MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

Official Minutes

Special Meeting

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September 18, 2008

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Pete Rahn, Director of the Missouri Department of Transportation; Rich Tiemeyer, Chief Counsel for the Commission; and Pamela J. Harlan, Secretary to the Commission were present on Thursday, September 18, 2008.

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"Department" or "MoDOT" herein refers to Missouri Department of Transportation.
"Commission" or "MHTC" herein refers to Missouri Highways and Transportation Commission.

-- CLOSED MEETING --

VOTE TO CLOSE MEETING

The agenda of the closed meeting was posted in keeping with Sections 610.020 and 610.022, RSMo, including the following statutory citations allowing the meeting to be closed:

1. Section 610.021(11), (12) – Specifications for competitive bidding, sealed bids, or negotiated contracts.

Upon motion duly made and seconded to convene in closed session, the Chairman called for a voice vote of the members. The vote was as follows:

Commissioner Michie, Aye
Commissioner Anderson, Aye
Commissioner Gach, Aye
Commissioner Kehoe, Aye
Commissioner Farber, Aye
Commissioner Nichols, Aye

The Commission met in closed session from 9:45 a.m. until 10:15 a.m.

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-- OPEN MEETING --

A special meeting of the Missouri Highways and Transportation Commission was held on Thursday, September 18, 2008, at Missouri Department of Transportation, 105 W. Capitol Avenue, Jefferson City, Missouri and via videoconference. Duane S. Michie called the meeting to order at 10:30 a.m. The following Commissioners were present at the meeting location: Duane S. Michie, James B. Anderson, and Mike Kehoe. The following Commissioners were present via videoconference: David A. Gach, Rudolph E. Farber, and Grace M. Nichols.

SAFE AND SOUND BRIDGE IMPROVEMENT PROGRAM

Don Hillis began his presentation reviewing the journey that brought the department to this point to seek Commission action regarding the Safe and Sound Bridge Improvement Program. This program will replace or rehabilitate 802 bridges in five years, at least one bridge in every Missouri county. Safe and Sound is the third design-build project approved by the Commission at the September 13, 2006 meeting.

In the fall of 2006 the design, build, finance, maintain procurement process began. This was an innovative concept where the procurement would have a single contractor or group that would do all of the design and construction, maintenance for 25 years, and financing for the program. Initial estimates for the program were about $40 million annually, with an estimate of $400 to $600 million for actual construction costs.

The department initially received five statements of qualifications. Of those five, there were four qualified teams, which indicated a lot of interest in the program. Two teams withdrew for various reasons; one team withdrew because they were unable to solicit a large Missouri contracting firm, the other wasn’t interested in the design, build, finance, maintain model. At that point the department knew the program was viable, but did not know if it was affordable.

The procurement process continued and in the spring of 2007, the department received technical proposals from the two remaining teams. In late summer of 2007, the General Assembly approved, during a special session, a bonding statute fix that had to occur or the procurement process would have ended at that point.

November 2007, was the first time the department received a price for this program. There were two pricing structures, a preferred pricing structure and an alternative pricing structure. The preferred pricing structure did not include any payments by MoDOT during the initial construction period in the first five years; the payments would begin after construction during the 25-year maintenance period. Whereas, the alternative pricing structure would insert two initial $50 million payments during the construction period to reduce capitalized interest. The Missouri Bridge Partner's (MBP) preferred pricing structure was $83.2 million per year and Team United's (TU) preferred pricing structure was $125.5 million per year. The preferred pricing structures were reviewed and were determined to be unaffordable. The department then opened the alternative pricing structure, for MBP that was $70.7 million per year and for TU was $93.9 million per year. The alternative pricing structure was also determined to be unaffordable.

In December 2007, the department entered into a Best and Final Offer process to try and find ways to make the program affordable. MBP came back with a price of $59.1 million per year for 25 years and TU offered $65.3 million per year for 35 years. At the December 19, 2007 meeting, the Commission approved the selection of Missouri Bridge Partners as the Apparent Best Value Proposer and authorized MoDOT to enter negotiations with MBP to determine final contract terms and price.

In February 2008, Missouri Bridge Partners proposed $52.7 million per year. This offer was accepted by MoDOT contingent upon MBP acceptance of market risk up to contract execution. However, the financial markets at the time did not allow MBP to immediately agree to those terms, so MoDOT agreed to continue discussions with the team.

In March 2008, MBP and MoDOT tentatively agreed on contract terms. The price range at that point was $62 to $64 million per year, with daily fluctuations in price. This was the point where MBP indicated a problem with their original financing mechanism. In April and May of 2008 the price range was $66 to $77 million per year depending on what happened with the interest rates. MoDOT even considered refinancing the debt at six or seven years which lowered the price to about $56 to $59 million per year. Many options were discussed and considered to find ways to make the program affordable. During this time key decision items were identified and resolved.

On June 6, 2008, the Commission ratified a limited notice to proceed, not to exceed $10 million, for design and field investigation. The department and MBP expected at some point to see improvement in the financial markets that would help improve pricing for the program. This allowed the team to do early design and technical engineering work and would set them up for a rapid construction phase. The work under the limited notice to proceed was necessary work that would have to be performed to improve any of the 802 bridges. In July 2008 MoDOT began preparing district staff for contract execution and implementation. These preparations included detours for closed structures, web site development, and quality control expectations. In August 2008, the United States Department of Transportation and Federal Highway Administration determined that MoDOT's procurement was valid.

The current estimate for the program is $65 to $74 million per year. If MoDOT were to do optional bond refinancing, the price is only lowered to $65 to $71 million per year. The department has only budgeted a $50 million annual payment. The credit market pressure has had a tremendous impact upon the procurement process for this program.

At the September 5, 2008, Commission meeting a financial analysis of future payments and the impact on the Statewide Transportation Improvement Program (STIP) was requested. In response, the department reported that current state revenue trends could impact project commitments in the current STIP. The federal funding outlook is grim. At the $65 to $74 million annual price, it is not possible to implement the design build finance maintain contract and honor the Commission approved funding distribution process. Despite everyone's best efforts from both MBP and MoDOT, the private financing component of the program makes it unaffordable.

Mr. Hillis recommended that the Commission conclude the current procurement due to the financial market crisis that has made private financing for a project of this magnitude unaffordable. Mr. Hillis also recommended that the department proceed immediately with an alternate method to improve 802 bridges.

Mr. Hillis recommended the following alternate procurement process: (1) Use a modified design-bid-build process to improve 248 bridges. This process will allow for at least 100 bridges to be under construction by spring 2009. The modified part of this process is the packaging of bridges into groups, and the groups will be determined by location, type, and size of the structures. (2) Immediately seek design-build proposals for the remaining 554 bridges. The department will need to receive two proposals as required by law. MoDOT will publicly finance the program.

Mr. Hillis explained how this program would be paid for under the alternate procurement process. The department would issue GARVEE bonds with a promise of payment with future federal funds. The department estimates the program, 802 bridges in five years, can be delivered for $50 million a year, which is also the amount that is currently in the budget.

In conclusion, Mr. Hillis recommended the Commission:

- Concur that the financial market crisis has made the current process unaffordable and determine that the proposed price structure for the design, build, finance, maintain contract is unaffordable.
- Authorize payment of a $2 million stipend to Missouri Bridge Partners as provided for in the design, build, finance, maintain procurement process.

- Direct MoDOT staff to immediately begin an alternate procurement process to improve 802 bridges, continuing a design-build component for 554 replacement bridges and a modified design-bid-build process to improve 248 bridges.
- Authorize the department to expend funds in fiscal year 2009 for the modified design-bid-build component of the procurement.

. Director Rahn emphasized the difference between the two procurement methods for the same program is private financing versus public financing. MoDOT's public financing is much less costly and suits the market place's desire for safe investments. Director Rahn stressed that MoDOT and the Commission are committed to delivering 802 bridges within five years. Commissioner Anderson expressed disappointment and frustration with the process, but understands the complexity of the issues that have been addressed along the journey. Commissioner Anderson stated the Commission wanted the public private partnership to work, as they have been proven successful. However, the focus is on the best value for the taxpayers and honoring our commitments. Following discussion, and upon motion by Commissioner Kehoe, seconded by Commissioner Farber, the Commission unanimously approved the recommendations presented by Mr. Hillis.

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By unanimous consensus of all members present, the meeting of the Commission adjourned.

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