

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
October 28, 2010
Lansing, Michigan

Meeting noticed in accordance with Open Meetings Act, Public Act 267 of 1976.

Present: Linda Miller Atkinson, Vice Chair
Maureen Miller Brosnan, Commissioner
Steven K. Girard, Commissioner
James S. Scalici, Commissioner

Also Present: Jackie Shinn, Chief Deputy Director
Frank E. Kelley, Commission Advisor
Marneta Griffin, Commission Executive Assistant
Jerry Jones, Commission Auditor, Office of Commission Audit
Amy Dickenson, Commission Auditor Executive Assistant
Patrick Isom, Attorney General's Office, Transportation Division
Myron Frierson, Bureau Director, Finance and Administration
John Friend, Bureau Director Highway Delivery
Leon Hank, Chief Administrative Officer
Greg Johnson, Chief Operations Officer
Bill Shreck, Director, Office of Communications
Matt DeLong, Administrator, Real Estate Division
Susan Mortel, Bureau Director, Transportation Planning
Rob Abent, Bureau Director, Aeronautics and Freight Services
Ed Timpf, Administrator, Finance and Administration
Tim Hoeffner, Administrator, Office of High Speed Rail
Sharon Edgar, Administrator, Bureau of Passenger Transportation
Mike Kapp, Administrator, Office of Economic Development

Excused: Ted B. Wahby, Chair
Jerrold M. Jung, Commissioner
Kirk T. Steudle, Director

A list of those people who attended the meeting is attached to the official minutes.

Vice Chair Atkinson called the meeting to order at 9:03 a.m. in the Bureau of Aeronautics and Freight Services Auditorium in Lansing, Michigan.

I. COMMISSION BUSINESS

Commission Minutes

Vice Chair Atkinson entertained a motion for approval of the minutes from the State Transportation Commission meeting of September 30, 2010.

Moved by Commissioner Scalici, with support from Commissioner Girard, to approve the minutes from the State Transportation Commission meeting of September 30, 2010. Motion carried on a unanimous voice vote.

II. **DIRECTOR'S REPORT**

Deputy Director Shinn reported that:

The State of Michigan has been awarded a \$161 million grant for the continued development of high speed rail in Michigan. The grant process was extremely competitive. The department is in the process of finding out what FRA intends for those grant funds, but expect capital improvements on the rail lines.

General Motors intends to invest \$190 million in redevelopment of a line for a new Cadillac in Delta Township. They also intend to invest another \$37 million to upgrade other area plants.

III. **OVERSIGHT**

Commission Agreements (Exhibit A) – Myron Frierson

Mr. Frierson provided information on 20 agreements that were presented.

Mr. Frierson commented on the notation of No Letting in regard to items #3 and #12, traffic operation centers in the City of Detroit and Macomb County. The local procurement process will be used to acquire equipment and staff for those services.

Pending further questions, Mr. Frierson asked for approval of Exhibit A.

Vice Chair Atkinson asked about the authorization terms in regard to item #19. Vice Chair Atkinson asked for an explanation of the terms of the project. Mr. Frierson deferred to Sharon Edgar. Ms. Edgar stated the revised authorization terms will be for a variety of capital improvements, primarily ITS related. Vice Chair asked about the revised authorization dates, so essentially we are talking about authorizations from the original September 24, 2007 through March 23, 2011. Ms. Edgar responded explaining the extension will not cover any costs incurred between September 24, 2010, and the date of approval of this amendment, as no agreement was in place.

Vice Chair Atkinson entertained a motion. Motion was made by Commissioner Girard and supported by Commissioner Brosnan to approve Exhibit A. Motion carried on a unanimous voice vote.

Bid Letting Pre-Approvals (Exhibit A-1) – Myron Frierson

Mr. Frierson gave a brief recap of the October 1, 2010, bid letting: 9 State projects with total engineers' estimates of \$8.7 million and low bid dollars totaling \$7.8 million were let. The State low bids for fiscal year-to-date 2011 total \$7.8 million of the 9 projects let, compared to the same period in fiscal year 2010 with \$43.1 million as a low bid total for the 18 projects let. Typically, October is the low point in the annual letting schedule for State projects.

Although the October 2010 monthly bid letting project projections for State trunkline projects let during FY 2011 were not available at the time this report was prepared, it has been determined that a total of 327 State projects with a total construction cost estimate of

\$799.9 million is anticipated to be let during FY 2011.

Due to the late passage of the department's budget we were unable to develop our letting schedule. That will be available in the next report on how the department is proceeding with projects.

Mr. Frierson stated that there are about four lettings that will be upcoming in November. Lettings will occur November 5th, 10th, 18th, and 19th. Mr. Frierson informed the Commission that the letting for October 28, 2010, has been postponed to November 22, 2010. The postponed letting includes 1 State Design/Build project is advertised with a total engineers' estimate of \$3.0 million. Mr. Frierson also noted that there are no warranties for this project.

There are 22 agreements in Exhibit A-1, pending any questions, Mr. Frierson asked for approval of the projects listed in Exhibit A-1; no questions were forthcoming.

Vice Chair Atkinson entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Scalici to approve Exhibit A-1. Motion carried on a unanimous voice vote.

Contract Adjustments (Exhibit B) – John Friend

Mr. Friend provided information for 9 MDOT projects and 1 Local project.

Mr. Friend provided information in regard to Extra 2010-143, 1-94 Jackson County. After the design-build project was awarded to the contractor two circumstances occurred. First, the department received a significant number of complaints from homeowners located along the roadway regarding rumble strip noise resulting from moving traffic over to maintain it. The contract allowed milling the rumble strips out, which would be taken care of at additional cost. The department chose to do that to be responsive to the public with a cost of \$350 thousand in extra costs. Most significantly the department was approached by the Michigan State Police and requested to make significant investments in weigh stations located within that project. This request has tentatively been agreed to and accounts for approximately \$800 thousand.

Mr. Friend also provided additional information in regard to Extra 2010-146, a continuation of the project in Southwest Region in Kalamazoo County on I-94. The project has previously been in front of the Commission. It is the project with a value engineering proposal to do some significant modifications to the retaining wall. There has been a shift in pay items and an offsetting of costs associated with the project. Project staff is confident the project will remain under budget even with the shifting of pay items.

Pending any questions, Mr. Friend asked for approval of Exhibit B; no questions were forthcoming.

Vice Chair Atkinson entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Girard to approve Exhibit B. Motion carried on a

unanimous voice vote.

Six Month Internal Audit Follow-up (Exhibit D) – Jerry Jones

Exhibit D is our Six Month Follow-Up Report on outstanding Internal Audits and presents the status of the department's actions to implement the recommendations. This report reflects the status of two reports with one open recommendation as of October 19, 2010. Mr. Jones noted that the report cover should have reflected the meeting date of October 28, 2010.

In regard to the Bureau of Finance and Administration, Contract Service Division's recommendation of the engineer's estimate, the recommendation has been closed based on the actions taken by the department and additional information they have provided, along with the department's continuous monitoring of bid results. With the revisions that have been made to the Administrative Rules, if the department notes a significant change occurring in the bid results the department could proceed with implementation of a pilot project, if determined necessary.

In regard to the Bureau of Highway, Division of Operations' recommendation on crew activity, note the date of implementation moved from January 2010 to March 31, 2011. The date moved due to the time needed to compile historical data and use that data to modify those procedures.

Pending any questions Mr. Jones recommended that the Commission accept this report; no questions were forthcoming.

Commissioner Brosnan stated that she had reviewed the report and discussed it with the Commission Auditor. She then asked that the Commission accept the report.

Motion was made by Commissioner Brosnan and supported by Commissioner Scalici to approve Exhibit D. Motion carried on a unanimous voice vote.

IV. SCHEDULE

2011 State Transportation Commission Meeting Schedule – Frank E. Kelley

Mr. Kelley stated that the dates for the 2011 meeting schedule have been provided. It should be noted that the May 2011 date is the week **before** Memorial Day weekend, the July 2011 date is the week **before** Fourth of July weekend, and the November 2011 date is again the week **before** the Thanksgiving holiday.

Vice Chair Atkinson asked if the Schedule follows the same format as followed in 2010, if some of the dates were altered for Holiday, and whether the proposed schedule follows the same conceptual schedule followed in 2010. Mr. Kelley replied that yes, dates were altered due to holidays and the same format was used in 2010. Mr. Kelley stated that the schedule was coordinated with the Bureau of Finance and Administration. Further, Vice Chair Atkinson posed the question of whether the altered dates for holiday's such as in May and November still give the department the time needed to coordinate with the AD Board. Mr. Kelley confirmed the tentative 2011 State Ad Board agenda was used, when making the 2011 State Transportation Commission meeting schedule.

Vice Chair Atkinson entertained a motion for approval. It was moved by Commissioner Brosnan, with support from Commissioner Girard to approve the 2011 meeting schedule as submitted. The motion carried on a unanimous voice vote.

V. **PRESENTATIONS**

National Partnership of Highway Quality (NPHQ) Awards – Russell Jorgenson, Division Administrator, FHWA-Michigan Division

Mr. Jorgenson presented the department with two 2010 Exemplary Ecosystem Initiative Award plaques. The awards are based on exemplary ecosystem initiatives related to living things and the environment and efforts used to improve and enhance ecosystems. A total of 10 awards were given and only six states received awards, with Michigan receiving two of them.

The first award, Protect Areas Initiative Award, was presented to Dave Schuen, Endangered Species Specialist, Ulrika Zay (Natural Features Coordinator), Mike O'Malley (Supervisor of Ecological Services Compliance and Mitigation Unit), and Richard Wolinski (Terrestrial Ecologist).

The second award, High Quality Wetland Preservation Initiative Award, was presented to Mike Pennington (Wetland Mitigation Specialist), Ulrika Zay (Natural Features Coordinator), and Mike O'Malley (Supervisor of Ecological Services Compliance and Mitigation Unit).

M-39 Improvement Project – Greg Johnson and Paul Ajegba

Mr. Johnson and Mr. Ajegba discussed the 2011 signature project in the Metro Region area. (Contact Pam Sebenick for a copy of the presentation with notes attached.) Mr. Johnson stated this was a unique type of situation created for this project. Mr. Johnson deferred to Mr. Ajegba for a brief overview of the project.

Mr. Ajegba stated the project covers approximately a six mile stretch through three different cities (Dearborn, Detroit, and Southfield). The project will cost approximately \$80 million and will start in February 2011. Approximately 24 bridges will be reconstructed along the corridor. The major part of the project will begin in April 2011.

Mr. Ajegba stated the department is trying something new by using LED lighting along the corridor, because they have learned it is more cost effective and will save money in the long run. Mr. Ajegba also discussed that some of the aesthetics are a result of meetings with the Community.

Mr. Ajegba worked with FHWA and MITA to address Community concerns with the project. These concerns included air quality, construction noise, and mobility.

Mr. Ajegba discussed the contract award process using a point system.

Commissioner Brosnan questioned whether or not Context Sensitive Design (CSD) fits

into the technical area of the contractor's ability to do the project.

Mr. Ajegba also stated that it is not included in the technical score.

Commissioner Brosnan then asked if the department would then go with a pre-prescribed design that includes some of the Context Sensitive Solutions, is some creativity going to be added to satisfy what the Community might like to see within the project.

Mr. Johnson said those elements are already in the design, as requested by the Community. There is nothing the contractor will have to add at a later time.

Deputy Director Shinn added that the Community design has already been added as we can see with the design along the bottom of the presentation that was agreed upon design to be put along the bridges. The contractors will follow those design specifications.

Mr. Johnson added a special type of fencing is included in the project.

Deputy Director Shinn also mentioned another aspect of the project, which included effort by the department to look at the workforce reflecting the local community. MDOT's disadvantaged business area has been talking to that business community to find out how we can help them prepare to take on aspects of this project. Mr. Johnson provided information in regard to a reverse job fair the department held for those likely disadvantaged businesses in the area to discuss what services they can potentially provide for portions of the project.

Vice Chair Atkinson posed a question of whether the department has found that the contract process increases or includes or builds accountability for the project in the community that there is more support.

Mr. Johnson responded that he can speak from clear experience on some of the factors such as mobility and innovation. These factors were implemented on a project where the process was used in the North Region, and it does support this notion.

Fiscal Year 2009-2010 Letting Statistics – Myron Frierson

MDOT construction contracting activities during fiscal year 2009-2010:

Bid Letting

Normally there is one letting per month, however, in recent years that has changed. Last year there were 21 lettings and the number of projects per letting ranged from 1 to 130, with an average of 50 items per letting.

MDOT provides letting services for Aeronautics, Railroad, Local Agency, and State projects. The largest numbers of lettings were for 592 local agency projects. State Trunkline projects was the next largest with approximately 403 projects being let. In terms of dollar the trunkline projects had a greater value, which constituted over \$1.2 billion.

During FY 2010, MDOT received 5,724 bids from 377 different bidders for 1040 projects let in 21 bid lettings. State trunkline projects comprised 403 of the total projects let. The remaining projects were 592 Local, 40 Aeronautics and 5 Freight Services.

The total dollar amount for State trunkline projects during FY 2010 was \$804.5 million of the total low bid dollars of approximately \$1.3 billion, or 62.5%. For FY 2009, approximately \$1.1 billion representing 77% of approximately \$1.4 billion in total low bid dollars were State trunkline projects. The total low bid dollars for State trunkline projects was \$481.9 million compared to \$319.2 million in FY 2009.

Approximately 4% of the state projects and 2% of the local projects received bids in excess 10% over the engineers' estimate. This is consistent with previous years. The total FY 2010 low bid amount was approximately 8% less than the engineer's estimate. Mr. Frierson stated this was due to the local economy and intense competition.

American Recovery and Reinvestment Act Program Reporting

In 2010, we had 305 ARRA project let. In terms of dollar it was \$352 million in ARRA projects let in 2010. The entire ARRA program represents \$869 million to Michigan's economy over the past few years.

Rejections and Appeals

There were six low bid rejections during October 2010, overall bid rejections in 2010 were 14 or 1.3% of all projects let. Historically, the necessity to reject all bids has been low. The low bidder on two of the projects withdrew their bids prior to contract award. The second low bidders were awarded the contracts on each of the two projects.

Design of State Projects

In 2010 approximately 18.5% were designed by consultants and 81.5% by the department. In 2009, there were significantly more state projects designed by consultants due to ARRA. If you go back to 2008, the split is similar being 18% in 2010 for routine projects. If you look at the dollar amounts there is a similar pattern. In 2010 we had \$803 million in state projects, 43% were designed by consultants and 57% by the department. In 2009 there was a slight change, but again it is similar to 2008 in 2010.

Pre-qualification

At the end of FY 2010, 824 construction contractors were pre-qualified. Contractors are prequalified in two different ways, a financial capacity and by work category. 211 individual prequalified contractors were awarded prime contracts, compared to the 170 individual contractors of the 845 prequalified in FY 2009.

The chart provides an illustration of prequalification ranges. The first category of \$0 to \$1 million shows that 461 contractors were in this range in FY compared to 172 contractors in FY 2010. In the category of \$1 to \$5 million there were 43 contractors in FY 2009 and now there are 315 in FY 2010. This increase wasn't due to having new contractor's, it was due to a change in Administrative Rules revising the lower of category of contractors from \$1 million to \$2 million.

Competition

Competition continues to be good in terms of bids per item. In 2010 we had approximately 5.5 bidders per project. This is consistent with previous years. Every year the department identifies the top ten contractors. The top ten contractors were awarded 54.6% of the total bid dollar amount in 2010, compared to 58.5% in 2009. In 2010, there were two different contractors in listed in the 2010 Top Ten Contractors that did not appear in 2009.

Projects by Region—Number of Projects

Metro (243—23%); University (150—14%); Southwest (142—14%); Bay (146—14%); Grand (138—13%); North (118—11%); and Superior (110—11%).

Projects by Region—Total Dollars

Because of the complexity of the projects the bulk of our work was in the Metro Region Metro (\$489.9—37%); University (\$255.1—19%); Southwest (\$122.3—9%); Bay (\$213.6—16%); Grand (\$103.0—8%); North (\$50.9—4%); and Superior (\$86.0—7%).

Payments

During the 2010 fiscal year, 14,391 payment vouchers were processed totaling \$1.4 billion paid to contractors, compared to 13,201 payment estimates that totaled \$13.1 billion paid in 2009.

Administrative Activities

The department amended the Administrative Rules associated with prequalification. It was to improve efficiencies within the department and to provide a cost savings to the contractors. There was a change to the requirements of audited financial statements for contractors from \$1 million. The old standard stated that in order to get a prequalification rating for over \$1 million the contractor had to provide audited financial statements. This is costly for small contractors, this shift in prequalification standards expands the number of contractors qualified to do projects in excess of \$1 million. The estimate on audit cost is \$8 to \$10 thousand.

The department was asked to look at the prequalification method to see what methods are being used across the states to ensure they are getting qualified contractors. The department looked throughout the industry and found that different practices are used, some relied only on bonds and others used project specific prequalification. The department uses a program level prequalification either once a year or every two years. We found that not one fits all. It was concluded that MDOT's prequalification, which includes bonds is best suited for the department.

Part of the evaluation process enhanced the department's efforts working with contractors. The department works at the field level, evaluation level, and then at the prequalification level. The department continues to work with the industry further clarify our respective responsibilities.

The audit also mentioned conducting a study of unbalanced bid. The department did a one year study, randomly screening 356 projects or approximately two-thirds of the 2010

program. The department did not find any material unbalanced bids. We felt this was a good program and incorporated it into our regular processes.

Commissioner Brosnan stated that there was more ARRA money in 2010, but more ARRA projects in 2009. Commissioner Brosnan asked if there was a price target in 2010 or if they were not let until 2010.

Mr. Frierson responded that there were some 2009 projects paid out in 2010, and you will see 2010 projects paid out in 2011. The projects are broken out into pieces and paid over multiple years. Projects were let in September 2009, but not started until 2010 and span into 2011.

Commissioner Brosnan stated that when comparing the low bid and engineer's estimate from 2006 to fiscal year 2010, we almost see a doubling of savings. She asked if this was due to a change of processes.

Mr. Frierson stated that in 2009 there was a significant increase in competition and the economy basically hit bottom in 2009. The other thing was the volatility in prices, such as the price of oil. This affected the engineer's estimates in terms of pricing materials.

VI. **PUBLIC COMMENTS**

Vice Chair Atkinson asked if any member of the audience wanted to address the Commission; none were forthcoming

Vice Chair Atkinson asked if any Commissioner wanted to address the Commission.

Commissioner Brosnan thanked the department as a whole. The City of Livonia recently asked that a portion of roadway that was in very bad condition be moved up and that an important interchange be reconstructed. The department responded to the City of Livonia's request and moved the project forward.

VII. **ADJOURNMENT**

There being no further business to come before the Commission, Vice Chair Atkinson declared the meeting adjourned at 10:09 a.m.

The next full meeting of the Michigan State Transportation Commission will be held on Thursday, November 18, 2010, in the 1st floor Bureau of Aeronautics and Freight Services Auditorium in Lansing, Michigan, commencing at the hour of 9:00 a.m.