

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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Section 222.104(b), Transportation Code authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled 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 the facility.

On January 29, 2009 by Minute Order 111669 the Texas Transportation Commission (commission) adopted revised rules, codified as Title 43 Texas Administrative Code §§5.51-5.60 (rules), that prescribe the policies and procedures governing the department's implementation of the pass-through toll program (program) under Section 222.104(b), Transportation Code.

Section 5.54 of the rules provides that if the commission determines that funds available for use in the program are limited, it may periodically limit the periods of time during which the department will accept proposals for pass-through toll projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement (agreement).

The commission finds that monies available under the program for allocation to new pass-through toll projects are limited to an estimated \$250 million in funds from Category 12, Strategic Priority, of the 2010 Unified Transportation Program (Category 12 funds). In order to extend use of the funds to the greatest number of highway improvement projects and to allow both public and private entities to have an equal chance to participate in the program, the commission determines that from the date of this minute order until the expiration of the 2011 fiscal year, or such additional time as needed for negotiation and execution of the individual agreements, proposals for projects to be developed under the program will only be accepted in accordance with the terms of this minute order.

Pursuant to §5.54 of the rules, the department will publish in the Texas Register notice of the designated period for acceptance of proposals for projects to be developed under the program. The notice will specify the deadline for submitting proposals, the estimated amount of funds available in the program that can be allocated to the proposals submitted, whether submissions will be accepted from only public entities, or from both public and private entities, whether submissions will be accepted for highway projects, railroad projects, or both, the categories of project costs that will be eligible for reimbursement, and any other condition deemed appropriate by the commission.

After evaluation of properly submitted proposals, the department will present its analyses to the commission which may, after consideration of the criteria set forth in §5.55 of the rules and the conditions established in this minute order, select the entities whose proposals provide the best value to the state. The department will attempt to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers, and will solicit competitive proposals under §5.56 of the rules for the selected private entity proposers.

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IT IS THEREFORE ORDERED that during the period of time beginning on December 16, 2010 and continuing until August 31, 2011, or such additional time as needed for negotiation and execution of the individual agreements, proposals for pass-through toll projects to be developed under the program will only be accepted if the proposals are in compliance with the following conditions:

- (1) proposals may be submitted by both public and private entities;
- (2) submissions will be for highway projects on the state highway system only;
- (3) proposals for a new location facility or realignment of an existing roadway will only be considered if a commission minute order exists at the time of submission that designates the new location or realignment as part of the state highway system;
- (4) only the following category of project costs described in §5.53(a)(11) of the rules will be considered as eligible for reimbursement under the program: construction cost, exclusive of construction engineering cost, and in the case of a pass-through toll project submitted as a design-build project, the construction cost, exclusive of construction engineering costs must be broken out separately as one component of the total project cost;
- (5) the value of development and implementation services and products for the project, including but not limited to environmental studies and mitigation, right-of-way acquisition, engineering, and construction inspection services that have been or will be provided by the department, will be deducted from the eligible reimbursement amounts;
- (6) federal and state funding that is otherwise programmed for or committed to a proposed pass-through toll project will not be considered as part of the proposer's contribution, nor may it be reimbursed under the program;
- (7) the estimated total amount of funds available to be allocated among the selected proposals will be \$250 million in Category 12 funds for the entire reimbursement period of all selected proposals;
- (8) the deadline for submitting proposals will be 60 days after publication of notice in the Texas Register soliciting proposals in accordance with this minute order;
- (9) in the event that an alternative funding source or a significant increase in Category 12 funding becomes available for use in the program prior to August 31, 2011 or any extended date, the commission may authorize an additional deadline period for submitting proposals to be in compliance with conditions specific to the new period, in accordance with the requirements of §5.54 of the rules; and

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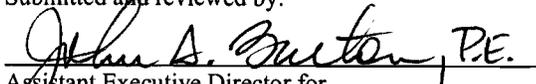
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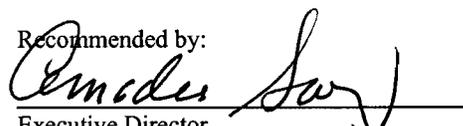
- (10) in the event that a critical transportation need arises which can be addressed with a pass-through toll agreement, or an alternative funding source becomes available for a specific transportation project, the commission may, at any time and irrespective of the limitations above, authorize acceptance of an individual proposal for development of a pass-through toll project to meet that need or utilize those funds, provided that the proposal otherwise complies with the rules.

IT IS FURTHER ORDERED that the executive director or his designee is directed to take the necessary steps to implement the actions as ordered in this minute order.

Submitted and reviewed by:


Assistant Executive Director for
Engineering Operations

Recommended by:


Executive Director
112526 DEC 16 10

Minute
Number

Date
Passed