

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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VARIOUS Districts

In Minute Order 110698, dated September 28, 2006, the Texas Transportation Commission (commission) authorized and directed the Texas Department of Transportation (department) to issue a request for proposals (RFP) for the development of the I-69 corridor from Northeast Texas to Mexico and other potential facilities to the extent necessary for connectivity, mobility, safety, and financing.

Minute Order 110698 further authorized the department to pay to each proposer that submits a responsive, but unsuccessful, proposal for the I-69 project an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$750,000.

In March 2008, two proposer teams submitted proposals in response to the RFP issued by the department for a comprehensive development agreement (CDA) for the planning, development, design and construction of the I-69 corridor. In Minute Order 111409, dated June 26, 2008, the commission conditionally awarded the CDA to ZAI/ACS 69 Partners, Inc. (ZAI/ACS). Following negotiation of final terms and review by the Legislative Budget Board, the CDA was submitted in November 2009 to the Office of the Attorney General for legal sufficiency review as required by statute.

During the two and a half years after conditional award, ZAI/ACS extended its proposal validity period fourteen times at TxDOT's request. The proposal ultimately expired in November 2010, without a final award of the CDA.

On November 15, 2010, ZAI/ACS submitted an invoice to TxDOT in the amount of \$3,440,332.84 for reimbursement of "I-69 CDA Procurement Termination Cost." The invoice described four categories of expenses for which reimbursement was sought: (1) costs of preparation and submittal of statement of qualifications and proposal (approximately \$1.5 million); (2) costs to respond to department inquiries and requests for information regarding the proposal (approximately \$100,000); (3) costs of negotiating and finalizing the CDA for execution (approximately \$300,000); and (4) costs incurred between December 2008 and October 2010 for presentations to stakeholders, monitoring status of projects, responding to department requests, fostering relationships with key stakeholders, management mobilization, and preparation of CDA execution documents (approximately \$840,000). The invoice also includes a line item for overhead and profit (approximately \$620,000).

As authorized by the commission, the department previously made a payment of \$750,000 to each of the two proposer teams (Cintra and ZAI/ACS) in January 2011, as payment for work product in accordance with the RFP. Because the ZAI/ACS invoice was submitted prior to the department's payment of the \$750,000 stipend amount, the claim for reimbursement of proposal preparation and related costs has been reduced by that amount.

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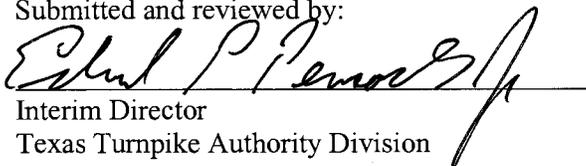
VARIOUS Districts

Department staff has reviewed and analyzed the invoices and backup supporting documentation provided by ZAI/ACS. After that review and analysis, and further discussions with ZAI/ACS, department staff recommends that ZAI/ACS be reimbursed the amount of \$1,095,275.44 based on mobilization of contract staff and work performed by ZAI/ACS in anticipation of the execution of the CDA that the department can use in the development of the I-69 corridor.

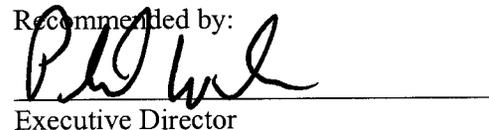
IT IS THEREFORE ORDERED by the commission that the department is authorized to make a payment to ZAI/ACS in the amount of \$1,095,275.44 in settlement and in full satisfaction of the ZAI/ACS claim for "I-69 CDA Procurement Termination Cost".

IT IS FURTHER ORDERED that this payment is conditioned on ZAI/ACS waiving or withdrawing any further claims in connection with the I-69 project and procurement and releasing the commission and the department from any further claims in connection with the I-69 project and procurement.

Submitted and reviewed by:


Interim Director
Texas Turnpike Authority Division

Recommended by:


Executive Director

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Minute
Number

Date
Passed