

These are the minutes of the special meeting of the Texas Transportation Commission, which was held on June 8, 2010, in Austin, Texas. The special meeting was called to order by Commissioner Houghton as chair. The meeting opened at 9:05 a.m. Commission Chair Deirdre Delisi joined the dais at 9:08 a.m.

Commission Members:

Deirdre Delisi	Chair
Ted Houghton	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner
William Meadows	Commissioner

Administrative Staff:

Amadeo Saenz, Executive Director
 Steve Simmons, Deputy Executive Director
 Bob Jackson, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director
 Dee Hernandez, Chief Minute Clerk

A public notice of this workshop containing all items on the proposed agenda was filed in the office of the Secretary of State at 3:05 p.m. on May 28, 2010, as required by Chapter 551, of the Government Code, referred to as “The Open Meetings Act.”

ITEM 1. FEDERAL DISCRETIONARY GRANT PROGRAM

Discussion of candidate transportation projects for submission to the U.S. Department of Transportation for funding under the National Infrastructure Investment Program, referred to as TIGER II Discretionary Grants

This item was presented by Transportation Planning and Programming Division Director Jim Randall. The commission also received comments from the Port of Corpus Christi Industrial Development Director Richard Stroot.

ITEM 2. PASS-THROUGH TOLL PROGRAM

Authorize the executive director or designee to add into all pass-through toll agreements to be negotiated with those public entities whose proposals under the February 26, 2009 pass-through toll program call were selected by the commission on October 29, 2009 and December 17, 2009, a provision that limits the liability of both the department and the public entity in the event of a cost overrun or underrun (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Deputy Executive Director Steve Simmons:

112293
AEO

On February 26, 2009 by Minute Order 111710 the Texas Transportation Commission (commission) approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call).

On September 24, 2009 by Minute Order 111977 the commission authorized the executive director or his designee to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals under the program call were selected by the commission in that minute order as providing the best value to the state. On October 29, 2009 by Minute Order 112016 and on December 17, 2009 by Minute Order 112074 the commission authorized the executive director or his designee to negotiate and execute a pass-through toll agreement with each of the public entities set forth in Exhibit A (selected public entities) for the construction of their respective projects as identified in the exhibit. The agreements will provide for payment of pass-through tolls by the Texas Department of Transportation (department) to the selected public entities as reimbursement for the construction of facilities on the state highway system in accordance with §222.104(b), Transportation Code, and Title 43 Texas Administrative Code §§5.51-5.60 (rules).

In accordance with §5.58(b)(3)(A) of the rules, the commission finds that it is in the public interest to require all pass-through toll agreements negotiated with the selected public entities to contain a provision that limits reimbursement to the actual costs incurred by the public entity (actual cost provision). The actual cost provision will be based on the following concepts:

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). 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 (actual cost of construction), subject to the following two exceptions.
 - (A) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
 - (B) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated cost of construction, if the following conditions are met:

- (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's estimated total reimbursement amount as set forth in Exhibit A;
 - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
 - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (iv) the public entity receives the department's prior consent for the expenditures.
- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
- (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
- (4) Construction costs shall have the same meaning as described in the program call.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized and directed to include in each pass-through toll agreement to be executed with the public entities set forth in Exhibit A an actual cost provision that complies with the findings described in this minute order.

Note: Exhibit A on file with minute order clerk.

ITEM 3. PROPOSITION 12 BONDS

Various Counties – Approval of work to be performed in connection with highway improvement projects that will be funded with the proceeds of bonds issued under Transportation Code, Section 222.004 (Proposition 12 Bonds) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Design Division Director Mark Marek:

112294
DES

Section 49-p, Article III, of the Texas Constitution (constitutional provision) provides that, to provide funding for highway improvement projects, the legislature by general law may authorize the Texas Transportation Commission (commission) or its successor to issue general obligation bonds of the State of Texas in an aggregate amount not to exceed \$5 billion and enter into related credit agreements.

Pursuant to the constitutional provision, the Texas Legislature, in House Bill 1, 81st Legislature, First Called Session, 2009, enacted Transportation Code, §222.004 (Enabling Act), the enabling legislation for general obligation bonds, notes, and other public securities that may be issued by the commission to fund highway improvement projects (Proposition 12 bonds).

House Bill 1 also amended Rider 60 to the appropriations to the Texas Department of Transportation (department) in Senate Bill 1, 81st Legislature, Regular Session, 2009 (General Appropriations Act), to allow the issuance of \$2 billion of these bonds. The department recently received approval from the Legislative Budget Board to expend \$150 million in bond proceeds for engineering that will enable the development of highway improvement projects to reduce congestion on some of Texas' most congested corridors.

During previous commission meetings, staff discussed this issue with the commission and presented potential scenarios for the use of these funds. As directed by the commission, staff worked with the state's transportation partners to develop a list of highway improvement projects to be developed with these funds. This minute order provides commission approval for the expenditure of the proceeds of Proposition 12 bonds to fund design consultant costs.

IT IS THEREFORE ORDERED by the commission that the engineering costs relating to the highway improvement projects set forth in Exhibit A are hereby approved for funding with the proceeds of Proposition 12 bonds.

Note: Exhibit A on file with minute order clerk.

ITEM 4. STATE INFRASTRUCTURE BANK
FINAL APPROVAL AMENDMENT

El Paso County – **Camino Real Regional Mobility Authority** – Consider amending Minute Order 112165, passed February 25, 2010, to authorize a reduction in the amount of the \$35 million SIB loan to Camino Real Regional Mobility Authority (CRRMA) and a deletion of one project from the scope of work to be covered by the loan proceeds (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director James Bass:

112295
FIN

The Texas Transportation Commission (commission) by Minute Order 112082, dated December 17, 2009, granted final approval of an application request from the Camino Real Regional Mobility Authority (CRRMA) to borrow \$35 million from the

State Infrastructure Bank (SIB) and authorized the executive director of the Texas Department of Transportation (department) to enter into a financial assistance agreement as negotiated with the CRRMA. On February 25, 2010 in Minute Order 112165, the commission amended Minute Order 112082 and granted final approval of the \$35 million SIB loan with a reduced interest rate and increased security.

During negotiation of terms for the authorized financial assistance agreement, the CRRMA proposed that: 1) the SIB loan be restructured to delete the I-10 Corridor aesthetic project from the projects for which loan proceeds would be used; and 2) the loan amount be reduced from \$35 million to \$30 million to reflect the reduced need (revised proposal). The executive director recommends that the commission amend its final approval of the CRRMA application request to incorporate the revised proposal.

The commission confirms its findings in Minute Order 112165, dated February 25, 2010 and determines that providing financial assistance in accordance with the revised proposal will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the revised financial assistance request submitted by CRRMA to borrow \$30 million from the SIB is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with CRRMA. The loan will be repaid over a period of 30 years at 4.95 percent interest per annum and secured by revenues from the City of El Paso transportation reinvestment zone (TRZ) and the city's written agreement to pay the CRRMA's SIB loan obligation from the city's general fund if other monies are not available or sufficient.

IT IS FURTHER ORDERED that this commission approval is contingent upon further actions, specifically: 1) the execution and continued effectiveness of an agreement by the City of El Paso and the CRRMA, as approved by the department, for the transfer and pledge of transportation reinvestment zone revenues and the city's commitment to pay the CRRMA's SIB loan obligation from its general fund if other monies are not available or sufficient; 2) creation by the city of a valid TRZ in accordance with state law, to provide security for the \$30 million SIB loan; and 3) submission of a financial assessment, as approved by the department, that demonstrates bonding capacity of the TRZ sufficient to secure the SIB loan.

ITEM 5. HIGHWAY MAINTENANCE AND DEPARTMENT BUILDING CONSTRUCTION

Brazos County - Award or reject contract for construction of Bryan District Headquarters, Brazos County, Job Number 4033, let on May 12, 2010 (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Construction Division Director Russel Lenz:

112296
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for Brazos County, Job Number 4033, Bryan District, which were publicly opened and read on May 12, 2010.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

The department recommends that the Texas Transportation Commission (commission) respectively award to WR Construction, Inc., the department building construction contract for Brazos County, Job Number 4033, Bryan District, as identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contract described in Exhibit A be and is hereby respectively awarded to the lowest bidder, WR Construction, Inc., as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

Note: Exhibit A on file with minute order clerk.

ITEM 6. GRANT THORNTON MANAGEMENT AND ORGANIZATIONAL REVIEW REPORT

Report on the department's response to the commission on the Grant Thornton report.

This report was presented by Executive Director Amadeo Saenz.

ITEM 7 Executive Session Pursuant to Government Code, Chapter 551

- a. **Section 551.071** – Consultation with and advice from legal counsel regarding any item on the agenda
- b. **Section 551.074** – Deliberation of the employment and duties of a person who would be responsible for implementing changes that result from the independent management and organizational review of the department

Note: The commission recessed at 10:09 a.m. to meet in executive session. The commission reconvened at 11:36 a.m.

The meeting adjourned at 11:36 a.m.

APPROVED:

Deirdre Delisi, Chair
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its workshop on June 8, 2010 in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation