



Texas Department of Transportation

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June 1, 2006

To Whom It May Concern:

On May 12, 2006, the Texas Department of Transportation (TxDOT) provided the industry review package for the SH-121 Toll Corridor (Project). As mentioned in the Instructions to Proposers, TxDOT is considering applying for credit assistance under the federal Transportation Infrastructure Finance and Innovation Act Program (TIFIA Program) and for an allocation of tax-exempt private activity bonds (PABs) from the Secretary of the United States Department of Transportation (USDOT). TxDOT has received approval from the Federal Highway Administration (FHWA) to act as the initial applicant for purposes of receiving a conditional credit commitment under the TIFIA Program that could be used by you in developing your detailed financial proposals. TxDOT has also received approval from the USDOT to follow the same approach in connection with the PABs.

Enclosed in this mailing is a Request for Information (RFI) as well as the attachments thereto regarding the use of TIFIA and PABs financing as well as your views concerning major tax assumptions, including the tax treatment of PABs financing. As mentioned in the May 12 letter accompanying the mail out of the industry review package, each proposer should be prepared to discuss the matters described in the RFI during the second set of one-on-one meetings scheduled for June 12-14, 2006. Written responses to the matters described in the RFI are due 48 hours after the close of your one-on-one meeting. Please be advised that a FHWA official responsible for the TIFIA Program has been invited to be in attendance during the portion of the one-on-one meetings that the TIFIA Program and PABs financing will be discussed; in that regard, TxDOT has received a letter signed by a USDOT official agreeing to take appropriate steps to protect the confidentiality of information obtained during the proposal process.

TxDOT and its advisors believe there may be value to the use of these federal programs in your detailed finance plans. We look forward to receiving your views on the subject.

Sincerely,

Phillip E. Russell, P.E.

Director, Texas Turnpike Authority Division

Enclosure

REQUEST FOR INFORMATION

REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF THE COMPREHENSIVE DEVELOPMENT AGREEMENT PROCUREMENT PROCESS

TEXAS DEPARTMENT OF TRANSPORTATION

The Texas Department of Transportation ("TxDOT") is seeking information to assist in developing and implementing its Comprehensive Development Agreement ("CDA") procurement process. This Request for Information ("RFI") is issued solely to obtain information to assist TxDOT on an administrative level. It does not constitute a Request for Qualifications ("RFQ"), a Request for Proposals ("RFP") or other solicitation document nor does it represent an intention to issue an RFQ or an RFP in the future. This RFI does not commit TxDOT to contract for any supply or service whatsoever. TxDOT will not pay for any information or administrative cost incurred in response to this RFI. Responses to this RFI are due by noon, Central Standard Time, on June 26, 2006. See Sections 3 and 4 for further information.

1. OVERVIEW

TxDOT has initiated an aggressive CDA program - working with the private sector to meet the transportation needs of the State of Texas for generations to come. A critical element of the program is the procurement process utilized to solicit proposals and select preferred partners. A sound framework for procurement will enable TxDOT to meet its objectives and provide a stable, predictable deal flow for the market over the next several years.

While TxDOT is committed to doing what is in the best interests of the taxpayers and traveling public, we strive to create a pro business environment as well, by capturing private sector innovation in ways that are prudent. TxDOT places great importance on developing efficient, effective and transparent procurement processes. As the pace of development picks up, TxDOT wishes to engage the market to solicit feedback on our current approach and identify opportunities for improvement - building upon the lessons learned from what has proved successful in public private partnership transactions in the United States and around the world.

By responding to this RFI, you can provide valuable input and help shape the framework for competition in Texas.

Currently, the procurement process for a "typical" CDA competition, for a project that has already reached or is near environmental clearance, consists of the key stages set forth in the following chart. The Procurement Timing column in the chart is designed to track the estimated number of days from the issuance of the RFQ (solicited and unsolicited procurements) to reach the CDA procurement stage at issue.

CDA Procurement Stage	Procurement Timing
1. Proposer submission of Qualification Statements in response to RFQ	Day ____
2. TxDOT issues short-list of potential proposers (typically, 3-4 teams)	Day ____
3. TxDOT issues draft RFP to short-listed proposers	Day ____
4. Industry review meetings - a series of one-on-one meetings with short-listed proposers	Day ____
5. TxDOT issues final RFP to short-listed proposers	Day ____
6. Proposer submission of Proposals in response to RFP	Day ____
7. TxDOT selection of preferred proposer(s)	Day ____
8. BAFO (if necessary)	Day ____
9. TxDOT selection of preferred proposer	Day ____
10. Completion of negotiation of alternative technical concepts and other final issues; execution of CDA	Day ____
11. Contract allowance for close of finance, including TIFIA credit	Day ____

2. INFORMATION REQUESTED

TxDOT is interested in your views on our current and anticipated procurement processes. In responding to this RFI, TxDOT asks parties to submit their perspectives on as many of the following issues as possible. Please number the answers to match the question numbers below. In addition, please provide a brief (no more than 3 page) summary of your organization and your previous experience with large transportation-related procurements and other relevant qualifications.

A. Procurement Timing

TxDOT aims to have aggressive procurement schedules that still provide proposers enough time to develop high quality submittals.

A1. In a standard “best value,” hard price proposal process, how much time do you think TxDOT should allow for each stage of the procurement process identified in Section 1 above? If helpful, you may fill in the Procurement

Timing column in the chart with your estimates of the number of days needed to reach each procurement stage.

- A2. In particular, how much time do you need to respond to an RFQ? What factors/characteristics of the RFQ stage dictate the amount of time needed and how predictable are these factors?
- A3. How much time do you need to respond to an RFP? What factors/characteristics of the RFP stage dictate the amount of time needed and how predictable are these factors?

B. Short-Listing

In general, TxDOT believes that the short-listing process ensures not only qualified teams, but optimizes and maximizes the procurement competition and allows for one-on-one meetings in a narrowed universe.

- B1. Do you support a short-listing step? Why or why not?
- B2. From the perspective of a developer investing significant funds to prepare a proposal, how many teams do you believe should be short-listed (even if there are many strong teams responding to an RFQ)?
- B3. What do you believe to be the most appropriate criteria for creating a short-list at the RFQ stage?

C. Proposer/Subcontractor Prequalification and Pre-Certification

TxDOT recently received legislative authority to proceed directly to the proposal stage of any CDA procurement for a design-build project. The qualifications assessment would be bypassed in favor of a prequalification and pre-certification stage for construction and engineering service providers, respectively, but only on design-build CDA projects. TxDOT currently anticipates that the design-build CDA prequalification and pre-certification program would operate very much like TxDOT's current prequalification program for highway construction projects and its current pre-certification program for engineering services with regard to meeting prequalification / pre-certification requirements on a design-build CDA project. TxDOT is in the process of drafting rules to implement this streamlined CDA process.

- C1. What recommendations do you have for tailoring TxDOT's current rules governing its existing prequalification / pre-certification programs to the design-build CDA prequalification / pre-certification program?
- C2. What categories of engineering services would you propose be included as categories for pre-certification for design-build CDAs?

- C3. What qualification requirements would you propose be included for prequalification as a construction service provider for design-build CDAs?

D. One-On-One Meetings With Proposers

For large U.S. procurements, there has been success in the use of one-on-one meetings with individual proposers during the period prior to proposal submission. The intention of these meetings is to enable frank exchange of information, ideas and concerns. To encourage such exchanges, TxDOT has sought to use appropriate safeguards during these meetings.

- D1. Do you support one-on-one meetings (after shortlisting and before RFP issuance) for review and comment on draft procurement and contract related documents? Why or why not?
- D2. For the kinds of projects that TxDOT is currently considering, how much time do you believe should be spent on this activity (that is, how many rounds of meetings between TxDOT and proposers are beneficial)?
- D3. What subjects should be covered in one-on-one meetings?
- D4. How can one-on-one meetings be organized to provide value to you, the proposer?

E. Project Definition / Status of Environmental Clearance

The procurement process defined in Section 1 above effectively assumes a relatively well defined project (including environmental approvals) prior to initiating a procurement process.

- E1. What are your views on waiting until a project is largely defined (including environmental approvals) before initiating a procurement process?
- E2. To what extent should all projects be progressed to or near environmental approval before initiating procurement?
- E3. To what extent are there circumstances under which TxDOT should seek proposals well before a project is environmentally cleared?
- E4. Under what circumstances and to what extent would you accept the cost and schedule risk associated with environmental approvals (e.g. "sweat equity")?

F. Pre-Development Agreement

TxDOT and other U.S. public entities have entered into pre-development agreements with developers to utilize the private sector's innovative ideas related to project definition, delivery and financing in order to finalize project scope. Examples of this approach are the original TTC-35 and current TTC-69 procurements.

- F1. In what circumstances should TxDOT consider entering into a pre-development agreement with a developer?
- F2. To what extent would you be interested in such a procurement? Why?
- F3. Under what conditions would you offer "sweat equity" and other contributions in advance of a project proving feasible and ready to develop?
- F4. Do you believe that the use of a pre-development agreement in the right circumstances captures private sector innovation in ways that it cannot capture with consulting resources and of sufficient value to outweigh the benefits to the public of a price-oriented competition?

G. Proposer Innovation

Through its CDA program, TxDOT seeks to capture private sector innovation, value and skills by using tools not available to it through its traditional procurement system. It does this in a variety of ways, including through the use of performance based specifications and outcomes, among other tools.

- G1. What can TxDOT do to encourage proposers bringing innovative ideas and other added value to the CDA procurement process?
- G2. Is it possible to factor a proposer's innovative ideas into a procurement while still utilizing transparent selection criteria and achieving competitive pricing?
- G3. Would you, as a proposer, prefer a procurement that brought you into the project development process well in advance of project feasibility or after a project's definition and feasibility was achieved? Why?

H. Alternative Technical Concepts (ATCs)

In the ATC process, proposers are given the opportunity to propose value-added enhancements that require, within carefully constructed bounds, TxDOT-approved deviations from technical requirements.

- H1. To what extent do you support the "alternative technical concept" process as part of the procurement process for a concession CDA?

- H2. If you support ATCs, do you believe the RFP should allow proposers to incorporate them into their base proposal or offer them as options to the base proposal?

I. Alternative Configurations – Risks & Processes

- I1. To what extent would you welcome the opportunity to offer an alternative configuration to a project if it meant reopening an already-received environmental approval or supplementing an environmental document in a way that would require new public hearings and additional analysis?
- I2. If you support being given the opportunity described in Question I1, would you accept the delay and cost risk at the time of your selection?
- I3. In the situation described in Question I1, how do you believe a selection should be made among proposers?

J. Current and Potential Use of TIFIA and PABs

Through the Transportation Infrastructure Finance and Innovation Act (“TIFIA”), the USDOT provides credit assistance in the form of direct loans, loan guarantees, and standby lines of credit (rather than grants) to projects of national and regional significance.

TxDOT has been authorized, through FHWA’s Special Experimental Project No. 15 (“SEP-15”), to carry out an experimental program for applying for credit assistance under the TIFIA program for up to 3 projects. Under this program, TxDOT would be the initial applicant for TIFIA credit assistance for a particular project. After review and approval of TxDOT’s application, including a pro forma finance plan, FHWA would issue a conditional credit commitment for TIFIA assistance the successful proposer can use. The successful proposer would be given up to 4 months to close financing.

SAFETEA-LU authorized up to \$15 billion in private activity bonds (PABs) to be issued for qualified highway or surface freight transfer facilities. TxDOT is preparing applications to the USDOT for several project-specific PAB allocations.

- J1. As a proposer, how valuable to you are the TIFIA and PABs programs generally? Why?
- J2. Do you find TxDOT’s SEP-15 TIFIA program helpful? Why or why not? How could this system be improved upon?
- J3. How should TIFIA be incorporated into the CDA procurement process outside of the process approved under SEP-15?
- J4. Do you believe TIFIA and PABS will prove to be useful tools in connection with the financing of TxDOT toll concessions? Why or why not?

- J5. Do you have any other suggestions for alternative approaches or refinements that would make TIFIA and PABs more useful?

K. Streamlined CDA Procurement Process

The procurement process for a CDA is a significant investment of time, energy and resources – for both TxDOT and proposers. We are constantly seeking to vet our procurement requirements to ensure they capture value for the taxpayer without placing undue burdens on proposers.

- K1. From a proposer's perspective, what opportunities exist to streamline TxDOT's current CDA procurement process or to render these processes more transparent, user friendly and/or efficient?
- K2. Please comment on any specific submittal requirements or procurement requirements which are not necessary or the value of which is outweighed by the burden they create.

L. Internal TxDOT Project Development Procedures

When approaching the variety of potential projects that it could pursue, TxDOT must decide how, when and to what degree to develop a project in anticipation of a procurement for a CDA with a private developer.

- L1. From what you have seen, is TxDOT using its resources (time and funds) wisely when preparing for CDA projects? Please give examples, if possible.
- L2. How should TxDOT spend its limited resources to prepare projects for CDA procurements? What elements of project preparation are more important than others? What level of project development is appropriate before starting the procurement?

M. TxDOT Provision Of Data Mining Information

In order to ascertain project feasibility and to streamline the CDA procurement process, TxDOT has engaged its own consultants to perform traffic and revenue work for potential CDA projects. TxDOT provides the results from this work to project proposers so that each proposer is not required to duplicate these efforts. Additionally, TxDOT believes that this process avoids problems associated with proposers using disparate traffic and revenue data.

- M1. From a proposer's perspective, is TxDOT's provision of data mining information helpful? Why or why not?
- M2. How can TxDOT improve this process? How would these changes benefit the procurement?

N. Submission Of Preliminary Proposals Prior To Proposal Due Date

TxDOT is thinking of implementing a new step in the procurement process, wherein proposers could submit preliminary proposals before the proposal due date for review by TxDOT. The purpose of the review would be to determine responsiveness to the RFP requirements and screen for issues that might prevent a proposal from being placed in the competitive range. As part of this review, TxDOT would only contact proposers through written requests for clarification or written notices regarding issues that might prevent a proposal from being placed in the competitive range. TxDOT would not use this process to suggest improvements to a proposal or to take other actions that could be construed as negotiations. If used, TxDOT would fully describe the preliminary proposal submission and review process in the RFP.

- N1. From a proposer's perspective, would a preliminary proposal submission process be helpful? Why or why not? What are the greatest benefits to this process? What are the greatest weaknesses?
- N2. Assuming TxDOT includes the preliminary proposal submission process into its CDA procurements, what steps could TxDOT take to maximize the benefit of this process for proposers? Please be as specific as possible.

O. Master Utility Adjustment Agreements

Currently, in order to facilitate coordination of utility adjustment efforts, TxDOT's CDAs establish a system whereby a developer enters into a "Master Utility Adjustment Agreement" ("MUAA") with each impacted utility owner to address the specifics of its utility adjustments; TxDOT is not a party to these agreements. An MUAA can address one adjustment or a group of adjustments. If the parties need to address the adjustment of additional utilities, they amend the MUAA to include those additional utilities. The developer and the utility owners are free to determine between them which party is responsible for design and construction of each adjustment. TxDOT provides the forms to be used for the MUAA and amendments. A developer and a utility owner can negotiate changes to these forms, but TxDOT reserves the right to review and approve the final form of the MUAAs.

- O1. From a proposer's perspective, do you find this process helpful? Why or why not?
- O2. How can TxDOT improve this process to accommodate the needs and concerns of developers?
- O3. To what extent should TxDOT be involved in the utility adjustment process?
- O4. Instead of leaving a developer to enter into MUAAs with utility owners, should TxDOT enter into memoranda of agreement with affected utility

owners prior to issuing an RFP, which would establish the utility owners' agreement to follow specified procedures and requirements during the adjustment process?

3. CONFIDENTIALITY/PUBLIC INFORMATION ACT

All written correspondence, exhibits, photographs, reports, other printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT in response to this RFI are, upon their receipt by TxDOT, the property of the State of Texas, may not be returned to the submitting parties, and are subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Respondents should familiarize themselves with the provisions of the Act. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a respondent for the disclosure of all or a portion of the information submitted in response to this RFI.

4. GENERAL INFORMATION

RFI Issuance Date: June 1, 2006

RFI Closing Date: June 22, 2006

TxDOT reserves the right to modify the above anticipated schedule milestones at any time and for any reason.

At its option, TxDOT may also elect to follow-up directly with respondents with more detailed questions or to clarify submissions.

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Please send an electronic copy of your responses to this RFI to Mr. Pensock at the E-mail address referenced above. If for any reason you cannot submit your responses

electronically, please send a copy of the responses to Mr. Pensock at the address above.