

PASS-THROUGH TOLL PROGRAM CALL

Description

This minute order selects pass-through toll proposals submitted under the February 25, 2010 pass-through toll program call and authorizes the executive director or designee to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers.

Background

Title 43 Texas Administrative Code §5.54 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.

On February 25, 2010, the commission by Minute Order 112156 approved a call for submission of projects under this program. 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 administration recommended that applications be accepted for a 60-day period commencing with the publication of a program call in the Texas Register on March 12, 2010 and concluding on May 11, 2010. Proposals were limited to (1) highway projects, (2) for construction costs only, and (3) an estimated total fund allocation of \$300 million from Category 12 for the entire reimbursement period of all selected proposals under the program call. The department evaluated the submitted pass-through toll proposals and provided its analyses to the commission.

Criteria

The department evaluated the submitted proposals using the items of criteria set forth in 43 TAC §5.55. Based on the commission's consideration of the eligible proposals, the commission may select the proposals that provide the best value to the state and direct the department staff to attempt to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers.

Problem/Condition

There are limited amounts of funding available to approve proposals for projects to be developed under the pass-through toll program. 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 adopted this program call under 43 TAC §5.54.

Other Comments

Exhibit A will be available on or about June 23, 2010.

Alternate Solutions/Actions

None.

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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.

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 Texas Transportation Commission (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 February 25, 2010 by Minute Order 112156 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 determined that (i) monies available that can be allocated among all proposals selected under the program call will be limited to an estimated total of \$300 million in Category 12 funds, and (ii) only the following category of project costs will be considered as eligible for reimbursement under the 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. The cost categories of design, development (including environmental clearance, right of way acquisition, utility adjustment), financing, maintenance, and operation are specifically excluded.

Pursuant to Minute Order 112156 and §5.54 of the rules, the department published in the Texas Register a notice designating a 60-day period commencing on March 12, 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 May 11, 2010. Department staff evaluated the proposals that were timely submitted under the program call using the items of consideration set forth in §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

After considering the factors described by §5.55 of the rules and the criteria set forth in Minute Order 112156, 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 \$300 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.

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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 August 17, 2010, 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 112156, consider selection of additional proposals that were timely submitted under the program call.

Submitted and reviewed by:

Recommended by:

Assistant Executive Director for
Engineering Operations

Executive Director

Minute Number Date Passed

**EXHIBIT A
PROJECTS APPROVED FOR NEGOTIATION
2010 PASS-THROUGH TOLL PROGRAM CALL**

CSJ	DIST	Local Entity Name	Reimburs. Value	Accumul. Reimburs. Value	Total Project Cost	Highway	Limits	Region
0836-02-050,etc.	WAC	CITY of KILLEEN	\$14,021,000	\$14,021,000	\$18,298,000	SH 195/SH 201 & SH 201	INTERCHANGE at SH 195/SH 201, etc.	NORTH
2452-03-108	SAT	BEXAR CO.	\$31,350,000	\$45,371,000	\$39,360,000	Loop 1604	LOWER SEGUING ROAD to IH 10 EAST	SOUTH
1046-02-021	ELP	CAMINO REAL RMA	\$38,287,405	\$83,658,405	\$60,763,718	FM 659	SUNFIRE to US 62/180 (MONTANA AVENUE)	WEST
0086-14-046	LRD	WEBB CO. & CITY of LAREDO	\$15,845,089	\$99,503,494	\$43,611,000	SL 20/SP 400	OVERPASS at SL 20/SPUR 400	SOUTH
0363-01-114	FTW	CITY of COLLEYVILLE	\$19,100,000	\$118,603,494	\$28,025,000	SH 26	CHEEK-SPARGER to HALL-JOHNSON	NORTH
0015-08-128,etc.	AUS	WILLIAMSON CO.	\$10,997,000	\$129,600,494	\$22,538,000	IH 35 NBFR	WESTINGHOUSE ROAD to SH 29	SOUTH
0188-03-019,etc.	HOU	BRAZORIA CO.	\$15,835,000	\$145,435,494	\$42,051,000	SH 36 & SH 36/FM 2004	N. of FM 1462 to S. of CR 18,etc.	EAST
0684-01-019,etc.	PHR	CAMERON CO. RMA	\$34,500,000	\$179,935,494	\$46,000,000	SH 32	US 77/83 to PORT of BROWNSVILLE	SOUTH
Not Available	AUS	CITY of CEDAR PARK	\$10,675,000	\$190,610,494	\$24,300,000	RM 1431	FM 734(PARMER LANE) to SAM BASS ROAD	SOUTH
0921-02-172	PHR	HIDALGO CO. RMA	\$70,000,000	\$260,610,494	\$195,930,000	SH 365	FM 1016 to FM 3072	SOUTH
Not Available	BMT	CHAMBERS CO.	\$20,032,000	\$280,642,494	\$35,762,000	FM 1409	SH 565 NORTH to SH 565 SOUTH	EAST
		TOTAL =		\$280,642,494				
1068-04-147,etc.	DAL	NCTCOG	\$64,000,000	-	\$128,732,000	IH 30	SH 360 to SYLVAN AVENUE	NORTH
0320-06-001,etc.	WAC	CITY of TEMPLE	\$39,019,000	-	\$50,491,000	LOOP 363	IH 35 (NORTH) to FM 2305	NORTH
0220-01-023	PHR	HIDALGO CO. RMA	\$8,500,000	-	\$21,885,000	US 281	E. of SPUR 600 to FM 2557	SOUTH
1311-01-034,etc.	DAL	DENTON CO.	\$42,570,000	-	\$56,988,000	FM 1171	W. of SHILOH ROAD to IH 35W	NORTH