

TDOT/ACEC Partnering Committee
Meeting Summary
September 17, 2009

The TDOT/ACEC Partnering Committee meeting convened September 17, 2009 at 10:00 AM in the 7th floor conference room of TDOT headquarters in Nashville, Tennessee. There were 21 in attendance (Roster attached). The following summary follows the meeting agenda.

Agenda Item #1 – General Comments

Mr. Paul Degges opened the meeting with a funding update. For fiscal year 08-09, TDOT received \$50 million less than projected (disregarding the stimulus funding). There are currently 700 vacancies which is double the normal rate. TDOT has been impounding maintenance money, delaying equipment & IT purchases, and even reducing the mowing program.

For FY 09-10, TDOT is projecting \$22.5 million less than the previous year. The funding board is to meet in December and hearings with the Governor in late November so the projections are subject to change.

Mr. Degges then discussed the following items.

Federal Rescissions

The Federal government is faced with an \$8.7B rescission of contract authority in the current bill that will affect unobligated apportionment balances (planned expenditures with corresponding project not ready to go). In Tennessee, the hardest hit areas will be the four major MPO's with approximately \$200 million of the total \$400 million unobligated apportionments. The Enhancements program is the next largest area at \$60 million. TDOT estimates that \$78 million in rescissions will come from the MPOs.

Although rescissions impact planned expenditures, short-term projects should still be delivered.

A New Transportation Bill & the Highway Trust Fund

The current bill expires at the end of the month and no new bill is in place. There will probably be an 18-month extension of the current bill. The Highway Trust Fund is broke due to a lack of tax revenue and money being borrowed from the funds over the years. At this time, it is anticipated that an extension of the current bill will resolve the \$8.7B shortfall.

ARRA Update

TDOT has authorized all Stimulus Funds it has received totaling over \$650M. Tennessee is ranked 3rd in the nation among DOT's in efficient handling of stimulus funds.

TIGER Grants

TIGER Grants are another way to access ARRA monies. TDOT has submitted applications on six highway projects including the US 64 Corridor, I-69, a seismic retrofit over the Mississippi, and short-line rail project (\$69 million largely to replace bridges). The Federal government has made \$1 Billion available for this program with no state being granted more than \$300 million. TDOT submitted for \$350 million in projects applying for TIGER Grants. The program appears to be slanted toward urbanized areas and multi-modal solutions. TDOT picked the strongest candidates regardless of geography and corridor.

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Discretionary Programs

There are several discretionary programs in place that may be unfamiliar.

- \$2 million truck stop electrification program
- \$800K for job training
- \$3 million for Ferry Road in Cumberland City

Bridge Bonding Program

The bridge bonding program was recently unveiled (news article is on TDOT website) and includes 111 bridges comprised of 45 replacements and 66 rehabilitation projects for the first year. The structural adequacy was a key selection criterion as was providing an equitable distribution across the state. 81 projects will cost less than a million with one over \$20 million. The program was to be completed in four years but the Commissioner asked that it be accelerated and completed in three years. To do this, TDOT will spend the \$87.5 million per year allocated for the program and supplement that with an additional \$30 million, which will be reimbursed by the program in year four.

Agenda Item #2 – Procurement Policy Update

Mr. Jeff Jones distributed a copy of the current procurement policy update that went into effect on August 1, 2009. This information is available at <http://www.tdot.state.tn.us/consultantinfo.htm>. The most significant change is that TDOT may require that Indirect Cost schedules be audited by independent CPA's rather than TDOT External Audit Staff.

Mr. Degges mentioned that the Department relied on consultants to help local governments understand the rules and regulations. Whenever it says "Commissioner" on the policy, it could probably be replaced with "Mayor" when apply regulations to local governments.

Agenda Item #3 – Prequalification Form DT-0330 Part 1 Revision

Mr. Jones indicated that that the DT-330 Part I has been updated to include a resume section (Part 12). These resumes are similar to the template requested from the Part 2s. These resumes will help the Department identify a team's capabilities, particularly for new or unfamiliar vendors. Complete this section for each main discipline with a one page for each person and no more than 5 in each discipline and no more than 20 total.

It was also noted that prequalification is now good for three years. Information to the prequalification process is available at:

http://www.tdot.state.tn.us/Chief_Engineer/assistant_engineer_design/design/DOT-CS-100/planning/index.htm

Agenda Item #4 – TDOT Ethics Policy Update

Mr. Jones distributed a memo regarding TDOT Ethics Policy Revisions (see attached). This memorandum identifies the revisions to the policy to be in compliance with requirements of both the Governor's Executive Order and the Ethics Commission interpretations. This ethics policy is fairly strict and each vendor is encouraged to become familiar with the current rules and regulations.

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Agenda Item #5 – Edison Project Update

Mr. Freddy Miller provided an update on the integration of vendor invoices into the process. There have been issues with addresses on invoices not matching what had been established in Edison and this has caused some delays. The ACEC committee members did not identify other areas of concern at this time as processing of invoices through Edison is still new.

At this time, there are no immediate plans for vendors to submit invoices or proposals electronically and it will be business as usual for procurements. An Edison Agenda item will be maintained for future meetings.

Agenda Item #6 – CEI Contracts / Fee Section

ACEC presented a concern that recent changes to CE&I contract language specific to net fee was restrictive and did not account for situations beyond the control of the CE&I consultant. The primary section discussed states that *“Extension of the construction contract time resulting in additional man hours being used under this agreement shall not be considered additional work and an increase to the net fee will not be allowed”*. ACEC’s concerns are in regard to language that does not afford an opportunity for latitude by the Department in the event the Consultant performs their scope of work as directed and circumstances beyond their control result in additional contract time: even if determined appropriate by the Department at that time.

Mr. Degges explained that the Department’s current position is consistent with the wording of the contract document. After further discussion, Mr. Joe Carpenter requested that ACEC prepare a written interpretation and suggested changes for contract language and submit to Mr. Brian Egan for review and additional discussion by the Department.

Agenda Item #7 – Manday Rates in Design Contracts

ACEC requested information as to the guidelines the Department follows with regards to manday rates particularly on design projects. Mr. Carpenter indicated that there is a large diversity among firms and cost-range across the state. Based on a review of contracts across the state, Mr. Carpenter indicated that a \$250 per day manday rate is a soft cap. If a firm goes above that, they will need to have a very good reason.

The Department is not opposed to paying higher rates if there is more efficiency and the total mandays are reduced. TDOT will gather more detail regarding manday rates and report back at the next meeting. If needed, the Department may request assistance from ACEC members in evaluating the policy.

Agenda Item #8 – Schedule Next Meeting

The next TDOT/ACEC Partnering Meeting is scheduled for December 8, 2009 at 10:00 AM in the 7th Floor Conference Room at TDOT headquarters.

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Additional Items

Mr. Mike Agnew requested that all firms read the instructional bulletin 09-02 regarding file net archiving. He indicated that naming conventions are to be followed exactly and that this process will give the Department better access and control over plans.

http://www.tdot.state.tn.us/Chief_Engineer/assistant_engineer_design/design/DGpdf/IB_09_02.pdf

Mr. Jones indicated that the next design advertisement will consist of four projects and will be advertised in the next few weeks.

Mr. Jones announced that Pete Hiatt would be retiring at the end of the month and that David Horne is moving to the traffic section.

Cc: Meeting Attendees

Attachments:
Roster of Attendees
TDOT Ethics Policy Revisions

Prepared by: Brad Winkler

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<u>Name</u>	<u>TDOT Department / Firm</u>
Jeff Jones	TDOT Design
Stan King	Florence & Hutcheson
Jeff Mize	Wilbur Smith Associates
Stacey Morris	ETI
Rick Gafford	Fisher & Arnod, Inc.
Brian Hall	AEOM
Patrick Smith	SSR
Robert McIver	Parsons
Daniel Spann	RPM
Brad Winkler	Long Engineering
Carolyn Stonecipher	TDOT Design
Jim Waters	TDOT Design
Freddy Miller	TDOT Design
Jeff Hoge	TDOT ROW & Utilities
Michael Agnew	TDOT Design
Joe Carpenter	TDOT
Said El Said	TDOT Construction
John Paul Saalwaechter	TDOT Construction
Tom Clinard	Clinard Engineering Associates
Chris Christianson	TDOT
Paul Degges	TDOT

TDOT Ethics Policy Revisions

All Directors Meeting, March 26, 2009

I. GIFT POLICY & EXCEPTIONS

General Rule: No employee shall accept any gift (e.g., food, entertainment, lodging, transportation, loans) from any person or entity that:

- i. Is seeking or has a contract or business with TDOT,
- ii. Conducts activities regulated by TDOT, or
- iii. Has an interest that may be substantially affected by the performance or non-performance of the employee's official duties.

Exceptions:

The revisions clarify and narrow the scope of the allowable exceptions to the general rule.

- i. Gifts from an immediate family member or a close personal friend.
The revision identifies factors which characterize allowable gifts that are genuinely motivated by a close personal relationship rather than the position of the employee:
 - The gift is purchased with personal funds and not charged to the giver's employer
 - There is a prior history of gift giving between the giver and the employee or the employee's family that is unrelated to the employee's position
 - The employee has given gifts of similar value to the giver
 - The giver does not give similar gifts to other employees who are not personal friends
 - The timing of the gift is not related to any official decision that the employee is about to make or recommend
- ii. Informational materials.
The revision clarifies that allowable gifts of informational materials (books, articles, videotapes, etc.) are those which relate to the giver's business and are not readily convertible to cash.
- iii. Sample merchandise, promotional items, and appreciation tokens routinely given to customers in the ordinary course of business.
To establish that such gifts are truly token in nature and routinely given to customers in the ordinary course of business, the revision:
 - Clarifies that sample merchandise or promotional items are items which bear the company's name or logo (e.g., inexpensive calendars, pens, caps, etc.)
 - Prohibits gift certificates
 - Establishes a \$10 limit on the value of any item given to an individual employee
 - Establishes a \$50 limit on the value of any divisible gift (e.g., food, candy, etc.) given to an entire office
- iv. Unsolicited awards in recognition of public service in the form of a plaque, trophy, etc., that is not readily convertible into cash.
No changes.
- v. Food, beverages, entertainment, etc.
The exception retains the \$50 per occasion limit and the reporting requirement, but the revision:
 - Specifies that any gift of food, etc., is allowable only if it is part of a meal or reception at a scheduled company event, industry conference, or similar event
 - Prohibits gifts of food, etc., that are not included as part of a scheduled event
 - Requires the employee to verify that the giver is not a lobbyist or employer of a lobbyist, or to explain how the gift complies with an allowable exception (see Addendum below)

- vi. Where refusal of the gift would be awkward or contrary to larger interests of the State.
The revision continues to require that such gifts are to be reported, with an explanation, to TDOT's Compliance Office, but it also provides that when the gift is to an executive service employee it will be reported to the Commissioner of Finance and Administration, as required in Executive Order #3.
- vii. Meals, travel expenses, etc., provided in connection with an event to which the employee is invited as a speaker or panel member.
The revision requires the employee to report the gift to the Compliance Officer, with an explanation of the employee's role in the event, within seven days.
- viii. Loans from established financial institutions on customary terms.
No changes.

II. PROHIBITION ON ACCEPTING GIFTS FROM LOBBYISTS.

The revision expressly incorporates the provisions of the Ethics Commission Act of 2006 which, as a general rule, prohibit any employee in the legislative or executive branch of government from accepting any gift from a lobbyist or employer of a lobbyist.

ADDENDUM – ETHICS COMMISSION ACT OF 2006

Prohibited Gifts¹ -- In general, no employee in the legislative or executive branch, or any member of the employee's immediate family, may solicit or accept any gift from a lobbyist or employer of a lobbyist.

Exceptions:

- Benefits resulting from business, employment, or other outside activities if such benefits are customarily provided to others in similar circumstances without regard to the recipient's status as a State employee
- Informational materials such as books, articles, periodicals, etc.
- Gifts given for a non-business purpose motivated by a close personal friendship
- Sample merchandise or promotional items routinely given to customers in the course of business
- Awards of appreciation or recognition of public service, e.g., plaques, desk items, etc. that are not readily convertible to cash
- Discounts, prizes given in public contests, or benefits of participation in charitable events so long as these are offered to the general public and not enhanced based on the status of the employee
- Expenses for out-of-state travel to, or food, refreshments, entertainment, lodging, etc., paid or reimbursed by a governmental entity or association of government officials or provided in connection with a conference of a governmental entity or association of government officials
- Entertainment, food, etc. provided in connection with an in-state event to which the entire General Assembly is invited and the invitation is filed with the Ethics Commission and the value of the gift does not exceed \$50 per person per day
- Entertainment, food, etc. provided in connection with an in-state event where the employee is a speaker or on a panel at a regularly scheduled meeting of an established and recognized organization and the value of the gift does not exceed \$50 per person per day
- Food or refreshments provided in connection with an in-state event to which employees of the executive or legislative branch are invited and the value does not exceed \$50 per event per day or \$100 per person annually

Acceptance of a gift in violation of this Act may be remedied and the violation removed either by returning the gift, or reimbursing the value of the gift, within 10 days after receiving it or learning that accepting it was a violation.

¹ Tennessee Code Annotated § 3-6-305.