



AGC of Texas



Highway, Heavy, Utilities & Industrial Branch

Joint AGC/TxDOT Committee

Minutes

August 18, 2010

THOMAS L. JOHNSON
Executive Vice President

1. Words of welcome

Attendees were as follows;

<i>AGC</i>		<i>TxDOT</i>	<i>AGC Staff</i>
Johnny Weisman	Brad Everett	David Casteel	Tom Johnson
Joe Charles	Jim Webster	David Hohmann	Thomas Bohuslav
Ballenger Howard	Duane Herbort	Carol Rawson	Lee Taylor
Pebly, Jr. Doug	Tim Creson	Randy Hopmann	A.P. Boyd
Pitcock	Tim Word	William Hale	Kristen Ogden
Zach Burkett III	Z.T. Burkett	Toribio Garza	
Kal Kincaid	John Rempe	Ken Barnett	
Robert Hall	Tracy Schieffer	Jeffrey Seiders	
Robert Adamson	Joe Forshage	Brian Ragland	
Bill Thomas	Dale Stubblefield		
Terry Williamson	Jim Andoga		
Pat Worrell	Bill Gibson		
Richard Barth			

2. Review minutes from May 19, 2010 meeting

The minutes were reviewed. No further action was taken.

3. Discuss funding

A. Federal

AGC stated ARTBA has taken a position to support the Oberstar bill while AGC is supporting the AASHTO position of extending the existing bill for 3 more years. It was stated that for the last 50 years, Congress has never failed to fund highways.

TxDOT stated that 2 weeks ago they received notice of a rescission of \$190 million. TxDOT stated that the latest information is that the rescission only affects planning dollars and there will be no reduction in letting. It was explained that the current federal continuing resolution funding level is at SAFTEA-LU levels that includes an additional amount that equates to the previous bill's spend down of the balance of the highway trust fund. It was stated that general revenue will be needed to fund at this level.

There was discussion about recent press releases stating that no states are donors. It was explained that Texas received the lowest rate of return on federal dollars and that the statement can be made only because spending exceeds revenue.

B. State (24 month letting)

AGC thanked TxDOT of the work in bring projects to letting in July and August 2010.

TxDOT stated that they had originally planned on letting 2300 projects but they actually let 3000 in FY 2010. TxDOT estimated the actual letting for the year under ran the cap by \$100 million and that any under runs will be added to the 2011 lettings. TxDOT stated they will have \$1.1 billion ready to let by October, in addition to currently planned lettings.

TxDOT stated the July 29 Commission adopted letting schedule has been subsequently modified and they expect modifications to occur weekly if not daily. The location of the letting list can be found on TxDOT's Webs site by typing "letting schedule" in site's Search box. TxDOT stated they will also have the Commission approve lettings every 6 months and that all updates will include information on "remaining to be let." Local lettings are included in the letting lists. TxDOT also explained the letting cap reports for each district that showed each district caps and status at the same Web site location.

C. Proposition 12 SIB loan

TxDOT explained that rules are being written to modify the current TxDOT State Infrastructure Bank (SIB) program to include legislatively approved Proposition 12 SIB general obligation bond program. The amount in the special session appropriation was for \$1 billion of bonding. TxDOT stated the Proposition 12 program will be for highways where the current \$300 million SIB program has been used by cities to fund utility work in conjunction with a TxDOT highway project.

TxDOT stated these bonds may be used for loans to public entities for highway construction including design, ROW, construction and highway acquisition. It was made clear that the funds cannot be used for debt service reserves or SIB program costs.

TxDOT explained that the application process will be much more detailed and that there will be 2 types of loans.

- Type I - Leveraged in cases where there is credit quality for revenue bonds.
- Type II - Not leveraged in cases where bonds would be short term, less than 20% of total financing, or the loan is \$4 million or less.

TxDOT stated they are moving forward with the request to the LBB, however, explained that there may be some hesitation from the legislature due to general revenue shortfalls.

AGC asked for the amount of letting remaining under the currently approved \$2 billion Proposition 12 program. TxDOT stated the planned letting in FY 2011 for regular Proposition 12 funds is \$1.275 billion.

D. Cash balance

TxDOT stated they expect to pay off the remaining short term debt of \$65 million in September 2010. TxDOT provided the cash balance forecast chart from April 2010 and stated that there may be additional funds available from the balance to let additional projects.

TxDOT also stated they have seen an increase in motor fuel tax revenue in the last 4 months reversing the decline over the past year and a half.

It was jointly discussed that the balance needs to be maintained closer to the minimum daily thresholds.

E. Past President's State Highway Funding Task Force report

AGC stated TxDOT's debt service has grown to \$1 billion a year when you include pass-through tolls, Proposition 14 debt service, and CDA commitments. AGC also stated the diversions have grown to \$770 million. AGC stated they have been reviewing funding and needs with TxDOT and believed a \$4 billion state letting with \$2 billion for pavement preservation and \$2 billion for congestion letting is necessary to maintain pavements and address congestion at a practical level that fund 6 can support. AGC stated they have focused on getting simplified real numbers to the legislature and have worked with TTI and CTR in developing support for funding. AGC stated the legislature is interested in comparing doing nothing to a reasonable and practicable funding scenario. AGC stated they want to provide tools for local funding options to bring local revenue to an additional \$2 billion for highways.

AGC stated it is important to present the same numbers as TxDOT in discussions with the legislators.

4. Discuss status of Grant Thornton

It was discussed that Mr. Kimbrough has stated that funding highways is good for the state and that there is no reason to look at TxDOT's organization if there is no funding.

AGC stated their meetings with Mr. Kimbrough and Mr. Wolf have been positive.

5. Discuss DBE program

A. DBE goal

AGC presented questions on TxDOT DBE goal methodology and asked for an extension for formal comments. AGC expressed concerns that the types of projects to be let in the next few years (TxDOT's goal will span 3 years) will be more weighted toward pavement preservation, therefore having less opportunities for DBEs. AGC also stated the direction previously was to move to a totally race-neutral program but that the latest draft goals move the goal higher before decreasing the race-conscious goal.

TxDOT agreed to consider a time extension for comments.

B. Status of DBE leadership

TxDOT stated they are waiting on the results of the Grant Thornton and recommendations from the special appointees before they hire a director for a Civil Rights or DBE Office. TxDOT stated they have hired a consultant to assist with assessing their DBE program including meeting with AGC to discuss the DBE program.

6. Discuss tiered pavement preservation goals

TxDOT stated the intent of their plan to develop tiered pavement preservation goals is to focus on higher type pavements. TxDOT stated the tiered goals would have moved more

funds to metropolitan areas of the state and reduced funding to the rural areas. TxDOT stated the plan was a result of their discussions with the Commission but that implementation is currently on hold.

7. Discuss status of retainage on local let projects

AGC asked the status of reviewing locally let project's retainage requirements. It was explained that there was concern that locally administered federally funded projects may not include the federal provisions for retainage.

TxDOT stated they are developing a program for district's use in reviewing locally administered contracts. TxDOT stated the review will include testing, inspection and contract administration. TxDOT stated these reviews will be similar to past FHWA reviews.

8. Status report on Contractor Performance Task Force

AGC presented that the Contractor Performance Task Force has met 2 times and are focusing on using partnering as a way to address issues.

TxDOT stated they are including quality, timeliness, and safety in the evaluations.

9. Status report on Consultant Testing Task Force

AGC stated that the first meeting resulted in questions about how selecting testers from sources, fabrication facilities, and off site testing would be dealt with. AGC also expressed concerns about costing for additional tests and funding for construction now supporting testing. AGC stated that defining the test subject to the contractor's selection of the tester is one of the keys to moving forward.

TxDOT stated they would take the issues presented under advisement.

10. Flexible base

A. Status of implementation of changes to flexible base testing

TxDOT stated Rainhart will have 9 Soil Compactor Analyzers (SCA) ready for consultants by the end of the week. TxDOT stated that they will assist the consultants and supplier with installation and calibration and conduct training and certify operators.

TxDOT stated that they will loan out TxDOT devices until all current orders (12) are filled. TxDOT stated they will have a training video for operators of the SCA.

TxDOT also requested AGC to comment on sample sizes for flex base triaxial testing. TxDOT stated they will fully implement the requirements for compaction using the SCA September 1, 2010.

AGC stated they would provide comments through the Flex Base Task Force.

B. Discuss flexible base testing

AGC commented that recent changes in test procedures are causing triaxial numbers to go down, primarily under zero lateral testing for strength. AGC stated that while the new procedures may have increased precision, bases that have performed well through the years now show to be failing.

11. Discuss lack of budget for change orders

AGC commented that because there are no funds for change orders and the change orders come out of lettings, districts are reluctant to execute needed changes and resolve issues. AGC suggested districts receive a contingency for change orders.

TxDOT stated they understood the issue but that they currently desire to use the full amount of funds for lettings and not hold funds for change orders. TxDOT also clarified that they did allow the use of ARRA funds for some change orders. TxDOT provide a summary of change orders where it is shown that the percent cost increase for change orders for consultant plans exceeded the percent cost for change orders on TxDOT plans. TxDOT also stated that cost growth adds about 1% on change order costs and the current change orders increase project costs by just less than 3%, down from a high of 7% from just a few years ago.

TxDOT agreed to consider providing funds change orders.

12. Subcontract requirements

A. Discuss clarification of required attachments for subcontractors and suppliers

AGC stated they will work with TxDOT to resolve issues related to subcontractor and supplier required contract references and attachments. TxDOT agreed to meet with individual contractors to discuss issues.

B. Requirements for rental equipment with operator

It was agreed to discuss issues individually with specific contractors and escalate as necessary.

13. Discuss speed limits in construction zones

TxDOT explained that the research and purpose of recent draft guidance on limiting speed reductions for construction work zones originated from 2005 attempts to pass legislation dictating limits to speed reductions. This research recommends procedures for establishing speed zones. The research showed people don't abide, drivers were already 5 mph over the speed zone and attempting to reduce 10 mph was probably not achievable, and that the public had to perceive that there is a safety problem before they reduce speed. The research also showed that some drivers do not obey any signs but some do obey speed zone signs creating speed differentials.

As the research showed and as jointly agreed in the meeting, non-compliance was more of an issue of enforcement. It was agreed that project law enforcement was a useful tool for work zone compliance. TxDOT stated they will encourage districts to use law enforcement.

14. Supplier claims and prompt payment requirements

AGC expressed concerns over excessive enforcement of prompt payment provisions when TxDOT receives supplier legal notices, intended to perfect protection under the McGregor Act. AGC stated these legal notices are a common practice and that the notices are sent with the original invoice. AGC asked TxDOT to review their procedures to address the administrative burden created when TxDOT office letters threaten withholding of payments.

TxDOT stated they will review their procedures and consider changes.

15. Extending contractor risk

Contractors stated that extending project duration for added work adds risk. AGC presented examples of where they allowed TxDOT to add out of scope work for another subcontractor at the end of the project, an accident occurred and after law suits, the contractor paid significant settlements. AGC stated that they wanted to work with TxDOT in the spirit of partnering but that these situations create excessive risk.

TxDOT stated they will take the comments under advisement.

16. TxDOT's plans for use of consultant CEI

AGC asked for TxDOT's plans for use of consultant construction engineering and inspection (CEI). AGC stated having TxDOT as the CEI was the most efficient way to provide construction management and inspection. AGC stated interpretations and expectations are more consistent when TxDOT performs CEI.

TxDOT stated they are considering using a consultant for a possible project in the Dallas District. TxDOT stated that they would retain ultimate authority on the project.

17. Items from the floor

None

Thomas L. Johnson
Secretary, Joint AGC/TxDOT Committee