

Memorandum

To: Chair and Commissioners

Date: April 2, 2010

From: Bimla G. Rhinehart,
Executive Director

Reference Number 4.9
Action

Ref: **Design-Build Demonstration Program Request for Project Authorization**

Issue: Should the California Transportation Commission (Commission) authorize the Los Angeles County Metropolitan Transportation Authority (LA Metro)/Department of Transportation (Caltrans) ExpressLane Project (I-10 and I-110) and the Riverside County Transportation Commission (RCTC) SR-91 Corridor Improvement Project for the design-build method of procurement?

Recommendation: Staff recommends that the Commission authorize the LA Metro/Caltrans ExpressLane Project (I-10 and I-110) for the design-build method of procurement. Staff recommends that the Commission **not** authorize the RCTC SR-91 Corridor Improvement Project for the design-build method of procurement.

Background: The Design-Build Demonstration Program was established in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, as added by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session). The Design-Build Demonstration Program provides for the use of the design-build method of procurement by local transportation entities for up to five projects that may be for local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the entity and by Caltrans for up to ten state highway, bridge, or tunnel projects, subject to authorization by the Commission. The Commission shall also determine whether a transportation entity may award a design-build method of procurement contract based on lowest responsible bid or best value.

Eligibility for the design-build method of procurement is limited to projects the Commission programmed for funding under the State Transportation Improvement Program (STIP), the State Highway Operation and Protection Program (SHOPP), the Traffic Congestion Relief Program (TCRP), or one of the programs designated under Proposition 1B of 2006.

The Commission received requests for design-build procurement authorization from LA Metro/Caltrans for the ExpressLane Project (I-10 and I-110) and from RCTC for its SR-91 Corridor Improvement Project. The LA Metro/Caltrans ExpressLane Project is a joint state/local project slated for implementation by Caltrans on the state highway system. The RCTC SR-91 Corridor Improvement Project is a local transportation entity projects slated for implementation by the local entity on the state highway system. Both projects are excellent design-build procurement candidates that have the potential for achieving enhanced constructability and improved delivery efficiency. The projects meet the Commission's criteria for approval adopted September 9, 2009, except that the Commission has received the attached letter from the Professional Engineers in California Government (PECG). The PECG letter questions the provision in the Commission's Policy Guidance that allows a local transportation entity to

implement a design-build method of procurement project on the state highway system. Staff has sought advice from the Commission's legal counsel on the PECG question and based on the counsel's advice has concluded that a local transportation entity is not eligible to implement a design-build method of procurement project on the state highway system. Staff will propose an amendment to the Commission's Policy Guidance at a later date.

Attachments

DESIGN-BUILD AUTHORIZATION LOCAL REQUEST

| Project | Express Lanes Construction Riv 91 |
|--|---|
| Criteria | |
| Meets Statutory Requirements | No |
| Fully Funded | Yes |
| Awardable prior to Jan 1, 2014 | Yes |
| Low Bid/Best Value | Best Value |
| Size (\$million) | Over \$200 |
| Geographical Location | South |
| State/Local | Local |
| Project Scope | |
| | Extend Riv-91 Express Lanes by 8 miles into Riverside County & additional improvements to Riv-15. |
| Project Cost | |
| | \$1,064 M |
| Project Schedule | |
| Environmental Document | EIR in progress Q3 2011 |
| R/W Certification base line | Q1 2013 |
| R/W Certification design-build | Q1 2013 |
| Contract Award base line | Q1 2015 |
| Contract Award design-build | Q4 2011 |
| Contract Acceptance base line | Q4 2019 |
| Contract Acceptance design-build | Q4 2016 |
| Design-Build Benefits (claimed) | |
| Schedule Acceleration | 36 months |
| Innovation | Enhanced constructability |
| CTC Staff Recommendation | |
| | Do Not Authorize Will achieve enhanced constructability & improved efficiency through design-build. |

Project Authorizations under the Design-Build Demonstration Program

Resolution G-10-XX

- 1.1. WHEREAS the Design-Build Demonstration Program was established in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, as added by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session), and
- 1.2. WHEREAS subject to the limitations of Chapter 6.5, a local transportation entity, if authorized by the California Transportation Commission, may utilize the design-build method of procurement for up to five projects that may be for local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the entity, and
- 1.3. WHEREAS subject to the limitations of Chapter 6.5, the Department of Transportation (Department), if authorized by the Commission, may utilize the design-build method of procurement for up to 10 state highway, bridge, or tunnel projects, and
- 1.4. WHEREAS projects authorized by the Commission shall vary in size, type, and geographical location, and
- 1.5. WHEREAS the commission determines whether a transportation entity may award a design-build contract based on lowest responsible bid or best value, and
- 1.6. WHEREAS the Commission has adopted policy guidance for project authorizations under the demonstration program on September 9, 2009, and
- 1.7. WHEREAS the Commission has stated its intent to authorize projects with reference to a project authorization request submitted by a local transportation entity or the Department, and such authorization will include the project scope, whether a contract can be awarded based on lowest responsible bid or best value, and an expiration date by when a design-build contract must be executed,
- 2.1. NOW THEREFORE BE IT RESOLVED that the Commission hereby authorizes the projects in the attached for design-build procurement by a local transportation entity and/or the Department, and
- 2.2. BE IT FURTHER RESOLVED that the project scope, the contract award method, and an planned schedule for contract award is included in the list, and
- 2.3. BE IT FURTHER RESOLVED that authorized projects must have an executed design-build contract within 18 months of the date of this resolution, and
- 2.4. BE IT FURTHER RESOLVED that pursuant to Chapter 6.5 and not later than June 30 of each year after the design-build contract is awarded, the awarding transportation entity shall submit a progress report to the Commission.

DESIGN-BUILD AUTHORIZATION STATE REQUEST

| Project | Express Lanes Conversion LA 10 & 110 |
|--|---|
| Criteria | |
| Meets Statutory Requirements | Yes |
| Fully Funded | Yes |
| Awardable prior to Jan 1, 2014 | Yes |
| Low Bid/Best Value | Best Value |
| Size (\$million) | \$20 to \$200 |
| Geographical Location | South |
| State/Local | State |
| Project Scope | |
| | Convert existing HOV lanes to High Occupancy Toll (HOT) lanes on the LA-10 (14.2 clm) & LA-110 (11 clm) freeways. |
| Project Cost | |
| | \$69.3 M |
| Project Schedule | |
| Environmental Document | EIR in progress April-2010 |
| R/W Certification base line | NA |
| R/W Certification design-build | NA |
| Contract Award base line | ???? |
| Contract Award design-build | Nov-2010 |
| Contract Acceptance base line | ???? |
| Contract Acceptance design-build | Aug-2012 |
| Design-Build Benefits (claimed) | |
| Schedule Acceleration | Not specified |
| Innovation | Enhanced constructability |
| CTC Staff Recommendation | |
| | Authorize Will achieve enhanced constructability & improved efficiency through design-build. |



PROFESSIONAL ENGINEERS

IN CALIFORNIA GOVERNMENT

January 8, 2010

Bimla Rhinehart
Executive Director
California Transportation Commission
1120 N Street, Room 2221
Sacramento, CA

Via Facsimile and U.S. Mail
(916) 653-2134

Re: September 9, 2009 Policy Guidance - Project Authorizations Under the Design-Build
Demonstration Program
Senate Bill X2 4 (Cogdill), Chapter 2, Statutes of 2009

Dear Ms. Rhinchart:

Professional Engineers in California Government represents more than 13,000 engineers, land surveyors, and related professionals working for the State of California, including those working for the Department of Transportation (Caltrans). PECEG has substantial concerns with an error in the scope of the recent "Policy Guidance - Resolution G-09-09" issued by the California Transportation Commission (CTC) concerning project authorizations under recent legislation authorizing a design-build demonstration program. In this policy guidance, the CTC appears to erroneously believe that local entities are allowed to utilize design-build for projects on the state highway system.

The CTC must rescind this portion of the Policy Guidance as it is contrary to state law. The CTC must take no action to approve any local transportation entity design-build project on the state highway system, as such approval is not authorized by state law.

On September 9, 2009, it appears the CTC passed Resolution G-09-09, Project Authorizations Under the Design-Build Demonstration Program. The Policy Guidance relates to the design-build demonstration program established in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, as added by Chapter 2 of the Statutes of 2009 (Senate Bill 4 (Cogdill), Second Extraordinary Session.) Included at page 2 of the Policy Guidance is the following:

Transportation Entity. This is firmly mandated. There will be a maximum of 5 projects for local transportation entities and 10 projects for the Department. The Commission may approve a project for a local transportation entity that is on the state highway system if the Department approves the local entity's implementation of the project.

HEADQUARTERS: 455 Capitol Mall, Suite 501, Sacramento, CA 95814 • (916) 446-0400
LOS ANGELES: 130 N. Brand Boulevard, Suite 301, Glendale, CA 91203 • (818) 500-9941
SAN FRANCISCO: 1 Sutter Street, Suite 800, San Francisco, CA 94104 • (415) 861-5720
TELEFAX: Headquarters (916) 446-0489; Los Angeles (818) 247-2348; San Francisco (415) 861-5360

Bimla Rhinehart

January 8, 2010

Page 2

Prior to the passage of Senate Bill X2 4, no entity was authorized to utilize design-build authority for "state highway construction or local street and road projects." (SB X2 4, Senate Floor Analysis, February 14, 2009.) The only exception was the Los Angeles Metropolitan Transportation Authority's legislative authorization to utilize design-build for an HOV project on Interstate 405. (SB X2 4, Senate Floor Analysis, February 14, 2009.)

SB X2 4 added Section 6802 to the Public Contract Code. Section 6802 subdivision (b) authorizes Caltrans, if authorized by the CTC, to "utilize the design-build method of procurement for up to 10 state highway, bridge, or tunnel projects."

Section 6802 subdivision (a) also separately authorizes a local transportation entity, if approved by the CTC, to "utilize the design-build method of procurement for up to five projects that may be for local street or road, bridge, tunnel or public transit projects within the jurisdiction of the entity." This section does not authorize local transportation entities to utilize design-build projects on the state highway system. The plain language of the statute makes it very clear that this authorization was provided only for local street or road, bridge, tunnel, or public transit projects. This plain reading is confirmed by subdivision (b)'s contrasting language authorizing Caltrans to utilize design-build on the state highway system.

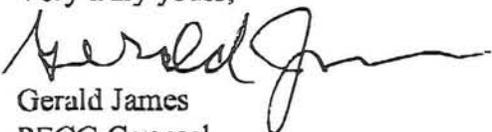
The Assembly floor analysis of SB X2 4 (February 15, 2009) notes that the language of the bill:

Authorizes, until January 1, 2014, local transportation entities to use design-build on up to five projects for local streets or road, bridge, tunnel or public transit projects, and Caltrans to use design-build on up to 10 state highway, bridge, or tunnel projects.

The plain language and intent of the legislation and the Legislature is clear - local transportation entities were not given and have no authority to utilize design-build on the state highway system. The CTC's Resolution G-09-09 is in error and must be rescinded. Further, as local transportation entities have no authority to utilize design-build on the state highway system, the CTC has no authority to approve a design-build project for a local transportation entity on the state highway system.

PECG looks forward to the rescission or revision of CTC Resolution G-09-09. I understand that no local project to utilize design-build on the state highway system is pending before the CTC on the January 13, 2010 agenda. Please provide assurance to PECG that no such project will be approved by the CTC or, in the alternative, please provide the CTC's legal justification for authorizing any such project. Thank you for your attention to this issue.

Very truly yours,



Gerald James
PECG Counsel



April 6, 2010

Ms. Bimla Rhinehart
Executive Director
California Transportation Commission
1120 N Street, Room 2221 (MS-52)
Sacramento, CA 95814

Re: Design-Build Demonstration Application for the Express Lanes on I-10, from I-605 to Alameda Street, and I-110, from Adams Blvd to 182nd Street in Los Angeles County

Dear Ms. Rhinehart:

The Express Lanes Demonstration Project reflects a more than two year partnership between the Los Angeles County Metropolitan Transportation Authority (LACMTA) and Caltrans to convert existing High Occupancy Vehicle (HOV) lanes to High Occupancy Toll (HOT) lanes on portions of I-10 and I-110 in Los Angeles County to demonstrate the viability of congestion pricing as a strategy to relieve traffic on congested freeways and improve productivity of the HOV lanes. Caltrans and LACMTA are requesting that this project be approved by the California Transportation Commission as a Design-Build Project using one of the ten slots available to the State of California authorized in Government Code Section 6802 (b).

This Demonstration Project is one of six projects competitively selected by USDOT to develop innovative programs to reduce congestion through the implementation of value pricing. A unique element of this Project is the federal grant deadlines related to State Tolling Authority and Revenue Operations. If these requirements are not met, LACMTA and Caltrans are required to re-pay the \$210.6 million federal grant.

The majority of the Project scope is related to the toll collection system. Minor roadway improvements include re-striping and minor widening to create a second HOT lane on I-10 between I-605 and I-710; operational improvements on Adams Blvd at I-110; transition lanes on I-110; and additional signage throughout both corridors.

The Cooperative Agreement between LACMTA and Caltrans outlines the roles and responsibilities for this Project. Caltrans and Metro as partners have already preformed Project Development activities, prepared Performance Specifications, Preliminary Engineering and Pre-Bid activities. Metro will advertise and award the design-build contract, which includes the toll integration portion, on behalf of the partners. Caltrans and Metro are preparing the Project Report which is nearly complete. Caltrans, on behalf of the partners, is



preparing the Environmental Document, which is nearly complete and Caltrans will perform the construction inspection on the civil work on the State Highway system.

Caltrans has approved the Project for implementation on the State Highway.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Failing'.

Douglas R. Failing, P.E.
Executive Director, Highway Programs

A handwritten signature in black ink, appearing to read 'Randell H. Iwasaki'.

Randell Iwasaki, P.E.
Director, Caltrans

Cc: Mike Miles, Caltrans District 7 Director
Bruce Blanning, Professional Engineers in California Government



WESTERN VALLEYS GROUP OF RIVERSIDE COUNTY INCORPORATED

April 1, 2010

Mr. Robert Alvarado, Chairman
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814

Subject: Support of RCTC's Application under the Design-Build Demonstration Program for the SR-91 Corridor Improvement Project in Riverside County

Dear Chairman Alvarado:

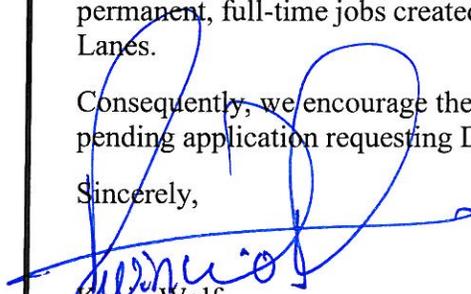
The Valley Group, composed of business leaders in the Inland Area of Southern California, is dedicated to supporting economic advancement in the Inland Empire and in the state. Accordingly, we are writing to respectfully urge the California Transportation Commission to approve the Riverside County Transportation Commission's (RCTC) application for Design-Build contracting authority to improve State Route 91 in the City of Corona under the state-wide Design-Build Demonstration Program.

The SR-91 Corridor Improvement Project (SR-91 CIP) will reduce congestion and improve mobility and commerce along one of California's most congested freeway corridors. This project will increase the capacity of the severely congested SR-91 corridor by adding general purpose lanes and interchange improvements to extend the existing Orange County Transportation Authority SR-91 Express Lanes easterly by eight miles to just beyond Interstate 15 (I-15) in Riverside County. A key feature of this project is the addition of Express Lanes, alternative travel lanes for motorists who choose to pay a toll to bypass congestion. The project will include improvements to I-15 in Riverside County between the Ontario Avenue interchange and SR-91, and direct connectors between the Express Lanes and the I-15.

The use of Design-Build contracting for the SR-91 CIP will reduce the time to deliver these much-needed capacity improvements by over three years. In an area hard hit by the economic downturn and where unemployment stands at nearly 15%, the Design-Build construction contract alone could generate over 14,000 direct and indirect jobs in the Inland Empire. These jobs will include higher-paying jobs in the engineering and construction fields, which will be needed through the project's completion, which is projected to be 2016. And because tolled Express Lanes are included in the Project, there will be at least 50 and possibly as many as 100 permanent, full-time jobs created in carrying out the operation and maintenance of the Express Lanes.

Consequently, we encourage the California Transportation Commission to approve RCTC's pending application requesting Design-Build contracting authority for the SR-91 CIP.

Sincerely,



Kevin Wolf

President, The Valley Group

cc: Anne Mayer, Executive Director, Riverside County Transportation Commission

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April 5, 2010

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Neal Richman
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School of Public Affairs

Lupita Sanchez
AT&T

Veronica Hahni
Executive Director

Mr. James Earp, Chair
California Transportation Commission
1120 N Street, Room 2221 (MS-52)
Sacramento, CA 95814

Re: Affirmation of Support for Moving Forward with Metro's *ExpressLanes* Project

Dear Chairman Earp,

As Executive Director of Los Angeles Neighborhood Initiative and a member of the *ExpressLanes* Corridor Advisory Group, I am writing in support of Metro's Design-Build application for the *ExpressLanes* project. The *ExpressLanes* project is a significant and valuable opportunity to implement a program that addresses traffic congestion in LA County by providing choices for drivers and transit users. This \$210 million federally funded demonstration project is a unique grant provided to only six urban partnerships in the nation. Metro and Caltrans have been out in the communities with extensive outreach for nearly two years to share the new and better options that come with this program including more reliable, safe, and frequent transit services along two of our most congested corridors – the I-110 and I-10, the ability for solo drivers to use the *ExpressLanes* for a fee, and improved traffic in all lanes resulting from the shift of hundreds of trips from autos to transit. In addition, construction efforts related to the project will create 2,400 construction-related jobs.

Again, I urge you to support Metro's Design-Build application for the *ExpressLanes* project.

Sincerely,

Veronica Hahni
Executive Director

Cc: Art Leahy, Metro
Lynda Bybee, Metro
Doug Failing, Metro
Stephanie Wiggins, Metro

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April 5, 2010

Mr. James Earp, Chair
California Transportation Commission
1120 N Street, Room 2221 (MS-52)
Sacramento, CA 95814

Re: Affirmation of Support for Moving Forward with Metro's *ExpressLanes* Project

Dear Chairman Earp,

As Executive Director of Fixing Angelenos Stuck in Traffic (FAST) and a member of the *ExpressLanes* Corridor Advisory Group, I am writing in support of Metro's Design-Build application for the *ExpressLanes* project.

Since 2008, FAST has been building an active coalition dedicated to supporting strategies to permanently address Los Angeles' mobility. FAST's non-profit public-private coalition of business, labor, education, transit, planning and community organizations and individuals now represent over 2 million business owners, workers, faculty, students and residents in Los Angeles County. In 2007, FAST's Chairman of the Board, Jim Thomas, in partnership with Metro and the Music Center, commissioned a report from the RAND Corporation to seek the most effective national "best practices" for short-term traffic relief in Los Angeles County. RAND's report recommended creation of High-Occupancy Toll (HOT) Lanes such as the *ExpressLanes* program as one of the top strategies to reduce Los Angeles' congestion and permanently change ridership behavior through use of congestion pricing.

The *ExpressLanes* \$210 million federally funded demonstration project is a unique grant provided to only six urban partnerships in the nation. Metro and Caltrans have made numerous fully interactive community presentations for nearly two years in order to share the new and better options that come with the *ExpressLanes* program including more reliable, safe, and frequent transit services along two of our most congested corridors – the I-110 and I-10, the ability for solo drivers to use the *ExpressLanes* for a fee, and improved mobility in all lanes resulting from the shift of hundreds of trips from autos to transit. In addition, construction efforts related to the project will create 2,400 construction-related jobs.

Again, I urge you to support Metro's Design-Build application for the *ExpressLanes* project.

Sincerely,

Cc: Art Leahy, Metro
Lynda Bybee, Metro
Doug Failing, Metro
Stephanie Wiggins, Metro

Fixing Angelenos Stuck in Traffic

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