



It was then determined a CDA proposal and an NTTA proposal must utilize the same key business terms in order to effectively compare one to another. In April 2006, the RTC adopted key business terms including toll rates, toll rate escalation and timing of any payments to TxDOT and the RTC.

The ability of the private sector proposal to provide for an up-front payment was of interest as the RTC had numerous projects ready for development which lacked funding resources. The RTC eventually settled on timing of payments to be 75% of the value to be paid up front and the remaining 25% over time in equal annual payments (adjusted for inflation).

The NTTA indicated interest in submitting a "Public Sector Comparator." The intent of this process, which was pre-approved by the FHWA, was to allow TxDOT to continue with the private sector competition, receive four proposals, determine the best value proposal, and then have the RTC compare the best-value proposal from the private sector to the NTTA proposal. The NTTA and private sector proposals would all be based on the same key pre-approved RTC business terms, to be submitted at the same time, allowing for a fair and meaningful competition designed to maximize the value returned to the public.

However, in August 2006, the NTTA Board of Directors rescinded the decision to propose on SH 121 as part of a comprehensive Regional Protocol Agreement between NTTA and TxDOT.

On February 28, 2007, the Texas Transportation Commission conditionally awarded the CDA to Cintra based on the best proposal—an up-front payment of \$2.1 billion, \$700 million total net present value of payments over time and remaining construction of \$560 million.

In March 2007, the Texas Legislature requested information from NTTA “in determining how much the NTTA believes it could offer in up-front fees as well as excess future cash flow after all debt service and operating expenses for SH 121.”

On May 18, 2007, the NTTA submitted a proposal to the RTC to finance, construct and manage SH 121. On June 18, 2007, the RTC passed a motion that the NTTA undertake the development, design, construction, financing, operation, and maintenance of the SH 121 toll project, and requested that the commission approve the selection of the NTTA for the SH 121 toll project. On August 23, 2007, the Texas Transportation Commission rescinded and terminated the CDA with Cintra and authorized the execution of the SH 121 project agreement between NTTA and TxDOT.

On November 29, 2007, NTTA wired funds in the amount of \$3,197,104,248. Simultaneously, at this point in time, multiple projects were being developed or already under construction, and the RTC was in the final project selection process for other projects which would be funded by the \$3.2 billion SH 121 payment (including those projects committed in the Denton County Memorandum of Understanding).

Additionally, SB 792 requires all interest earned on the sub-account for SH 121 funds to be used on transportation in the region. As of June 30, 2008, interest earned is nearly \$70 million.

SH 161

SH 161 is a 12.5 mile segment of the western portion of the outer loop which was recommended in 1957 by the Dallas Area Master Plan Committee. The SH 161 project is located in Dallas County and begins at I-20 in the City of Grand Prairie running north to SH 183 in the City of Irving. A federal court injunction was placed on the development of this corridor beginning in the early 1980s and was finally resolved in 1998. With the injunction lifted, TxDOT began acquisition of right of way.

In 1999 the SH 161 corridor cities requested NTTA review the toll feasibility which determined only the segment from I-30 to SH 183 was financially feasible as a toll facility.

As mentioned previously, in 2004 TxDOT reviewed all projects for toll feasibility and determined the entire SH 161 corridor was viable as a toll facility. In October 2004, the RTC, the cities of Grand Prairie, Irving and Dallas County agreed to toll the project.

In August 2005, TxDOT received an unsolicited proposal for a CDA, and in February 2006 the RTC passed a resolution requesting project delivery of SH 161 by a TxDOT CDA. However, in July of 2007, the CDA procurement process was suspended to

undertake the market valuation process and allow NTTA to decide whether to exercise their option to finance and construct the project in accordance with Senate Bill 792, 80th Legislative Session.

With increasing pressure to ensure a viable route to the new Dallas Cowboys stadium scheduled to hold the 2011 Super Bowl and to open August 2009, the RTC, with agreement from NTTA, requested TxDOT continue with project development.

Overview of SH 161 Market Valuation Process

The market valuation process for SH 161 began on July 19, 2007. Terms and Conditions were finalized on December 21, 2007 with a memorandum of understanding executed on January 25, 2008 between TxDOT and NTTA that memorialized the Terms and Conditions. TxDOT and NTTA then attempted to finalize a market value; however, on February 21, 2008 TxDOT and NTTA reached an impasse over seven material financing assumptions that created a \$400 million gap between each agency's determined market value.

TxDOT had already committed to early delivery of key elements of the SH 161 corridor in time for the 2009 opening of the Dallas Cowboys Stadium and for the 2011 Super Bowl. Under the requirements of Senate Bill 792, the market valuation process had to have been concluded prior to beginning construction of the portion of the project promised for early delivery.

On April 20, 2008, NTTA and TxDOT executed an agreement that provides for a negotiated market value as follows:

- \$458 million upfront payment that provides for repayment of the early delivery projects (\$303.8 million repayment into the RTC's toll revenue account) and provides for funding that can be used to construct additional projects as selected by the RTC; and
- NTTA and TxDOT shall equally share (50%/50%) all net revenues from SH 161 beginning in the 53rd year following execution of the project agreement.

On April 21, 2008, construction work began on the early delivery segment of SH 161 between I-30 and SH 183. The main lane portion from I-30 to SH 183 is currently under construction and funded by the RTC. In addition, TxDOT is completing the final design, and will begin construction this winter, for the main lane underpass of SH 161 at the Union Pacific Railroad. These two projects have an estimated total cost of \$303.8 million and are funded from the RTC's toll revenue account (a portion of the SH 121 payment).

I-635

In 1987 a study of the I-635 corridor was initiated; however, significant local opposition grew regarding two primary factors—proposed right of way acquisition, and the proposal of elevated lanes. The study was re-focused, resulting in environmental approvals in 2003 for the east segment and 2004 for the west segment. The locally preferred design

alternative provides for the addition of six subsurface lanes in the west segment. The six additional lanes are “managed lanes.”

Managed lanes can be best described as highly efficient toll lanes that allow the toll fee to be increased or decreased in order to decrease or increase usage respectively. This operations tool helps maintain an optimum number of vehicles traveling at a faster, more stable speed limit. The benefits are cumulative and include:

- More reliable and predictable travel times thru the corridor;
- Reduced fuel consumption;
- Improved air quality; and
- Improved quality of life.

In May 2005, TxDOT issued a Request for Qualification to begin the CDA procurement process, with the project to be structured as a concession (grant of land usage in return for services).

The scope of the project within the CDA consists of the west segment of I-635 from I-35E to US 75 including:

- Reconstruction of the general purpose lanes;
- New construction of six subsurface managed lanes between and below the existing freeway, either in tunnels or in an open trench with portions of the roadways “cantilevering” over the new managed lanes;
- Reconstruction of crossing structures;
- Reconstruction of existing frontage roads;
- Construction of new frontage roads to provide a continuous frontage road system between I-35E and US 75; and
- Construction of elevated direct connector ramps between Loop 12 and I-635 along I-35E.

TxDOT and NTTA have developed a Tolling Services Agreement (TSA) to provide the administrative and tolling services operations. In addition, the developer will provide all operations and maintenance work required within the right of way for the I-635 and for facilities constructed along I-35E.

This concession allows the proposal teams to modify our plans and submit any variation of solutions provided their proposal meets the goals of the community, and meets the performance requirements of the Request for Proposals (RFP).

TxDOT worked with key staff from the RTC, DART, and the local cities and counties to develop the key business and technical terms that are part of the CDA. Key terms include:

- Selection Criteria is 80% price, 20% technical;
- Term of the CDA is 52 years from the date of CDA execution;
- The Tolling Policy will be as set by the RTC from May 2006;
- The toll rate will ensure an average 50 mph trip through the managed lanes;

- HOVs will receive a 50% discount during 6 peak hours;
- Transit vehicles will not be charged;
- Revenue Sharing will be based upon the selected proposer's base case traffic and revenue line, any revenue exceeding the base case, on an annual basis, will be paid to TxDOT/RTC on an increasing share, known as "banding;"
- Operations and Maintenance will be required for 52 years by the developer for all of I-635, and on elements built by the developer along I-35E;
- Lane Rental will be applied during construction. The developer will be assessed monetary charges commensurate with the Road User Delays costs (as low as \$0 for 1-lane closed at night to \$261,700/hour for 4-lanes closed during peak hour);
- Over 260 Key Performance Measurements will be monitored on an ongoing basis during the design, construction, operations and maintenance phases to ensure quality and responsiveness;
- Liquidated Damages will be assessed for late completion in the amount of \$50,000/day, or non-compliance with the performance requirements in the amount of \$7,400 per occurrence or \$13,200 for uncured occurrences; and
- All Asset Components are to have a remaining life at the end of the 52 year term of 10 years for pavements and 50 years for structures.

Proposals are due September 15, 2008, at which time TxDOT staff, including observers from the local governmental entities throughout the corridor will begin reviewing and scoring the proposals. The Transportation Commission will select the best-value proposal on October 30, 2008, and final award and execution will be completed by December 29, 2008.

The US DOT has been a substantial partner in this procurement. In December, they approved an allocation of \$288 million of Private Activity Bonds, and in February 2008 approved an allocation of \$147 million for a TIFIA Loan. In addition, the US DOT approved tolling of the new lanes on the Interstate through the Express Lane Demonstration Program, the first of fifteen in the nation.

With an estimated construction cost of over \$1.5 billion, plus operations and maintenance costs of \$188 million, and with RTC, state and local funds limited to a maximum subsidy of \$700 million, the selected proposer will use the toll revenue from the managed lanes to finance the balance of construction as well as the operations and maintenance for the 52-year term.

Note: the Request for Proposals is available at:

http://www.dot.state.tx.us/services/texas_turnpike_authority/i635_proposal.htm

Market Valuation Process

The market valuation process now required by Senate Bill 792, 80th Legislative Session is applicable to all projects with a tolling element which includes both tollroads and Managed-HOV lanes.

We appreciate the ability for local tolling authorities to have the first option to develop toll projects, as well as the intent to capture the value of toll projects through the market valuation process which seem to apply lessons learned from the previous PGBT agreement.

Based on our understanding of Senate Bill 792, neither agency may perform development activities (design or construction) of projects until either the market valuation has been mutually agreed to or waived by both participating agencies. This has caused long, drawn out negotiations which we hope to see minimized in the future through improved partnerships and understandings of what is required through the process.

I have included an attachment titled "Toll and Managed Lane Projects in Dallas-Fort Worth." It should be noted that all of these 24 corridors are included on the RTC's Mobility 2030 Metropolitan Transportation Plan, and are a priority for the region. Many of these corridors are codependent with other regional transportation projects which require construction of segments (such as the interchange project of SH 114 at Loop 12, a priority project to facilitate DART's Irving Light Rail Line). In many cases, the timing of construction for these projects severely impacts the ability of TxDOT and NTTA to conclude the market valuation process.

Conclusion

They say that competition brings out the best in products and the worst in people. This is a natural causation of our nation's free market process—to produce the best value product at the lowest cost.

The value of the competitive bidding process is, by its nature, to compel the bidders to propose the best value project at the lowest cost compared to their competition. Bidders try to accomplish this by gaining advantage over their competition through the development of innovative, low cost, high value materials, construction techniques, scheduling, and financing components for their proposal with the goal of being awarded the project.

TxDOT and NTTA have the same charter—to serve the public's best interest. While it has been difficult to blaze new trails, it has not been without success. We have learned many lessons from these experiences, and stand ready to share our expertise and assist in any way requested.