

**TEXAS TRANSPORTATION COMMISSION**

ALL Counties

**MINUTE ORDER**

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §5.53, proposal, §5.54, commission approval to negotiate, §5.55, proposals from private entities, §5.56, final approval, and §5.58, project development by public or private entity, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §5.53, §5.54, §5.55, §5.56, and §5.58 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

Recommended by:

\_\_\_\_\_  
Director, Design Division

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Minute Number      Date Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §5.53, proposal, §5.54, commission approval to negotiate, §5.55, proposals from private entities, §5.56, final approval, and §5.58, project development by public or private entity. The amendments to §5.53, §5.54, §5.55, §5.56, and §5.58 are adopted without changes to the proposed text as published in the October 12, 2007 issue of the *Texas Register* (32 TexReg 7233) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments clarify provisions of Transportation Code, §222.104 and implement new Transportation Code, §222.105, §222.106, and §222.107, as added by Senate Bill 1266, 80th Texas Legislature, 2007. Those newly enacted sections provide that a municipality or a county may designate a contiguous geographic area in its jurisdiction as a transportation reinvestment zone to promote transportation projects in the area as pass-through projects financed as described in Transportation Code, §222.104 under a pass-through agreement. The amendments provide that the creation of such a transportation reinvestment zone is considered by the department in determining the viability of a project proposed by a public entity and whether to enter into a pass-through agreement with a public entity. The amendments also clarify the other criteria that the department may consider

1 when evaluating a proposal from a private entity.

2

3 Additionally, the amendments make grammatical and other  
4 nonsubstantive changes and renumber existing provisions.

5

6 Amendments to §5.53(a), Proposal requirements, prescribe  
7 additional materials and information that must be included in a  
8 proposal submitted to the department for a proposed pass-through  
9 project under Transportation Code, §222.104, and clarify  
10 existing proposal requirements. The additional information  
11 required includes a statement of a proposing public entity's  
12 intentions with regard to the creation of a transportation  
13 reinvestment zone under Transportation Code, §222.106 or  
14 §222.107. The amendments will ensure that the department has  
15 the information necessary to determine the viability and  
16 potential public benefit of a proposed pass-through project.  
17 The amendments also make nonsubstantive changes, such as adding  
18 headings to each subsection of §5.53, to clarify the  
19 requirements of the section and to conform the section to other  
20 sections within the subchapter.

21

22 Amendments to §5.54, Commission Approval to Negotiate, add to  
23 the list of factors that the commission considers when  
24 determining whether to authorize the executive director to  
25 negotiate a pass-through agreement with a public entity whether

1 a public entity proposer has or intends to designate a  
2 transportation reinvestment zone under Transportation Code,  
3 §222.106 or §222.107. Because funds generated by a  
4 transportation reinvestment zone may only be used to fund pass-  
5 through projects, the creation of a transportation reinvestment  
6 zone is indicative of a public entity's ability to make payments  
7 under a pass-through agreement, the presence of local support  
8 for a pass-through project, and, thus, the likelihood of success  
9 of the project.

10  
11 Amendments to §5.55(c) clarify that the department may prescribe  
12 in a request for competing proposals to private entities  
13 additional evaluation criteria as the department deems  
14 necessary. This amendment will ensure that the department may  
15 tailor evaluation criteria to a specific project.

16  
17 Amendments to §§5.55(g) and (h) clarify that the executive  
18 director directs the negotiation of pass-through agreements to  
19 provide consistency within the subchapter.

20  
21 Amendments to §5.56(b), Contents of pass-through agreement,  
22 prescribe additional items that must be included in a pass-  
23 through agreement, including deadlines for key stages of project  
24 development, provisions for termination of the agreement, and,  
25 for a public entity, a copy of the document designating a

1 transportation reinvestment zone as authorized under  
2 Transportation Code, §222.106 or §222.107, if such a designation  
3 has been made. The amendments will ensure that a pass-through  
4 agreement entered into by the department will serve the public  
5 interest, further local, regional, and state transportation  
6 goals, provide assurance that the project will be completed, and  
7 prudently provide for the expenditure of public funds.

8  
9 Amendments to §5.58(c)(2) prescribe additional requirements with  
10 which highway projects constructed under a pass-through  
11 agreement must comply to ensure that highway projects  
12 constructed under a pass-through agreement meet all department  
13 standards for highway design and construction in order to ensure  
14 the safety of the traveling public. The amendments to  
15 paragraphs (7) and (11) of §5.58(c) clarify that final design  
16 plans and related documentation must be sent to the department.  
17 The amendments to paragraph (9) of §5.58(c) provide that  
18 revisions to any construction contract entered into under a  
19 pass-through agreement must comply with all department criteria  
20 and manuals and be submitted to the department. The amendments  
21 also make changes to provide consistency in terminology used  
22 throughout the subchapter.

23

24 COMMENTS

25 Two comments on the proposed amendments were received.

1

2 Comment:

3 The commenter stated: "Proposed 5.54(11) - as written this  
4 speaks to whether 'the entity' has or intends to designate a  
5 TRZ, if the proposer is a public entity. This ignores that the  
6 proposer may be a public entity which cannot, itself, establish  
7 a TRZ (such as an RMA), but can work in cooperation with another  
8 public entity that can create a TRZ (which is anticipated by the  
9 legislation)." The commenter suggested the following language  
10 for proposed §5.54(11):

11 (11) whether the proposer, or a governmental entity working  
12 in cooperation with the proposer, has or intends to designate a  
13 contiguous geographic area in the jurisdiction of the entity as  
14 a transportation reinvestment zone under Transportation Code,  
15 Chapter 222, Subchapter E.

16

17 Response:

18 The term "entity" relates to either a public or private entity  
19 and is inclusive of all components constituting the entity or  
20 team submitting the pass-through toll proposal. No change to  
21 the rule was made as a result of this comment.

22

23 Comment:

24 The commenter stated: "Proposed 5.56(13) - as written, this may  
25 reflect an assumption that a transportation reinvestment zone

1 would already have been created at the time of final approval of  
2 the pass-through. In fact, that process may not have been  
3 completed at the time the pass-through is ready for final  
4 approval, and creating the zone should not be a condition of  
5 final approval of the pass-through financing." The commenter  
6 suggested the following language for proposed §5.56(b)(13):

7 (13) if applicable, a timeline showing when the process for  
8 creating a reinvestment zone under Transportation Code, Chapter  
9 222, Subchapter E, is anticipated to be completed or, if already  
10 completed, a copy of the order, resolution, or ordinance  
11 designating a transportation reinvestment zone.

12

13 Response:

14 Proposed §5.56(b)(13) requires that a copy of any formally  
15 adopted order, resolution, or ordinance designating a  
16 transportation reinvestment zone be attached to a pass-through  
17 agreement being executed by the department and the public or  
18 private entity. Because a transportation reinvestment zone  
19 would be an integral aspect of project financing, it is vital  
20 that the department have proof that the order, resolution, or  
21 ordinance establishing it has been formally adopted before the  
22 agreement is executed. No change to the rule was made as a  
23 result of this comment.

24

1 STATUTORY AUTHORITY

2 The amendments are adopted under Transportation Code, §201.101,  
3 which provides the Texas Transportation Commission (commission)  
4 with the authority to establish rules for the conduct of the  
5 work of the department, and more specifically, Transportation  
6 Code, §222.104, which provides that the commission may adopt  
7 rules to implement the pass-through toll program.

8

9 CROSS REFERENCE TO STATUTE

10 Transportation Code, §222.104, §222.105, §222.106, and §222.107.

1 SUBCHAPTER E. PASS-THROUGH FARES AND TOLLS

2 §5.53. Proposal.

3 (a) Proposal requirements. A public or private entity may  
4 submit in writing to the department a proposal for a project or  
5 a series of projects to be developed under a pass-through  
6 agreement. The proposal must include:

7 (1) a [~~project location map showing proposed alignments~~  
8 ~~and~~] description of the project, including the project limits,  
9 connections with other transportation facilities, and any  
10 services to be provided;

11 (2) an application, on a form provided by the department,  
12 that includes all scope and estimate documentation forms and  
13 related attachments and any other materials and information  
14 required by the application;

15 (3) [~~+~~2] a statement of the benefits anticipated to  
16 result from completion of the project;

17 (4) [~~+~~3] a description of the local public support for  
18 the project and any local public opposition;

19 (5) [~~+~~4] a proposed project development and  
20 implementation schedule, including an estimated date when the  
21 project will be open to traffic;

22 (6) [~~+~~5] a description of the entity's experience in  
23 developing highway projects, if the proposer is a public entity

1 and if the proposal is for the development of a highway project  
2 by that entity;

3 (7) [~~(6)~~] a description of the entity's experience in  
4 developing railway projects, if the proposer is a public entity  
5 and if the proposal is for the development of a railway project  
6 by that entity;

7 (8) [~~(7)~~] complete information concerning the experience,  
8 expertise, technical competence, and qualifications of the  
9 proposer and of each member of the proposer's management team  
10 and of other key employees or consultants, including the name,  
11 address, and professional designation of each member of the  
12 proposer's management team and of other key employees or  
13 consultants, and the capability of the proposer to develop the  
14 proposed projects, if the proposer is a private entity and if  
15 the proposal is for the development of a project by that entity;

16 (9) [~~(8)~~] complete information sufficient to show the  
17 capability of the proposer to make all projected future  
18 payments, if the proposal is for the development of a project by  
19 the department;

20 (10) [~~(9)~~] total amount of reimbursement requested and  
21 ~~[if available, a]~~ proposed pass-through payment schedule;

22 (11) project funding sources and amounts by fiscal year;

23 (12) [~~(10)~~] for a highway project, a statement indicating

1 whether the proposer intends for the project to be tolled and,  
2 if the proposer intends for a tolled project to be first opened  
3 to traffic as a non-tolled highway, the approximate date on  
4 which the highway will begin to be tolled; ~~and~~

5 (13) ~~(11)~~ a statement indicating whether the proposer  
6 intends to enter into a comprehensive development agreement, if  
7 the proposer is a private entity and if the proposal is for the  
8 development of a project by that entity; and ~~[-]~~

9 (14) a statement indicating whether the entity has or  
10 intends to designate a contiguous geographic area in the  
11 jurisdiction of the entity as a transportation reinvestment zone  
12 under Transportation Code, Chapter 222, Subchapter E, if the  
13 proposer is a public entity.

14 (b) Public release of proposal. If requested, and unless  
15 prohibited by law, the department will release to the public a  
16 proposal submitted under this section.

17 (c) Certain contracting requirements. The private entity  
18 and the department may agree to develop a project under a  
19 comprehensive development agreement if authorized by other law.  
20 For a highway project that is developed by the proposer,  
21 notwithstanding any other provision of this subchapter, Chapter  
22 27, Subchapter A, of this title (relating to Comprehensive  
23 Development Agreements), applies to the solicitation,

1 advertisement, negotiation, and execution of a comprehensive  
2 development agreement. For a railway project that is developed  
3 by the proposer, notwithstanding any other provision of this  
4 subchapter, Chapter 7, Subchapter B, of this title (relating to  
5 Contracts) applies to the solicitation, advertisement  
6 negotiation, and execution of a comprehensive development  
7 agreement.

8  
9 §5.54. Commission Approval to Negotiate. The commission may  
10 authorize the executive director to negotiate the financial  
11 terms of a potential pass-through agreement under this  
12 subchapter or, if the proposer is a private entity, authorize  
13 the department to solicit competitive proposals under §5.55 of  
14 this subchapter, after considering:

- 15 (1) financial benefits to the state;
- 16 (2) local public support for the project;
- 17 (3) for a highway project, whether the project is in the  
18 department's Unified Transportation Program;
- 19 (4) the extent to which the project will relieve  
20 congestion on the state highway system;
- 21 (5) potential benefits to regional air quality that may  
22 be derived from the project;
- 23 (6) the compatibility of the proposed project with

1 existing and planned transportation facilities;

2 (7) the entity's experience in developing highway  
3 projects, if the proposer is a public entity and if the proposal  
4 is for the development of a highway project by that entity;

5 (8) the entity's experience in developing railway  
6 projects, if the proposer is a public entity and if the proposal  
7 is for the development of a railway project by that entity;

8 (9) the qualifications of the proposer to accomplish the  
9 proposed work, if the proposer is a private entity and if the  
10 proposal is for the development of a project by that entity;

11 [~~and~~]

12 (10) the financial capability of the proposer to make all  
13 projected pass-through payments, if the proposal is for the  
14 development of a project by the department; and

15 (11) whether the entity has or intends to designate a  
16 contiguous geographic area in the jurisdiction of the entity as  
17 a transportation reinvestment zone under Transportation Code,  
18 Chapter 222, Subchapter E, if the proposer is a public entity.

19

20 §5.55. Proposals from Private Entities.

21 (a) If the commission approves the further evaluation of a  
22 proposal of a private entity under §5.54 of this subchapter, the  
23 department will publish notice of that decision and provide an

1 opportunity for the submission of competing proposals.

2 (b) The department will publish a notice in the Texas  
3 Register and in one or more newspapers of general circulation.  
4 The notice will state that the department has received a  
5 proposal under this subchapter, that it intends to evaluate the  
6 proposal, that it may negotiate a pass-through agreement with  
7 the proposer based on the proposal, and that it will accept for  
8 simultaneous consideration any competing proposals that the  
9 department receives in accordance with this subchapter within 45  
10 days of the initial publication of the notice in the Texas  
11 Register, or such additional time as authorized by the  
12 commission. In determining whether to authorize additional time  
13 for submission of competing proposals, the commission will  
14 consider the complexity of the proposal.

15 (c) The notice will summarize the proposed project and  
16 identify its proposed location. The notice will also specify  
17 the general criteria that will be used to evaluate all proposals  
18 and the relative weight given to the criteria. Specific  
19 evaluation criteria will be set forth in the request for  
20 proposals. The criteria will~~[, at a minimum,]~~ include:

21 (1) the factors listed in §5.54 of this subchapter, to  
22 the extent applicable;

23 (2) the proposer's qualifications, technical competence,

1 and financial capability; [~~and~~]

2 (3) an analysis of the proposer's project implementation

3 schedule; and

4 (4) any other factor deemed appropriate by the

5 department.

6 (d) A proposal submitted in response to a notice must  
7 contain the information required by §5.53 of this subchapter.

8 (e) The original proposer may submit a revised proposal in  
9 response to a notice.

10 (f) Upon expiration of the 45-day period, or such  
11 additional time as authorized by the commission, the department  
12 will evaluate the proposal of the original proposer and any  
13 properly submitted competing proposals, utilizing the evaluation  
14 criteria set forth in the request for proposals.

15 (g) The department will rank all proposals after the  
16 evaluation described in subsection (f) of this section, and may  
17 select the private entity whose proposal provides the best value  
18 to the department. The executive director will direct the  
19 department's [~~department will~~] attempt to negotiate a pass-  
20 through agreement with that proposer.

21 (h) If an agreement satisfactory to the executive director  
22 [~~department~~] cannot be negotiated with the proposer, the  
23 department will formally end negotiations with that proposer.

1 The department may reject all proposals or proceed to the next  
2 most highly ranked proposal and attempt to negotiate an  
3 agreement with that party.

4

5 §5.56. Final Approval.

6 (a) Authorization to negotiate final agreement. The  
7 executive director will submit to the commission a summary of  
8 the final financial terms of a proposed pass-through agreement.  
9 The final financial terms may consist of specific payment terms  
10 and schedules or may consist of a range of acceptable  
11 parameters. The commission may authorize the executive director  
12 to negotiate and execute a final agreement only if it finds  
13 that:

14 (1) the project serves the public interest and not merely  
15 a private interest;

16 (2) the proposed pass-through agreement is in the best  
17 interest of the state;

18 (3) the project is compatible with existing and planned  
19 transportation facilities; and

20 (4) the project furthers state, regional, and local  
21 transportation plans, programs, policies, and goals.

22 (b) Contents of pass-through agreement. Before any work is  
23 done for which reimbursement will be requested through a pass-

1 through toll or fare, the department and the public or private  
2 entity shall execute a pass-through agreement containing, at a  
3 minimum, the following:

4 (1) identification of the scope and nature of the work to  
5 be performed;

6 (2) all financial terms, as applicable, including the  
7 levels of pass-through tolls or fares, maximum and minimum  
8 periodic payments, and maximum and minimum total payments;

9 (3) allocation of responsibility for all significant work  
10 to be performed, including environmental documentation, right of  
11 way acquisition, utility adjustments, engineering, construction,  
12 and maintenance;

13 (4) provision for the collection and use of toll or other  
14 revenues, if applicable;

15 (5) all provisions required by state or federal law;

16 (6) a map showing the location of the project;

17 (7) a proposed project schedule;

18 (8) an estimated budget;

19 (9) deadlines for key stages of project development;

20 (10) [~~+9~~] procedures and timelines for the submission of  
21 materials and for approvals; [~~and~~]

22 (11) [~~+10~~] for a local government, a copy of the  
23 resolution or ordinance authorizing execution of the agreement;

1           (12) provisions for termination of the agreement; and  
2           (13) if applicable, a copy of the order, resolution, or  
3 ordinance designating a contiguous geographic area in the  
4 jurisdiction of a public entity as a transportation reinvestment  
5 zone under Transportation Code, Chapter 222, Subchapter E.

6

7 §5.58. Project Development by Public or Private Entity.

8           (a) Social and environmental impact.

9           (1) General. A public or private entity that is  
10 responsible for the construction of a project shall conduct the  
11 environmental review and public involvement for the project in  
12 the manner prescribed by Chapter 2, Subchapter C of this title  
13 (relating to Environmental Review and Public Involvement for  
14 Transportation Projects). The department may choose to conduct  
15 the environmental review and public involvement.

16           (2) Department approval. The department must approve  
17 each environmental review under this section before construction  
18 of the project begins.

19           (b) Right of way and utilities.

20           (1) Responsibility. This subsection applies when the  
21 public or private entity is responsible for the acquisition of  
22 right of way or the adjustment of utilities.

23           (2) Right of way procedures.

1           (A) Manual requirements. The acquisition of right of  
2 way performed by or on behalf of the public or private entity  
3 shall comply with the latest version of each of the department's  
4 manuals.

5           (B) Alternative procedures. A public or private entity  
6 may request written approval to use a different accepted  
7 procedure for a particular item or phase of work. The use of an  
8 alternative procedure is subject to the approval of the Federal  
9 Highway Administration. The executive director may approve the  
10 use of an alternative procedure if the alternative procedure is  
11 determined to be sufficient to discharge the department's state  
12 and federal responsibilities in acquiring real property.

13           (3) Utility adjustments. The adjustment, removal, or  
14 relocation of utility facilities performed by or on behalf of  
15 the public or private entity shall comply with applicable  
16 federal and state laws and regulations.

17           (c) Design and construction.

18           (1) Responsibility. This subsection applies when the  
19 public or private entity is responsible for the design,  
20 construction, and, operation, as applicable, of each project it  
21 undertakes. This responsibility includes ensuring that all EPIC  
22 are addressed in project design and carried out during project  
23 construction and operation.

1 (2) Design criteria.

2 (A) State criteria. All designs developed by or on  
3 behalf of the public or private entity shall comply with the  
4 latest version of the department's manuals.

5 (i) Highway projects. Each highway project shall, at  
6 a minimum, comply with the:

7 (I) Roadway Design Manual;

8 (II) Pavement Design Manual;

9 (III) Hydraulic Design Manual;

10 (IV) Texas Manual on Uniform Traffic Control  
11 Devices;

12 (V) Bridge Design Manual;~~and~~

13 (VI) Texas Accessibility Standards;

14 (VII) 16 TAC Chapter 68 relating to Elimination of  
15 Architectural Barriers; and

16 (VIII) Americans with Disabilities Act  
17 Accessibility Guidelines.

18 (ii) Railway projects. Each railway project shall  
19 comply, at a minimum, with the current version of the American  
20 Railway Engineering and Maintenance of Right of Way Association  
21 standards.

22 (B) Alternative criteria. A public or private entity  
23 may request approval to use different accepted criteria for a

1 particular item of work. Alternative criteria may include the  
2 latest version of the AASHTO Policy on Geometric Design of  
3 Highways and Streets, the AASHTO Pavement Design Guide, and the  
4 AASHTO Bridge Design Specifications. The use of alternative  
5 criteria is subject to the approval of the Federal Highway  
6 Administration or the Federal Railroad Administration for those  
7 projects involving federal funds. The executive director may  
8 approve the use of alternative criteria if the alternative  
9 criteria are determined to be sufficient to protect the safety  
10 of the traveling public and protect the integrity of the  
11 transportation system.

12 (C) Exceptions to design criteria. A public or private  
13 entity may request approval to deviate from the state or  
14 alternative criteria for a particular design element on a case-  
15 by-case basis. The request for approval shall state the  
16 criteria for which an exception is being requested and must  
17 include a comprehensive description of the circumstances and  
18 engineering analysis supporting the request. The executive  
19 director may approve an exception after determining that the  
20 particular criteria could not reasonably be met due to physical,  
21 environmental, or other relevant factors and that the proposed  
22 design is a prudent engineering solution.

23 (3) Access to a highway project.

1 (A) Access management. Access to a highway shall be in  
2 compliance with the department's access management policy.

3 (B) Interstate access. For proposed highway projects  
4 that will change the access control line to an interstate  
5 highway, the public or private entity shall submit to the  
6 department all data necessary for the department to request  
7 Federal Highway Administration approval.

8 (4) Preliminary design submission and approval. When  
9 design is approximately 30% complete or as otherwise provided in  
10 a pass-through agreement, the public or private entity shall  
11 send the following preliminary design information to the  
12 department for review and approval in accordance with the  
13 procedures and timeline established in the project development  
14 agreement described in subsection (d) of this section:

15 (A) for a highway project, a completed Design Summary  
16 Report form as contained in the department's Project Development  
17 Process Manual;

18 (B) a design schematic depicting plan, profile, and  
19 superelevation information for each roadway or a design  
20 schematic depicting plan, profile, and superelevation based on  
21 top of railway for each railway line;

22 (C) typical sections showing existing and proposed  
23 horizontal dimensions, cross slopes, location of profile grade

1 line, pavement layer thickness and composition, earthen slopes,  
2 and right of way lines for each roadway or subballast and  
3 ballast layer thickness and composition for each railway line;

4 (D) bridge, retaining wall, and sound wall layouts;

5 (E) hydraulic studies and drainage area maps showing  
6 the drainage of waterways entering the project and local project  
7 drainage;

8 (F) an explanation of the anticipated handling of  
9 existing traffic during construction;

10 (G) when structures meeting the definition of a bridge  
11 as defined by the National Bridge Inspection Standards are  
12 proposed, an indication of structural capacity in terms of  
13 design loading;

14 (H) an explanation of how the U.S. Army Corps of  
15 Engineers permit requirements, including associated  
16 certification requirements of the Texas Commission on  
17 Environmental Quality, will be satisfied if the project involves  
18 discharges into waters of the United States; and

19 (I) for a highway project, the location and text of  
20 proposed mainlane guide signs shown on a schematic that includes  
21 lane lines or arrows indicating the number of lanes.

22 (5) Highway construction specifications.

23 (A) All plans, specifications, and estimates developed

1 by or on behalf of the public or private entity for a highway  
2 project shall conform to the latest version of the department's  
3 Standard Specifications for Construction and Maintenance of  
4 Highways, Streets, and Bridges, and shall conform to department-  
5 required special specifications and special provisions.

6 (B) The executive director may approve the use of an  
7 alternative specification if the proposed alternative  
8 specification is determined to be sufficient to ensure the  
9 quality and durability of the finished product for the intended  
10 use and the safety of the traveling public.

11 (6) Railway construction specifications.

12 (A) All plans, specifications, and estimates developed  
13 by or for the public or private entity for a railway project  
14 shall conform to all construction and material specifications  
15 established in the American Railway Engineering and Maintenance  
16 of Right of Way Association standards.

17 (B) The executive director may approve the use of an  
18 alternative specification if the proposed alternative  
19 specification is determined to be sufficient to ensure the  
20 quality and durability of the finished product for the intended  
21 use and the safety of the public and the railway system.

22 (7) Submission and approval of final design plans and  
23 contract administration procedures. When final plans are

1 complete, the public or private entity shall send the following  
2 information to the department [~~executive director~~] for review  
3 and approval in accordance with the procedures and timelines  
4 established in the contract described in §5.56(b) of this  
5 subchapter [~~chapter~~]:

6 (A) seven copies of the final set of plans,  
7 specifications, and engineer's estimate (PS&E) that have been  
8 signed and sealed by the responsible engineer;

9 (B) revisions to the preliminary design submission  
10 previously approved by the department in a format that is  
11 summarized or highlighted for the department;

12 (C) a proposal for awarding the construction contract  
13 in compliance with applicable state and federal requirements;

14 (D) contract administration procedures for the  
15 construction contract with criteria that comply with the  
16 applicable national or state administration criteria and  
17 manuals; and

18 (E) the location and description of all EPIC addressed  
19 in construction.

20 (8) Construction inspection and oversight.

21 (A) Unless the department agrees in writing to assume  
22 responsibility for some or all of the following items, the  
23 public or private entity is responsible for:

1 (i) overseeing all construction operations, including  
2 the oversight and follow through with all EPIC;

3 (ii) assessing contract revisions for potential  
4 environmental impacts; and

5 (iii) obtaining any necessary EPIC required for  
6 contract revisions.

7 (B) The department may inspect the construction of the  
8 project at times and in a manner it deems necessary to ensure  
9 compliance with this section.

10 (9) Contract revisions. All revisions to any [the]  
11 construction contract entered into under a pass-through  
12 agreement under this subchapter shall comply with the latest  
13 version of the applicable national or state administration  
14 criteria and manuals, and must be submitted to the department  
15 for its records. Any revision that affects prior environmental  
16 approvals or significantly revises project scope or the  
17 geometric design must be submitted to the department [~~executive~~  
18 ~~director~~] for approval prior to beginning the revised  
19 construction work. Procedures governing the department's  
20 [~~executive director's~~] approval, including time limits for  
21 department review, shall be included in the agreement [~~contract~~]  
22 described in §5.56(b) of this subchapter [~~chapter~~].

23 (10) As-built plans. Within six months after final

1 completion of the construction project, the public or private  
2 entity shall file with the department a set of the as-built  
3 plans incorporating any contract revisions. These plans shall  
4 be signed, sealed, and dated by a professional engineer licensed  
5 in Texas certifying that the project was constructed in  
6 accordance with the plans and specifications.

7 (11) Document and information exchange. The public or  
8 private entity agrees to deliver to the department all materials  
9 used in the development of the project including aerial  
10 photography, computer files, surveying information, engineering  
11 reports, environmental documentation, general notes,  
12 specifications, [~~and~~] contract provision requirements, and all  
13 information necessary for the department to update legacy data  
14 systems.

15 (12) State and federal law. The public or private entity  
16 shall comply with all federal and state laws and regulations  
17 applicable to the project and the state highway system, and  
18 shall provide or obtain all applicable permits, plans, and other  
19 documentation required by a federal or state entity.

20 (d) Contracts. All contracts for the development,  
21 construction, or operation of a project shall be awarded in  
22 compliance with applicable law.

23 (e) Federal law. If any federal funds are used in the

1 development or construction of a project under this subchapter,  
2 or if the department intends to fund pass-through toll payments  
3 with federal funds, the development and construction of the  
4 project shall be accomplished in compliance with all applicable  
5 federal requirements.