, provides the best value to the department. If the negotiations are unsuccessful, the department may reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party. Upon completion of successful negotiations, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with Zachry American Infrastructure if no competing proposals are received in response to the notice for competing proposals. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

Submitted and reviewed by:



Chief Financial Officer

Recommended by:



Executive Director

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Minute Number Date Passed