



Concession Payments

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Overview

■ **Payment Opportunities**

- Types of procurements
- Contractual provisions

■ **Legislative Changes**

- SB 792
- Impact on procurements

■ **Uses of payments**

- Have federal funds been used (including TIFIA)?

Payment Opportunities

■ Types of procurements

- Concessions
 - Up front, annual, revenue bands, Liquidated Damages, refinancing
- Availability Payments
 - Liquidated Damages, refinancing
- Design Build with and without Option to Maintain
 - Liquidated Damages, refinancing

Contractual Provisions

■ Up front Payment

- At commercial and financial close

■ Annual Payments

- Adjusted for inflation
- Considered rent so it is part of operations and maintenance

■ Revenue Bands

- Based on gross revenues
- Considered rent so it is part of operations and maintenance

■ Liquidated Damages

- Based on cost
- Tied to non-compliance points regime

Legislative Changes

■ Impact of SB 792

- Greater detail on types of revenues
- Allocation methodology changed
- Subaccounts/interest

Impact on Current Procurements

- **TTC-35**
- **TTC-69**
- **SH 130 5 & 6**
- **SH 121**
- **SH 161**
- **North Tarrant Express**
- **IH 635**
- **DFW Connector**
- **281/1604**

Impact on Future Procurements

■ Legislative

- Moratorium until September 1, 2009
- Authority to enter into CDAs expires August 31, 2009 or 2011 for procurements underway
- Legislative study committee –report due December 1, 2008
- Sunset Review
- Federal level activities

■ Going forward

- Availability Payments
- Shadow tolls
- Concessions

Uses of Payments

- **Have federal funds been used (including Transportation Infrastructure Finance and Innovation Act (TIFIA) loan)?**

Addressing PPP Myths

PPP Myth #1: “Toll Rates will be Exorbitant”

■ Toll rate policy for the project will be developed in cooperation with the MPO

- Initial maximum toll rate is comparable to toll rates nationally
- Toll rates may be adjusted upwards every two years
- In general, maximum increase linked to inflation – with some adjustments:
 - In periods of high inflation, consider the corresponding increase in other rates (eg. employment rates)
 - Time of day and/or congestion pricing
- “Floor” of 0%
- Tolls for video users 45% higher
 - Predicated on estimate of cost and risk

■ Traffic and revenue are developer’s risk

- In practice, developer can only charge what the market will bear

PPP Myth #2: “Constrain Future Development”

- **Beyond the competing facilities zone, TxDOT has no restrictions**
- **Within the competing facilities zone, exclude all projects in:**
 - Certain limited access highway lanes
 - STIP
 - UTP
 - Mobility 2025 Plan
 - Mobility 2030 Plan
- **Developer has no right to prohibit future development**
 - Remedy linked to compensation
 - Developer bears the burden of proof
 - Compensation to project sponsor if traffic improves

PPP Myth #3: “Developers Earn Exorbitant Profits”

- **Proposers have been reasonable given risk profile and market conditions**
 - Return expectations are subject to competition

- **Toll rate increases are effectively capped at CPI**

- **Revenue sharing mechanism will allow the Region to benefit from higher than expected traffic and revenue**
 - Base case – 0% of revenue
 - Band 1 ceiling – 12.5% of revenue
 - Band 2 ceiling – 25% of revenue
 - Band 3 ceiling – 50% of revenue

- **Unplanned project refinancing gains incorporated into annual revenue share calculation**

PPP Myth #4: “Cannot Transfer Construction Risk”

■ Risk that has been completely transferred

- Performance vis-à-vis construction standards
- Changes in standards for new construction and/or reconstruction
- Utility adjustments
- Known or reasonably should have known archeological, paleontological and cultural resources
- Known or reasonably should have known threatened and endangered species

Shared Approach to Hazmat

- **Developer performs management and remediation work**
- **Cost sharing of pre-existing Hazmat for up to a certain dollar amount**
- **TxDOT compensates for TxDOT caused releases**
- **Generator liability for off-site disposal**
 - TxDOT for pre-existing and TxDOT caused releases
 - Developer for all other Hazmat
- **May give rise to a relief event**

Schedule Relief Related Risks

- Differing site conditions
- Fire, explosion, flood, etc.
- Change in law
- Unknown or unreasonably should have known archeological, paleontological and cultural resources
- Unknown or unreasonably should have known threatened and endangered species
- Third party Hazmat after proposal due date and TxDOT release of Hazmat
- Court injunction of performance of work
- NEPA approvals and inability to timely obtain other governmental approvals
- Utility owner delay
- Defects in TxDOT title
- TxDOT caused risks (changes, delays, contract breach, etc.)

Compensation Events

- Differing site conditions vis-à-vis data reported at boring holes
- Discriminatory change in law
- TxDOT release of Hazmat
- Suspension of work by court injunction and/or design change due to legal challenge of NEPA
- Defects in TxDOT title
- TxDOT caused risks
- TxDOT suspension of tolls (in certain circumstances only)
- Inability to obtain local approval
- Competing facilities
- Compensation events with toll rate adjustments
 - Change in real property tax exemption
 - Tax change for toll charges (toll rate surcharge)
 - Cardinal change in ETC technology to remain interoperable

PPP Myth #5: “Cede Control for over a Generation”

■ **52 year term limit**

- Begins at contract execution

■ **Developers determined that tax benefits of depreciation would likely be achieved**

- Treatment of “goodwill” for brownfield element of the project
- Likely deemed to be the “tax owner” for tax purposes
- Developer assumes this risk

■ **Independent engineer continues to monitor TxDOT’s interests**

- Non-compliance points help ensure standards are maintained

Myth #6: “Inappropriate Use of Funds”

- **By law, concession revenue must be spent on transportation projects in the region**
- **MPO drives the spending decisions**
- **MPO may create a method for allocating the concession fee to local projects**
 - Funding for other CDA projects in the region
 - Advanced timing for several projects
 - Several unfunded projects will be constructed

Myth #7: “Toll Authorities Do Not Have a Role”

- **SB 792 requires toll authorities to provide customer service and other toll collection and enforcement services**
 - Enhances value to the region by minimizing duplication of back office costs
 - Builds upon strong local presence, established track record and pre-existing customer base
 - Helps achieve interoperability as technology and business models evolve

Myth #8: “Public Sector Can Always Do Better”

- **Both TxDOT and/or tollway authorities had previously determined a public subsidy would be required for SH 121 and SH 130 5&6 projects**

More Information

■ Procurement related documents

http://www.dot.state.tx.us/services/texas_turnpike_authority/pub_priv_partnerships.htm

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