

Texas Construction Association

REPRESENTING TEXAS SUBCONTRACTORS AND SUPPLIERS

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Subcontractor and Supplier Construction Newsletter-September 9, 2009

Metropolitan Transit System of Houston Begins Building \$1.46 Billion Rail Project Without Payment Bonds or Performance Bonds. The Metropolitan Transit System of Houston began construction in mid-August on a \$1.46 billion dollar expansion of its light rail transit system. According to METRO President Frank Wilson, Houston METRO tentatively plans to use “parent guarantees” on most of the project in lieu of payment bonds and performance bonds. Wilson has stated that the only portion of the project to be covered by payment and performance bonds is utility work valued at \$45 million, which will be performed at the beginning of the project.

With the exception of the utility work, the current tentative plan as described to TCA staff leaves subcontractors and suppliers *without the remedy provided by payment bonds*. If the bonds are not provided, the subcontractor and supplier must look to the general contractor(s) and Houston METRO for payment. While both may have “deep pockets”, there is a lack of security that the bonds provide and collection problems can develop in the event of a dispute. (Didn't many people believe Enron had deep pockets?)

The Texas Property Code stipulates that local governmental entities must require general contractors to secure payment bonds on public projects with a value of more than \$25,000 and performance bonds for public projects over \$100,000. The payment bond provides the security for subcontractors and suppliers as they have no mechanic's or materialman's lien rights against the property improved on public projects. The performance bond protects the taxpayers as the ultimate owners of a public work project.

Representatives of TCA have met with Houston Metro staff and with representatives from the surety industry to try to resolve the issue. The requirements set forth in the Texas Property Code are clear and do not provide for an alternative such as “parent guarantees” on which METRO wishes to rely. Until the issue is resolved, TCA recommends all subcontractors and suppliers consult with a knowledgeable construction attorney prior to entering into a contract to provide labor or materials on the project. TCA will provide updated information on the status of the dispute through member newsletters.

DFW Airport Studying the Revamping of Four Terminals. The DFW Airport Board of Directors is studying plans to revamp Terminals A, B, C and E over the next several years with an estimated cost that could be in excess of \$3 billion. The project is expected

to begin in 2011 and is projected to be completed by the year 2017. All 4 of these terminals have been in place since the airport opened in 1974. The last major terminal project was Terminal D which was completed in 2005.

2010 Elections Will Determine Which Party Controls the Texas Legislature.

While much of the Texas election news has been dominated by the Governor's race and the possible vacancy in the U.S. Senate if Senator Kay Bailey Hutchison resigns her seat, the control of the Texas House and Senate may play an even more critical role.

Redistricting, taxes, and the state budget will be critical issues facing the Legislature in 2011. Regarding the issue of redistricting, not only will each State Legislator's district be redrawn, Texas expects to pick up 3 or 4 new Congressional seats after the 2010 census; thus, the Congressional districts likely will undergo drastic reconfiguration.

However, looking at the numbers, the Democrats are in the position of having to defend more incumbents in Districts that are Republican or Republican leaning, in terms of voter history. Several Democrats won in districts in 2006 that had previously been considered to be reliable Republican districts. In the Democrats favor, the demographics of some of these districts, and perhaps others, have been trending Democratic.

The battlefields will likely be in those rural districts where Republicans are trying to unseat some Democratic incumbents (e.g., several east Texas districts) and the Democrats will be trying for gains in some of the older suburbs where the demographics have changed (e.g., the Republican House Member from Irving won by only twenty votes in 2008 over an underfinanced token candidate).

Currently, there are 76 Republicans and 74 Democrats in the Texas House. If the Democrats pick up 2 seats in 2010, they would become the majority and would likely elect a Democratic Speaker.

Redistricting is important to the State Senate because the shift of greater population to the urban areas and away from the rural areas may effect at least 2 current rural Senate districts, 1 in east Texas and 1 in west Texas.

In the Texas Senate, the Republicans hold a relatively safe 19 to 12 margin. However, the Republicans would like to pick up an additional 2 seats in order to give them a two-thirds majority in the Texas Senate. This would enable them to defeat Democratic attempts to prevent consideration of legislation (the Senate rules provide that two-thirds of the Senators present have to vote to suspend the rules in order to consider a bill).

In addition, both Chambers will have a say in drawing Congressional Districts. With as many as 4 new Congressional Districts, many current state legislators see opportunities to run in the new districts. This process will likely become a serious contact sport before it is over.