

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §27.8, Conflict of Interest and Ethics Policies, relating to Comprehensive Development Agreements, and §27.91, Definitions, and §27.92, Financial Terms, relating to Determination of Terms for Certain Toll Projects, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §27.8, §27.91 and §27.92 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Interim Director, Strategic Contract
Management Division

Recommended by:


Executive Director

114561 APR 28 06

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §27.8, Conflict of Interest and Ethics Policies,
4 concerning Comprehensive Development Agreements, and to §27.91,
5 Definitions, and §27.92, Financial Terms, concerning
6 Determination of Terms for Certain Toll Projects.

7

8 EXPLANATION OF PROPOSED AMENDMENTS

9 In a separate rulemaking, Section 10.5 of the department's
10 rules, relating to ethical conduct by entities doing business
11 with the department, is being amended to expand the definition
12 of impermissible benefits an entity is prohibited from offering,
13 giving, or agreeing to give to a member of the commission or to
14 a department employee. Those changes, and the amendments to
15 §27.8 in this rulemaking, are consistent with the provisions in
16 the department's Ethics Policy that prohibit a department
17 employee from accepting any gift, favor, or service that the
18 employee knows or should know is being offered with the intent
19 to influence the employee's official conduct. The amendments to
20 §27.8 implement current department practices regarding gifts and
21 benefits to department officials and employees.

22

23 The department does not currently have the statutory authority
24 to enter into availability payment contracts. The amendments to
25 §27.91 and §27.92 implement changes necessary to align those

1 rules with the department's existing contracting authority.

2

3 Section 27.8 prohibits a proposer, developer, consultant, or
4 subconsultant participating in the comprehensive development
5 agreement program, or an affiliate of any of those entities,
6 from, except as provided in that section, offering, giving, or
7 agreeing to give a gift or benefit to a member of the commission
8 or to a department employee whose work for the department
9 includes the performance of procurement services relating to a
10 comprehensive development agreement project, or who participates
11 in the administration of a comprehensive development agreement.
12 The amendments to §27.8 remove the exception to that prohibition
13 that allows a consultant or subconsultant, unless a member of a
14 proposer or developer team, to pay for an ordinary business
15 lunch.

16

17 Amendments to §27.91 remove the definition for availability
18 payment contract. Amendments to §27.92 remove references in that
19 section to an availability payment contract.

20

21 FISCAL NOTE

22 Brian Ragland, Chief Financial Officer, has determined that for
23 each of the first five years in which the amendments as proposed
24 are in effect, there will be no fiscal implications for state or
25 local governments as a result of enforcing or administering the

1 amendments.

2

3 Mr. Frank P. Holzmann, P.E., Interim Director, Strategic
4 Contract Management Division, has certified that there will be
5 no significant impact on local economies or overall employment
6 as a result of enforcing or administering the amendments.

7

8 PUBLIC BENEFIT AND COST

9 Mr. Holzmann has also determined that for each year of the first
10 five years in which the sections are in effect, the public
11 benefit anticipated as a result of enforcing or administering
12 the amendments will be to ensure there is a fair and unbiased
13 comprehensive development agreement procurement process, to
14 ensure high standards of ethics and fairness in the
15 administration of the comprehensive development agreement
16 program, and to ensure the process for developing toll projects
17 is consistent with the department's existing contracting
18 authority. There are no anticipated economic costs for persons
19 required to comply with the sections as proposed. There will be
20 no adverse economic effect on small businesses.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed amendments to §27.8, §27.91 and
24 §27.92 may be submitted to Rule Comments, Office of General
25 Counsel, Texas Department of Transportation, 125 East 11th

1 Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov
2 with the subject line "Toll Project Rules." The deadline for
3 receipt of comments is 5:00 p.m. on June 13, 2016. In
4 accordance with Transportation Code, §201.811(a)(5), a person
5 who submits comments must disclose, in writing with the
6 comments, whether the person does business with the department,
7 may benefit monetarily from the proposed amendments, or is an
8 employee of the department.

9

10 STATUTORY AUTHORITY

11 The amendments are proposed under Transportation Code, §201.101,
12 which provides the Texas Transportation Commission (commission)
13 with the authority to establish rules for the conduct of the
14 work of the department, and more specifically, Transportation
15 Code, §223.209, which requires the commission to adopt rules,
16 procedures, and guidelines governing the selection and
17 negotiation process for comprehensive development agreements.

18

19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapters 223 and 228.

1 SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

2 §27.8. Conflict of Interest and Ethics Policies.

3 (a) Purpose. This section prescribes ethical standards of
4 conduct applicable to private entities, including consultants
5 and subconsultants, participating in the department's
6 comprehensive development agreement program. A private entity's
7 failure to comply with these standards of conduct may result in
8 the private entity's preclusion from participation in a project
9 or sanctions being imposed under §27.9 of this subchapter
10 (relating to Sanctions).

11 (b) Gifts and benefits. A proposer, developer, consultant,
12 or subconsultant participating in the comprehensive development
13 agreement program, or an affiliate of any of those entities, may
14 not offer, give, or agree to give a gift or benefit to a member
15 of the commission or to a department employee whose work for the
16 department includes the performance of procurement services
17 relating to a project under this subchapter, or who participates
18 in the administration of a comprehensive development agreement.
19 Notwithstanding this prohibition, a consultant or subconsultant
20 (unless a member of a proposer or developer team, if authorized
21 under subsection (c) of this section) may [+]

22 [~~(1) pay for an ordinary business lunch; and~~]

23 [~~(2)~~] offer, give, or agree to give a token item that

1 does not exceed an estimated value of \$25 (excluding cash,
2 checks, stocks, bonds, or similar items), where the item is
3 distributed generally as a normal means of advertising.

4 (c) Conflicts of interest.

5 (1) Purpose. This subsection prescribes department
6 policy on conflicts of interest relating to consultants and
7 subconsultants participating in the comprehensive development
8 agreement program, and thereby:

9 (A) protects the integrity and fairness of the
10 program and all procurements carried out by the department as
11 part of the program;

12 (B) avoids circumstances where a consultant,
13 proposer, or developer obtains, or appears to obtain, an unfair
14 competitive advantage as a result of work performed by a
15 consultant or subconsultant;

16 (C) provides guidance to private entities so they
17 may assess, and make informed business decisions concerning
18 their participation in the program; and

19 (D) protects the department's interests and
20 confidential and sensitive project-specific and programmatic
21 information.

22 (2) Applicability. This subsection applies to all
23 comprehensive development agreement projects undertaken by the

1 department. This subsection applies to consultants and
2 subconsultants, and to individual employees of consultants and
3 subconsultants who participated in the performance of services
4 for the department. A reference in this subsection to a
5 consultant or subconsultant also means individual employees of a
6 consultant or subconsultant who participated in the performance
7 of services for the department. To the extent that the
8 department has previously consented in writing to a consultant's
9 or subconsultant's performance of services that are in conflict
10 with this subsection, participation on a proposer team as an
11 equity owner or team member, acting as a consultant or
12 subconsultant to a proposer, or having a financial interest in a
13 proposer or an equity owner or team member of a proposer, this
14 subsection does not modify or alter the prior consent. The
15 foregoing does not prevent, however, the application of this
16 subsection to the consultant or subconsultant for other
17 projects, including taking into account the performance of
18 services on the project for which consent was obtained. This
19 subsection may by extension prohibit or restrict the ability of
20 a proposer to have a consultant or subconsultant participate on
21 the proposer team as an equity owner or team member, act as a
22 consultant or subconsultant to the proposer, or have a financial
23 interest in the proposer or an equity owner or team member of

1 the proposer.

2 (3) Period in which a conflict of interest applies.

3 If a determination is made under this subsection that the
4 performance of services by a consultant or subconsultant raises
5 a conflict of interest, the resulting prohibition or restriction
6 provided in this subsection continues:

7 (A) for the private entity until the date the
8 performance of services ends and all work product prepared by
9 the entity and other information and data provided to the entity
10 in the performance of services is publicly available; and

11 (B) for an individual that is an employee of or
12 was employed by the consultant or subconsultant and who
13 participated in the performance of services for the department:

14 (i) until five years after the date the
15 performance of services ends for those projects for which the
16 individual was materially involved in providing services to the
17 department; and

18 (ii) until one year from the date the
19 performance of services ends for projects for which the
20 individual was not materially involved in providing services to
21 the department.

22 (4) Application to new firm. If a conflict of
23 interest is determined to apply to an individual pursuant to

1 paragraph (3)(B) of this subsection, the conflict of interest
2 and prohibition with respect to the individual will not apply to
3 the individual's new place of employment. If the new employer
4 is otherwise eligible to perform consultant services, the new
5 employer will remain eligible despite the employment of the
6 individual. This paragraph does not apply to an individual
7 employed by an affiliate of its previous employer, and the
8 conflict of interest and prohibition with respect to the
9 individual will apply to such affiliate.

10 (5) Federal requirements. For federal-aid projects,
11 the department must comply with the Federal Highway
12 Administration's organizational conflict of interest regulations
13 (found in 23 CFR §636.116). The requirements of this subsection
14 do not limit, modify, or otherwise alter the effect of those
15 regulations, and will be applied consistent with those
16 regulations.

17 (6) General conflict of interest standards. Except as
18 provided in paragraph (7) of this subsection, no consultant
19 providing consultant services to the department with respect to
20 a comprehensive development agreement project may be a proposer
21 or participate as an equity owner, team member, consultant, or
22 subconsultant of or to a proposer for that project, or have a
23 financial interest in any of the foregoing entities with respect

1 to that project. Except as provided in paragraph (8) of this
2 subsection, a consultant performing consultant services for a
3 comprehensive development agreement project will not be
4 prohibited from participating on a different comprehensive
5 development agreement project as a proposer or participating as
6 an equity owner, team member, consultant, or subconsultant of or
7 to a proposer for the different project, or having a financial
8 interest in any of the foregoing entities with respect to the
9 different project.

10 (7) Providing services for the same project. A
11 consultant that is actively providing preliminary engineering
12 and architectural services to the department with respect to a
13 comprehensive development agreement project, or that performed
14 and completed environmental or traffic and revenue services for
15 a comprehensive development agreement project, may be a proposer
16 or participate as an equity owner, team member, consultant, or
17 subconsultant of or to a proposer for the same project, or have
18 a financial interest in any of the foregoing entities with
19 respect to that project, provided:

20 (A) with respect to a consultant providing
21 preliminary engineering and architectural services, all work
22 product prepared by the consultant and other information and
23 data provided to the consultant in the performance of services

1 is made available to all proposers prior to the issuance of the
2 request for proposals for that project; or

3 (B) the executive director issues a written
4 determination under paragraph (9) of this subsection that:

5 (i) the consultant will not, or in the case
6 of the previous performance of consultant services did not, have
7 access to or obtain knowledge of confidential or sensitive
8 information, procedures, policies and processes that could
9 provide an unfair competitive advantage with respect to the
10 procurement for that project;

11 (ii) the data and information provided to
12 the consultant in the performance of the consultant services is
13 either irrelevant to the procurement for that project or is
14 available on an equal and timely basis to all proposers;

15 (iii) the work products from the consultant
16 incorporated into or relevant to the procurement for that
17 project are generally available on an equal and timely basis to
18 all proposers;

19 (iv) with respect to environmental services,
20 a record of decision or finding of no significant impact has
21 been issued for the project; and

22 (v) with respect to traffic and revenue
23 services, there will be no impact on the project's plan of

1 finance, including the ability to obtain and close funding and
2 potential sources of funding.

3 (8) Procurement and financial services. A consultant
4 actively engaged and performing procurement services or
5 financial services with respect to a comprehensive development
6 agreement project may not be a proposer or participate as an
7 equity owner, team member, consultant, or subconsultant of or to
8 a proposer for that project, or have a financial interest in any
9 of the foregoing entities with respect to that project. A
10 consultant actively engaged and performing procurement services
11 or financial services with respect to a comprehensive
12 development agreement project may be a proposer or participate
13 as an equity owner, team member, consultant, or subconsultant of
14 or to a proposer for another comprehensive development agreement
15 project, or may have a financial interest in any of the
16 foregoing entities with respect to another comprehensive
17 development agreement project, provided the consultant submits a
18 request for a written determination under paragraph (9) of this
19 subsection that establishes to the commission's satisfaction
20 that such participation or interest would not constitute a
21 conflict of interest or create the appearance of a conflict of
22 interest, and the consultant institutes ethical walls or other
23 safeguards required by the department.

1 (9) Requests for determinations or exceptions. A
2 consultant, proposer, or developer may submit a request to the
3 executive director for a determination whether participation in
4 a comprehensive development agreement project or the performance
5 of particular services with respect to a comprehensive
6 development agreement project would constitute a conflict of
7 interest, or to request approval of an exception to the
8 applicability of this subsection to those services. A request
9 for approval of an exception may be made if a consultant,
10 proposer, or developer desires to appeal a previous
11 determination that a conflict of interest exists. The executive
12 director will forward a request to the department's Office of
13 General Counsel for analysis and recommendation prior to issuing
14 a decision. In determining whether a conflict of interest
15 exists, or whether to approve an exception, the commission or
16 executive director, as appropriate, shall consider the executive
17 director's recommendation and:

18 (A) the extent to which the firm or individual
19 employee obtained access to or the ability to gain knowledge of
20 confidential or sensitive information, procedures, policies, and
21 processes concerning the comprehensive development agreement
22 program or a particular project or procurement that could
23 provide an unfair competitive advantage with respect to the

1 procurement or project at issue;

2 (B) the type of consulting services at issue;

3 (C) the particular circumstances of each
4 procurement;

5 (D) the specialized expertise needed by the
6 department and proposers to implement the procurement;

7 (E) the past, current, or future working
8 relationship between the consultant and the department;

9 (F) the period of time between the potential
10 conflict situation and the project at issue; and

11 (G) the potential impact on the procurement and
12 project at issue, including competition.

13 (10) Multiple services. If a consultant is providing
14 more than one category of consultant services to the department
15 and there are differences in the standards, restrictions, and
16 limitations applicable to those categories, the standards,
17 restrictions, and limitations applicable to a category that are
18 more stringent will be applied.

19 (11) Participation on proposer or developer team. A
20 consultant participating with respect to a comprehensive
21 development agreement project as a proposer or developer, or as
22 an equity owner, team member, consultant, or subconsultant of or
23 to a proposer or developer, or having a financial interest in

1 any of the foregoing entities, is eligible to provide consultant
2 services (other than procurement services) to the department for
3 another comprehensive development agreement project, provided
4 that, once the consultant is retained to perform consultant
5 services for the department, the restrictions in this subsection
6 shall apply.

7 (12) Restriction of services and conditions to
8 approvals and exceptions. In instances where a written
9 determination under paragraph (9) of this subsection that a
10 conflict of interest does not exist (including, in particular,
11 where the conditions prescribed in paragraph (7) of this
12 subsection has been met), or grants an exception to the
13 application of this subsection under paragraph (9), the
14 department may still, in its discretion:

15 (A) restrict the scope of services the consultant
16 or subconsultant may be eligible to perform for the department
17 in order to further the intent and goals of this subsection; and

18 (B) condition an approval, determination, or
19 exception as the commission or executive director determines
20 appropriate to further the intent and goals of this subsection,
21 including by requiring the consultant, subconsultant, proposer,
22 or developer to execute confidentiality agreements, institute
23 ethical walls, or segregate certain personnel from participation

1 in a project or the performance of consultant services.

2 (13) Provisions are nonexclusive. The provisions in
3 this subsection do not address every situation that may arise in
4 the context of the department's comprehensive development
5 agreement program nor require a particular decision or
6 determination when faced with facts similar to those described
7 in this subsection. The department retains the ultimate and
8 sole discretion to determine on a case-by-case basis whether a
9 conflict of interest exists and what actions may be appropriate
10 to avoid, neutralize, or mitigate any actual or potential
11 conflict, or the appearance of any conflict. The provisions of
12 this subsection shall not be construed to preclude or condone
13 any conduct with regard to projects other than projects under a
14 comprehensive development agreement. The department will
15 continue to evaluate other projects based on its traditional
16 conflict of interest standards.

17 (d) Rules of contact. In order to provide a fair and
18 unbiased procurement process, a request for qualifications,
19 request for proposals, or request for competing proposals and
20 qualifications will contain rules of contact regulating
21 communications between proposers or any of its team members and
22 the commission, the department, and third parties involved in
23 the procurement. Communication includes face-to-face,

1 telephone, facsimile, electronic-mail (e-mail), or formal
2 written communication. The rules of contact become effective
3 upon the issuance of the request for qualifications, request for
4 proposals, or request for competing proposals and
5 qualifications. The rules of contact will include provisions:

6 (1) prohibiting a proposer or any of its team members
7 from communicating with another proposer or its team members
8 with regard to the project, request for qualifications, request
9 for proposals, or request for competing proposals and
10 qualifications, or either team's qualifications submittal or
11 proposal;

12 (2) requiring each proposer to designate one or more
13 representatives responsible for contact with the department, and
14 requiring the proposer to correspond with the department
15 regarding the project, request for qualifications, request for
16 proposals, or request for competing proposals and qualifications
17 only through the department's authorized representatives and the
18 proposer's designated representatives;

19 (3) prohibiting any ex parte communication regarding
20 the project, request for qualifications, request for proposals,
21 or request for competing proposals and qualifications or the
22 procurement with any member of the commission or with any
23 department staff, advisors, contractors, or consultants involved

1 in the procurement until the earliest of the execution and
2 delivery of the comprehensive development agreement, the
3 rejection of all qualifications submittals or proposals by the
4 department, or the cancellation of the procurement;

5 (4) permitting communications in exceptional
6 circumstances and designating department personnel authorized to
7 approve such communications, and providing that the restrictions
8 on communications shall not preclude or restrict communications
9 with regard to matters unrelated to the request for
10 qualifications, request for proposals, or request for competing
11 proposals and qualifications, or participation in public
12 meetings of the commission or any public or proposer workshop
13 related to the project, request for qualifications, request for
14 proposals, or request for competing proposals and
15 qualifications;

16 (5) designating a department employee not involved in
17 the procurement to act as an ombudsman who is authorized to
18 receive confidential communications (including questions,
19 comments, or complaints regarding the procurement) and who,
20 after removing, to the extent practicable, any information
21 identifying the proposer, forwards the communications to the
22 employees designated as the department's authorized
23 representatives; and

1 (6) authorizing the executive director to disqualify a
2 proposer from the procurement and participation in the project
3 at issue or to impose another sanction under §27.9 of this
4 subchapter if it is determined that a proposer has engaged in
5 any improper communications in violation of the rules of
6 contact.

7 (e) Exceptions to rules of contact. Notwithstanding
8 subsection (d)(1) of this section:

9 (1) subcontractors that are shared between two or more
10 proposer teams may communicate with members of each of those
11 teams so long as those proposers establish a protocol to ensure
12 that the subcontractor will not act as a conduit of information
13 between the teams; and

14 (2) the prohibition provided by that subsection does
15 not apply to public discussions regarding the project, request
16 for qualifications, request for proposals, or request for
17 competing proposals and qualifications at any department
18 sponsored informational meetings.

1 SUBCHAPTER H. DETERMINATION OF TERMS FOR CERTAIN TOLL PROJECTS

2 §27.91. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 [~~(1) Availability payment contract--A comprehensive~~
6 ~~development agreement under which payments are made to a private~~
7 ~~entity from project and other revenue to compensate the private~~
8 ~~entity for capital, operating, and financial costs, which may be~~
9 ~~based on the private entity's performance under the agreement.]~~

10 (1) [~~(2)~~] Commission--The Texas Transportation
11 Commission.

12 (2) [~~(3)~~] Committee--A committee established under
13 this subchapter.

14 (3) [~~(4)~~] Comprehensive development agreement--An
15 agreement with a private entity authorized under Transportation
16 Code, Chapter 223, Subchapter E that, at a minimum, provides for
17 the design and construction, reconstruction, extension,
18 expansion, or improvement of a toll project and may also provide
19 for the financing, acquisition, maintenance, or operation of a
20 toll project.

21 (4) [~~(5)~~] Concession agreement--A comprehensive
22 development agreement under which a private entity agrees to
23 develop, finance, and construct a toll project, and to assume

1 operation or maintenance responsibilities for a toll project, in
2 exchange for rights to revenue of the project.

3 (5) [~~(6)~~] Department--The Texas Department of
4 Transportation.

5 (6) [~~(7)~~] Executive director--The executive director
6 of the department or the executive director's designee.

7 (7) [~~(8)~~] Local funds--Funds of a city or county, any
8 other funds paid by a city or county to meet local participation
9 requirements, and money deposited in a subaccount created under
10 Transportation Code, §228.012.

11 (8) [~~(9)~~] Local toll project entity--Has the meaning
12 assigned by Transportation Code, §373.001.

13 (9) [~~(10)~~] Metropolitan planning organization--The
14 organization or policy board of an organization created and
15 designated under 23 U.S.C. §134 and 49 U.S.C. §5303, as amended,
16 to make transportation planning decisions for a metropolitan
17 planning area in which a toll project is located and to carry
18 out the metropolitan transportation planning process.

19 (10) [~~(11)~~] Toll project--Has the meaning assigned by
20 Transportation Code, §201.001.

21

22 §27.92. Financial Terms.

23 (a) Applicability. This subchapter applies only to a

1 department toll project that will be developed under a
2 concession agreement [~~or an availability payment contract~~], and
3 for which:

4 (1) funds allocated to a metropolitan planning
5 organization are expected to be used to pay for project costs;

6 (2) local funds are expected to be used to pay for
7 project costs; or

8 (3) property of a city or county is expected to be
9 used as project right of way or a city or county is expected to
10 pay for the acquisition of right of way for the project.

11 (b) Formation and membership of committee. For a project
12 subject to Transportation Code, Chapter 373, Subchapter B, the
13 committee shall be formed after the department exercises its
14 option under that subchapter to develop, finance, construct, and
15 operate the project. The membership of a committee shall be
16 determined after the commission authorizes the department to
17 initiate a procurement for a toll project that provides for the
18 potential delivery of the project through a concession agreement
19 [~~or an availability payment contract~~]. To be eligible to serve
20 as a committee member, a person must be an elected official or a
21 full-time employee of the represented entity. A committee
22 consists of the following members:

23 (1) one member appointed by each metropolitan planning

1 organization within whose boundaries all or part of the proposed
2 project may be located;

3 (2) one member appointed by each local toll project
4 entity within whose boundaries all or part of the proposed
5 project may be located;

6 (3) one member appointed by each city and county which
7 has:

8 (A) provided local funds to pay for right of way
9 acquisition or other project costs or to acquire right of way
10 for the project, or has provided property of the city or county
11 for use as project right of way; or

12 (B) submitted to the department an order or
13 resolution adopted by the city council or county commissioners
14 court committing local funds or property to the project; and

15 (4) one member appointed by the executive director to
16 represent the department.

17 (c) Officers. The committee will, subject to the
18 concurrence of the commission, elect a chair and vice-chair by
19 majority vote of the members of the committee.

20 (d) Duties. A committee established under this subchapter
21 shall submit a report to the executive director before the date
22 the department issues a request for qualifications for the toll
23 project, except for a project for which the department and a

1 local toll project entity have agreed on the terms and
2 conditions for the project under Transportation Code, §228.0111,
3 or for which a local toll project entity has waived its option
4 to develop, construct, and operate the project, in which case
5 the report shall be submitted before the date the department
6 issues a request for proposals for the project. If the project
7 is subject to a market valuation agreement, market valuation
8 waiver agreement, or similar agreement entered into under
9 Transportation Code, §228.0111, or a toll project agreement
10 entered into under Transportation Code, §373.006, the report may
11 not include determinations that are inconsistent with the
12 provisions of the agreement that relate to the determinations to
13 be included in the report. A report shall contain the following
14 determinations:

15 (1) the distribution of project financial risk, which
16 is the allocation of revenue risk for a toll project between the
17 department and the private entity with which the department
18 enters into an agreement for the project;

19 (2) the method of financing for the project, which is
20 a determination of whether the project should be funded with
21 private or public funding or a combination of private and public
22 funding; and

23 (3) unless the project is subject to a regional

1 tolling policy, the project's tolling structure and methodology.

2 (e) Failure to submit report. All members of a committee
3 will utilize their best efforts to support the generation of a
4 report. If a committee does not submit a report by the date the
5 department is scheduled to issue a request for qualifications or
6 request for proposals, as applicable, for a project, the
7 department will use any business terms applicable to the project
8 that have been adopted by the metropolitan planning organization
9 and that relate to the determinations to be included in the
10 report.

11 (f) Meetings.

12 (1) Meeting requirements. The department's Office of
13 General Counsel will submit to the Office of the Secretary of
14 State notice of a meeting of the committee at least eight days
15 before the date of the meeting. The notice will provide the
16 date, time, place, and purpose of the meeting. A meeting of a
17 committee will be open to the public. A committee will follow
18 the agenda set for each meeting under paragraph (2) of this
19 subsection.

20 (2) Scheduling of meetings. Meeting dates, times,
21 places, and agendas will be set by the office designated under
22 subsection (g) of this section. Any committee member may
23 suggest an agenda item, provided that the agenda item must be

1 approved by the chair of the committee and the department. A
2 committee's report may only discuss items that are within the
3 committee's jurisdiction. The office designated under
4 subsection (g) of this section will provide notice of the time,
5 date, place, and purpose of meetings to the members, by mail,
6 email, telephone, or any combination of the three, at least
7 eight calendar days before each meeting. All meetings must take
8 place in Texas and must be held in a location that is readily
9 accessible to the general public.

10 (3) Committee action. A quorum of the committee is
11 one half or more of the number of members appointed to the
12 committee. A committee may act only by majority vote of the
13 members present at the meeting and voting.

14 (4) Record. Minutes of all committee meetings shall
15 be prepared and filed with the executive director. The complete
16 proceedings of all committee meetings must also be recorded by
17 electronic means.

18 (5) Public information. All minutes, transcripts, and
19 other records of the committees are records of the department
20 and as such, are subject to disclosure under the provisions of
21 Government Code, Chapter 552.

22 (g) Administrative support. For each committee, the
23 executive director will designate an office or division of the

1 department that will be responsible for providing any necessary
2 administrative support essential to the functions of the
3 committee. The department will provide project information and
4 other information to the committee to assist the committee in
5 carrying out its duties, including the project procurement
6 schedule.

7 (h) Duration. After a committee submits the report
8 described in subsection (d) of this section, the committee
9 ceases to exist. The department may, in its discretion,
10 reconvene a committee if changed circumstances may result in a
11 change in the committee's determinations.