

**TEXAS TRANSPORTATION COMMISSION**

Dallas County

**MINUTE ORDER**

Page 1 of 2

Dallas District

Subchapter F, Chapter 223, Transportation Code prescribes the process by which the Texas Department of Transportation (department) may enter into a design-build contract with a private entity that provides for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project. Transportation Code § 223.242 authorizes the department to enter into, in each fiscal year, up to three design-build contracts.

On April 28, 2016, by Minute Order 114563, the Texas Transportation Commission (commission) authorized the department to issue a request for qualifications (RFQ) for the design, development, construction, and potential maintenance of the Southern Gateway Project in Dallas County, consisting of improvements to I-35E from south of the I-35E/US 67 interchange to Colorado Boulevard, with transition work extending north to Reunion Boulevard, and improvements to US 67 from the I-35E/US 67 interchange to I-20.

The department issued the RFQ on May 13, 2016. Five proposer teams responded to the RFQ. The department is evaluating the qualifications statements to determine which proposer teams are best qualified to be on the short list of proposer teams that will be requested to submit detailed proposals to design, develop, construct, and potentially maintain the project.

Transportation Code § 223.246 and 43 TAC § 9.153(d) provide that, if authorized by the commission, the department will issue a request for proposals (RFP) from all private entities qualified for the short list. The department intends to issue an RFP for the Southern Gateway Project and to request detailed proposals from the short listed teams to design, develop, construct, and potentially maintain the project.

Transportation Code § 223.249(a) and 43 TAC § 9.153(f) require the department to pay an unsuccessful private entity that submits a detailed proposal that is responsive to the requirements of the RFP a stipulated amount in exchange for the work product contained in the proposal. The stipulated amount must be stated in the RFP and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the Southern Gateway Project or other department projects without further payment to the unsuccessful proposer. Transportation Code § 223.249(b) and 43 TAC § 9.153(f) require the department to pay a partial stipend in the event that a procurement is terminated before the execution of a design-build contract.

**IT IS THEREFORE ORDERED** that the department, after it determines the best qualified proposer teams to be on the short list, is authorized to issue an RFP to design, develop, construct, and potentially maintain the Southern Gateway Project in Dallas County, consisting of improvements to I-35E from south of the I-35E/US 67 interchange to Colorado Boulevard, with transition work extending north to Reunion Boulevard, and improvements to US 67 from the I-35E/US 67 interchange to I-20.

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Page 2 of 2

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IT IS FURTHER ORDERED that, after consideration of the criteria in 43 TAC § 9.153(f), the department is authorized to pay each proposer that submits a responsive, but unsuccessful, proposal for the Southern Gateway Project an amount based upon the value of the work product provided in the proposal that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of 0.25% of the successful proposer's price for all work under the design-build agreement.

IT IS FURTHER ORDERED that in the event the procurement is terminated prior to the execution of the design-build agreement, and after consideration of the criteria in 43 TAC § 9.153(f), the department is authorized to pay each proposer a partial stipend based upon the value of the work product that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$1,564,000.

IT IS FURTHER ORDERED that payment for work product may only be paid to the extent that the work product submitted meets the minimum criteria and the proposer satisfies the conditions for payment identified by the department in the Southern Gateway Project procurement documents.

Submitted and reviewed by:

  
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Director, Project Finance,  
Debt & Strategic Contracts Division

Recommended by:

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

114649 July 28 '16  
Minute Date  
Number Passed