

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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VARIOUS Districts

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.

Title 43 Texas Administrative Code §§5.51-5.60 (rules) prescribe the policies and procedures governing the department's implementation of the 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).

On December 16, 2010, by Minute Order 112526, the commission approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call). The commission further prescribed several conditions for submission and cost reimbursement for the program call including a determination that (i) monies available that can be allocated among all proposals selected under this program call will be limited to an estimated total of \$250 million in Category 12 funds; (ii) only the following category of project costs described in 43 TAC §5.53(a)(11) will be considered as eligible for reimbursement under this program call: 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; (iii) 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; and (iv) 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.

Pursuant to Minute Order 112526 and §5.54 of the rules, the department published in the Texas Register a notice designating a 60-day period commencing on December 31, 2010, for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was March 1, 2011. Department staff evaluated the proposals that were timely submitted under the program call using the items of consideration set forth in set forth §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

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After considering the factors described by §5.55 of the rules and the criteria set forth in Minute Order 112526, it is determined that the pass-through toll proposals set forth in Exhibit A represent the best value to the state for a total of approximately \$250 million in authorized funds.

Before the projects in the selected proposals are designed, developed, or constructed using funds administered by the department, the proposals: (1) must be included in the department's UTP, thereby identifying committed funding for the project; (2) prior to construction, must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

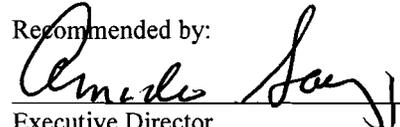
IT IS THEREFORE ORDERED by the commission that the pass-through toll proposals submitted under the current pass-through toll program call and set forth in Exhibit A are hereby selected as providing the best value to the state.

IT IS FURTHER ORDERED that the executive director or designee is authorized to negotiate the financial terms of potential pass-through toll agreements for each of the selected pass-through toll proposals as set forth in Exhibit A. Payment of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the construction contract, subject to limited exceptions for cost overruns and underruns of the estimated cost of construction. If negotiations are successful, the executive director shall submit to the commission a summary of the final terms of each agreement so that the commission may consider final approval of the agreement under §5.57 of its rules. If the financial terms of a pass-through toll agreement for one or more of the selected pass-through toll proposals set forth in Exhibit A cannot be successfully negotiated with the proposer(s) by July 19, 2011, the unsuccessful proposal or proposals will be rejected and the commission may, in accordance with §5.55 of the rules and the criteria set forth in Minute Order 112526, consider selection of additional proposals that were timely submitted under the program call.

Submitted and reviewed by:


Assistant Executive Director for
Engineering Operations

Recommended by:


Executive Director
112685 MAY 26 11

Minute Number Date Passed

**EXHIBIT A
PROPOSALS APPROVED FOR NEGOTIATIONS
2011 PASS-THROUGH TOLL PROGRAM CALL**

CSJ	DIST	REGION	LOCAL ENTITY NAME	ENTITY'S REIMBURSEMENT REQUEST	CUMULATIVE REIMBURSEMENT REQUEST	TOTAL PROJECT COST	HIGHWAY(S)	LIMITS
Not Available	AUS	SOUTH	Central Texas RMA	\$1,500,000	\$1,500,000	\$3,203,000	US 183/US 183A	Intersection at US 183/US 183A
0171-05-081	FTW	NORTH	City of Fort Worth	\$11,195,000	\$12,695,000	\$34,050,000	SH 199	North of Cullen St. to North of White Settlement Rd
Not Available	AUS	SOUTH	Travis County	\$7,190,000	\$19,885,000	\$13,990,000	FM 969	FM 3177 to Hunter's Bend Rd
0008-02-069	FTW	NORTH	Parker County	\$6,860,000	\$26,745,000	\$8,440,000	IH 20	Interchange at IH 20 and Western Loop
Not Available 0751-01-044 0095-14-020 0495-01-056	DAL	NORTH	City of Terrell	\$9,606,092	\$36,351,092	\$18,062,000	FM 148 North FM 148 South IH 20 Spur 557	Spur 557 to Bachelor Creek IH 20 to Spur 557 FM 148 to Spur 557 FM 148 to CR 305
2351-01-911	DAL	NORTH	City of Frisco	\$5,116,071	\$41,467,163	\$6,680,000	FM 2478	SH 121 to Stonebridge Parkway
Not Available	AUS	SOUTH	Travis County	\$4,000,000	\$45,467,163	\$11,920,000	FM 1626	West of Brodie Ln to FM 2304
0173-03-904	DAL	NORTH	City of Kaufman	\$13,538,442	\$59,005,605	\$20,207,000	SH 34	Southwest of FM 1388 to South of US 175
0009-12-072	DAL	NORTH	Rockwall County	\$21,656,000	\$80,661,605	\$32,811,000	IH 30	Interchange at IH 30 and FM 3549
0080-04-090	FTW	NORTH	Hood County	\$28,897,000	\$109,558,605	\$43,682,000	US 377	North of SH 171 to South of SH 171
0255-05-034	PHR	SOUTH	Hidalgo County RMA	\$9,177,000	\$118,735,605	\$10,863,000	US 281	Interchange at US 281 and FM 755
Not Available	DAL	NORTH	City of Forney	\$27,433,000	\$146,168,605	\$38,211,360	FM 1641	FM 458 to IH 20
0684-01-046	PHR	SOUTH	Cameron County RMA	\$25,500,000	\$171,668,605	\$34,170,000	US 77	Direct Connectors from US 77 to SH 550
0231-03-128	WAC	NORTH	City of Harker Heights	\$1,700,000	\$173,368,605	\$2,303,000	US 190	Intersection at US 190 and FM 2410
			TOTAL		\$173,368,605			
Not Available	SAT*	SOUTH	Bexar County	\$13,000,000		\$16,090,000	FM 471	Kallison Lane to FM 1560
0710-03-001	BMT*	EAST	Orange County	\$34,200,000		\$41,922,000	FM 299	South of Walden Rd and FM 105 to Conner Rd and FM 105
0039-02-040	PHR*	SOUTH	Hidalgo County RMA	\$58,240,000		\$80,966,000	US 83	East of FM 886 to East of Showers Rd

* The Commission grants conditional authority to pursue negotiations with the sponsors of these projects in priority order for a Pass-Through Toll program amount not to exceed \$176 million, if staff is unable to successfully negotiate any of the top 14 proposals.