TxDOT cutback is driving lower bids, contractor qualifications

The Texas Department of Transportation’s (TxDOT’s) $1.1-billion cutback in project funding has become a two-way street for cities currently bidding roadway projects. This decrease in roadway work has driven contractors who specialize in TxDOT-funded projects to bid on other municipal work to keep their construction crews and equipment active and generating revenues.

Benefits for Municipalities
Cities are discovering the savings in unshelving non-TxDOT projects during this cutback, which is expected to last through TxDOT’s current fiscal year. Wisely, the cities are taking additional steps to research the qualifications of contractors bidding outside their normal areas of work.

Feedback
The Public Works Director for one North Texas city said that he was very pleased with two recent bid openings for roadway projects. He felt that he was receiving better, more competitive bids and added that on the most recent project, which normally would draw one or two bidders, four contractors submitted very competitive bids.

The increased competition also has produced a negative inflation rate in road construction. A recent roadway project bid for one North Texas municipality produced only three bidders, but the municipality indicated that the winning bid came in well under budget.

Influx of Contractors
Recent declines in private work resulting from the downturn in the housing market also have pushed contractors who traditionally specialize in development-related work toward the municipal construction market.

- Darren Hibbs, Construction Cost Estimator, Construction Services Group, Freese and Nichols, Inc.
Right-of-way for intersection improvements Freese and Nichols designed along US 69 (South Broadway) in Tyler, Texas.

How to maintain federal funding on early right-of-way acquisitions

For federally-funded transportation projects, TxDOT and the Federal Highway Administration’s (FHWA’s) preferred process has been that right-of-way (ROW) acquisition of property takes place following National Environmental Policy Act (NEPA) clearance. However, with escalating construction costs and increasing needs for traffic congestion relief, meeting project schedules and early acquisition of property have become critical for TxDOT and local governments, resulting in numerous questions on the procedures required to maintain federal funding while acquiring property early.

Clarification Memorandum
On Aug. 24, 2007, the FHWA issued the memorandum Guidance on Early Acquisitions and Compliance with NEPA and Uniform Act verifying that states and local governments can indeed purchase property early while maintaining their access to federal funding. However, the memorandum also emphasized that an early purchase of property is considered to be an “at risk” acquisition and will be subjected to more intense scrutiny in the NEPA process. The FHWA considers early acquisitions to be “at risk” because the NEPA process can lead to selection of different alignments, thus raising the risk that some properties could be acquired unnecessarily, rendering them ineligible for federal reimbursement.

Criteria for Maintaining Federal Funding
According to TxDOT’s Real Estate Acquisition Guide for Local Public Agencies, although early acquisitions do not require federal authorization and agreement, local public agencies (LPAs) that choose to do so must acquire ROW property according to the following provisions:

- “The acquired property must not influence the need for or location of the project.” – An LPA’s early acquisition should not influence determination of the preferred alignment in the NEPA process.
- “The acquisition must comply with the Uniform Act, as amended.” - The Uniform act was enacted by Congress in 1970 to ensure that citizens whose
real property is acquired, or who move as a direct result of projects receiving federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

- “The acquisition must comply with Title IV of the Civil Rights Act of 1964.”
- “The acquisition must not include lands protected by Section 4(f) of the DOT Act…” – These may include environmentally sensitive properties such as parklands, which are not eligible for early acquisition prior to the NEPA process.
- “The final project must meet all requirements for a normal Federal project…”
- “Advanced acquisitions must not be used to circumvent Federal laws or regulations.”

Concerns with Environmental Documentation
A major concern with early acquisitions is that many environmental documents include a statement requiring documentation that all ROW acquisition has been purchased for the project, whether it was acquired early as part of the current project or previously in a past acquisition or dedication. This statement presents a problem in that it can be in direct conflict with the FHWA requirement mandating that early acquisitions shall not influence the Federal environmental review.

To mitigate this problem, TxDOT now requires the following key information be added to all environmental documents:

- Location of acquired parcels along the alignment
- Discussion of when the parcels were acquired
- Discussion as to why the parcels purchased do not limit the evaluation of alternatives
- Documentation that the Uniform Act was followed in the acquisition of all parcels
- Documentation and records for acquired parcels must be available to inspection by FHWA.

Disadvantages
The primary disadvantages for early ROW are the risks of losing federal funding for your project, acquiring land that you may not need for your current or future projects and increased difficulty in following the documentation process

Advantages
The primary advantage of early ROW acquisition is that it allows you to purchase property early for your project rather than having to wait for environmental clearance to proceed. This in turn allows for expedition of project design and schedule and results in cost savings.

- Chris Bosco, P.E., Transportation Engineer and Associate, Freese and Nichols, Inc.

Construction and post-construction on Hickox Road, Rowlett, Texas, where ROW acquisition was required. Freese and Nichols provided construction inspection.

Is early ROW right for you? What to consider:

Size of Project - Small-scale projects such as roadway widenings have a significantly lower risk of losing federal funding for early ROW because they typically do not require multiple alignments, so they do not require much ROW acquisition. For large-scale projects, the risk of acquiring land unnecessarily and losing federal funding is significantly higher.

Budget - Verify whether or not your city has the budget to cover costs incurred in the event that some or all of your early ROW property is rejected for federal funding.

Location of Project - Does your project site involve environmentally sensitive / protected properties? If so, keep in mind that the NEPA process will scrutinize early ROW projects more heavily in the environmental review.
Introducing: Stan Lynch

Stanford W. Lynch, P.E., hit the ground running when he joined Freese and Nichols last October, bringing with him a host of skills in developing and managing both large- and small-scale transportation and infrastructure projects.

Experience

Stan has more than 30 years experience in design, management and administration of transportation, water resources and environmental projects, from planning and design through development, construction and implementation. He has been responsible for public policy consulting projects totaling more than $10 billion.

As first general manager for the Dallas County Utility and Reclamation District (DCURD), Stan oversaw all stages of developing and operating Las Colinas Urban Center’s electrically-powered people mover system. During his stint at DCURD, Stan was responsible for maintenance, long-range planning, budgeting, design, construction and implementation of all capital improvements for the development within the District, which serves Las Colinas.

Expertise in Funding

Stan is accomplished in identifying potential sources of funding for municipal projects. While serving as chief operating officer for Dean International, Stan coordinated with federal and state policy-makers to develop legislation and subsequent funding sources to support client projects.

The transportation group is excited to have Stan on the Freese and Nichols team. We hope you will feel free to contact Stan at 817-735-7465 or SWL@freese.com.

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