



Strategic Projects Division



DESIGN BUILD: The Texas Story

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Agenda

- TxDOT's Plan / Goals
- Public-Private Partnerships
- CDA Methodology / Risk Allocation
- TxDOT Roles / Responsibilities
- Right of way and Utilities
- Lessons Learned
- Key Factors to Project Success



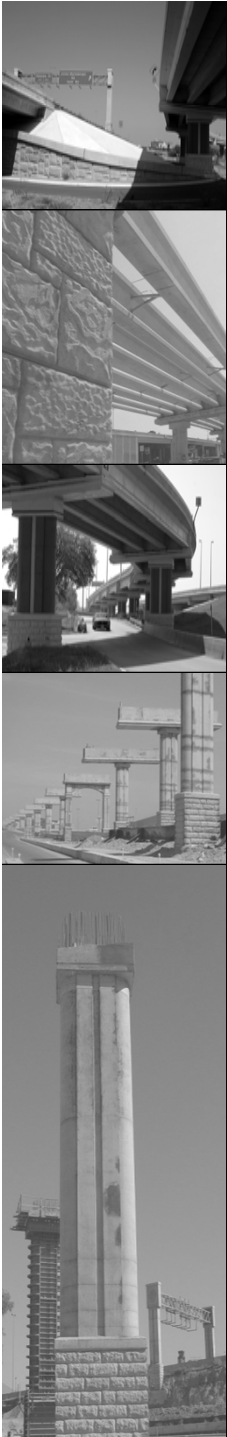
TxDOT's Plan

- Reduce Congestion
- Enhance Safety
- Expand Economic Opportunity
- Improve Air Quality
- Increase the Value of Transportation Assets



Four Strategies

- Use all financial options to build transportation projects.
- Empower local and regional leaders to solve local and regional transportation problems.
- Increase competitive pressure to drive down the cost of transportation projects.
- Demand consumer-driven decisions that respond to traditional market forces.



Public-Private Partnerships

1. Open the doors to accelerating the finance, design, construction, operations and/or maintenance of a project.
2. Help TxDOT reach its goals to improve the transportation system of Texas.
3. Provide for the additional funds that allow TxDOT to complete projects much quicker than traditional funding sources.



Comprehensive Development Agreement (CDA)

1. Agreement with one entity (the Developer) to design, acquire ROW, adjust utilities, construct, finance, operate and/or maintain certain transportation facilities.
2. Very strict Procurement, Evaluation and Selection process.
3. Best Value Selection- Price, schedule, qualifications
TxDOT selects the Developer (Consortium)
4. Types of Facilities
 - Highways
 - Turnpikes
 - Managed Lanes
 - Freight or Passenger Rail



Comprehensive Development Agreement (CDA)

1. Current Types of CDAs

- Design / Build
- Pre-Development Agreements
- Concession Agreements

2. CDA Procurement

- Unsolicited
- Independent Proposals submitted at TxDOT's request

3. Project Transfer to TxDOT

- At the end of the CDA term (Concession)
- Transfer occurs after construction (Design/Build)

Currently Executed CDAs in Texas

		Cost of Construction (\$)
1. DFW Connector (Oct-09)	Design/Build w/Maint Opt	1.5 billion
2. I-635 / LBJ Freeway (Sept-09)	Concession	4 billion
3. North Tarrant Express Seg 1 & 2W (Jun-09)	Concession	1.1 billion
4. North Tarrant Express Seg 2-4 (Jun-09)	Master Development Plan	750 million up to 4 billion
5. SH 130 Segments 5 & 6 (Mar-2007)	Concession	1.35 billion
6. SH 130 Segments 1 - 4 (2002)	Design/Build w/Maint Opt	1 billion
7. I-35 TTC (2005)	Master Development Plan	4.4 billion
8. Toll Integrator (2004)	Design/Build Raytheon	68 million



Currently in Procurement

More, more, more !!!!

Proposed Project	City	Limits	Delivery Method	Total Cost (\$)
1. Grand Parkway SH 99	Houston	F1, F2 and G	Design / Build w/ Maint Opt	1.5 billion
2. Interstate 35 E	Dallas	LBJ 635 to Denton	Concession or D / B	4 billion
3. North Tarrant Express	Ft Worth	Seg 3 A and 3 B	Concession and D/B/B	500 million
4. The Horseshoe	Dallas	I 35 I 30 interchange	Design / Build or Concession	600 million
5. Border Highway Loop 375	El Paso		Design Build	

In the pipeline

1. SH 288 in Houston Managed Lanes		2013	Concession or D / B
2. US 290 from Loop 6 to Grand Pkwy		2013	Design / Bid / Build
3. SH 249 NW Houston Managed Lanes		2013	Concession or D / B





CDAs & Risk Allocation

CDAs delegate risk to the parties best able to manage it.

Assign to Owner

Assign to Developer

Shared Risk

Concession Program differs from Design / Build



Risk Allocation & Contracting

Allocating Other Risks

1. Who can best control the risk?
 - Right of Way
 - Utility Relocations
2. Who can best manage the risk?
 - Differing Site Conditions
 - Force Majeure
3. Are contractors willing to assume the risk?
 - Hazardous Materials
 - Paleo / archaeo / bio
4. How much will it cost?
 - Permits
 - Railroads

Different Project Delivery Types & Risk Sharing¹

Risk Type	Design Bid Build	Design Build	Availability Payment	Design Build Finance O/M (Pass-Through)	Concession Finance O/M 50 yrs
Environmental Approval	Owner	Owner	Owner	Owner	Owner
Environmental Compliance	Owner	Shared	Developer	Developer	Developer
Financing	Owner	Owner	Developer	Developer	Developer
Design	Owner	Developer	Developer	Developer	Developer
ROW Acquisition	Owner	Shared	Developer ²	Developer ²	Developer ²
Utility Delays	Owner	Shared	Developer	Developer	Developer
Construction	Shared	Shared	Developer	Developer	Developer
Schedule Delays	Shared	Developer	Developer	Developer	Developer
O & M	Owner	Owner	Shared	Developer	Developer
Traffic & Revenue	Owner	Owner	Owner	Shared	Developer

1 Actual Risk Allocation may vary by specific project

2 Eminent Domain risks and delays retained by the owner

... Shared Risk Allocation

Public

Risk Transfer by Model

Private



Design/
Build

D/B/
Finance

D/B/F Operation
/ Maintenance

Build-Operate-
Transfer/Concession

Regulatory
Approvals
Environmental
Customer Acceptance
Design
Traffic/Rev.
Finance
Technology
R-O-W
Construction
O&M

Regulatory
Approvals
Environmental
Customer Acceptance
Design
Traffic/Rev.
Finance
Technology
R-O-W
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O&M

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Technology
R-O-W
Construction
O&M



Our Transportation Promise

1. Facilities completely owned by the State of Texas.....
at all times.
2. CDAs include provisions that allow TxDOT to purchase or “buy back” private developer interest at any time, if “buying back the project” would be in the best financial interest of the State.
3. Texas Transportation Commission approval of toll rates.
4. Only new lanes added to an existing highway will be tolled.
5. Use of existing right of way that satisfies the purpose and need of the project is always considered.



TxDOT's Roles & Responsibilities Right of Way & Utilities



TxDOT's Role

1. **To provide oversight management on right of way and utility activities performed by the Developer.**
2. **Establish proper guidelines and procedures in our oversight role, providing guidance to the Developer, ensuring compliance of:**
 - **CDA Documents**
 - **State & Federal Rules and Regulations**
 - **TxDOT Policy & Procedures**



TxDOT Responsibilities

1. Approval of all acquisition and utility packages submitted by the Developer.
2. Approval of all property owner offers and settlement opportunities.
3. Manage eminent domain efforts; all acquisition is in the name of the State of Texas.
4. Oversee the Developers' effort through our consultant management contracts.



Other Reasons Why We are Here

1. Facilitate Contract and Procedural Compliance
2. Mitigate Delay Claims / Penalties (per day charge)
3. Eliminate Compensable Events
4. Analyse Time Extensions and Project Deviation Requests
5. Facilitate Audit Review (FHWA, Bond, State, Comptroller)
6. [Protect the Property Owner and Displacees](#)



Lessons Learned



Lessons Learned

1. Parallel Paths

- Use of simultaneous activities

2. Title Issues

- Ensuring the Developer provides clean title prior to title policy being issued.
- Make good business decisions on title risk. Don't chase title curative activities that are low risk.

Lessons Learned

3. Utility Issues

- Coordination of New Utility Permit Requests during design and construction.
- Redefine the term “Developer”. Communicate it
- Early notification to utility owners of the project & what to expect
- Initial Project Meeting
- Kick-Off Meetings
- Workshops with line level employees and sub contractors




Lessons Learned

4. Driveway Issues
 - Controlled Access Highway
 - Coordination of Driveway Permits during design and construction

5. Coordination of State Government Responsibilities
 - ESA – Environmental Site Assessments – Due diligence
 - Hazardous Materials

6. Engage condemnation lawyers early.



Key Factors to Project Success

Other Key Factors

1. Delegation of Authority – empowerment but accountability.
2. Utilization of Employee Resources and Consultant Resources
3. Coordination Efforts/Communication
4. Co-Location – not next door, but very nearby
5. Incorporate Lessons Learned each time...
 - Make it better
 - Clarify language
 - Address risk



TxDOT Delegation of Authority

1. TxDOT Responsibilities in CDA:
2. Direct Management Authority / Signature Authority from Executive Director
3. Control and Command
4. Back-up / Redundancy
5. Recovery Plan



Employee Resources

1. Never under-estimate how many people it takes to get the job done. Be ready.
2. Assignment of Tasks / Managing Efforts
 - Set up resource plan
 - Track activity
 - Anticipate needs – schedule, communication,
 - Acknowledge results good and
3. Know who is doing what,... and when its supposed to happen
4. Internal Communication
 - Same message to staff as you do to the Developer.



Coordination Efforts

1. Project Progression Meetings
2. Executive Partnering Sessions
3. Team Partnering Sessions
4. Schedule Impacts / Critical Path Parcels
5. Specific Milestones



Email Communications

1. Be Cautious
2. Great for Tracking Purposes
3. Creates an Evidence Trail
4. Composure / Emotion
5. Sensitivity to Other Perspectives



Partnership Approach

1. Project success is dependent on effective partnering and cooperation.
2. Both Parties must commit to **WORK WITH** each other.
3. TxDOT must consider Developer proposed methodologies that may streamline the process.
4. Understand that the Developer must be profitable.



Q & A ???



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Except as otherwise set forth below, TxDOT's Executive Director shall be the Authorized Representative.

	Description	SH 130 Right of Way Manager			SH 130 Project Manager			Statewide CDA Board Chair	Asst. Executive Director Engineering Operations	Asst. Executive Director Districts Operations							
		P	S	A	P	S	A										
1	IE Coordination/oversight		S		P		A										
2	IE Work Authorizations and Supplement Agreements				P		R		A								
3	IE Notices to Proceed				P		R	A									
4	FHWA Coordination	P			P												
5	Audit/Monitor Design				P	S	A										
6	Audit/Monitor Construction				P	S	A										
7	Audit/Monitor Operations and Maintenance				P	S	A										
8	Audit/Monitor/Approve Right-Of-Way	P	A														
9	Audit/Monitor/Approve Utilities	P	A														
10	Audit/Monitor Small Business Mentoring Plan				P	S	A										
11	Audit/Monitor DBE				P	S	A										
12	Audit/Monitor OJT				P	S	A										
13	Approval of Key Personnel (ROW Acquisition Manager ONLY)		A														
14	Approval of Key Personnel (Facility Manager ONLY)				P	S	R	A									
15	Approval of Key Personnel						A										
16	Audit/Monitoring Safety Compliance				P	S	A										
17	Audit/Monitor Baseline Schedule				P												
18	Approval of Changes to Baseline Schedule*				P		A										
19	Governmental Approvals - Article 6.2		S		P	S	A	R									
20	Deviation - Article 7.2.3		S		P	S	A										
21	Issuance of NTP(s) - Article 7.7		S	R	P		R	A									
22	Determination of Substantial Completion - Article 7.8.1		S	R	P		A										
23	Punch List - Article 7.8.2		S	R	P		A										
24	Conditions To Service Commencement - Article 7.8.3		S	R	P		A										
25	Final Acceptance - Article 7.8.4		S	R	P		A										
26	Early Opening and Operation - Article 7.8.5				P		A										
27	Hazardous Materials Management - Article 7.9				P		R	A									
28	Increased Oversight -Article 9.2.2				P		R	A									
29	Competing Facilities Determination -Article 11				P		R	A									
30	Reserved Airspace/Business Opportunities				P		R	A									
31	Mandatory Upgrade				P		A										
32	Discretionary Upgrades - Article 12.3				P		R	A									
33	Relief/Compensation Events - Article 13				P		R	A									
34	Change Orders less than \$700k	P		R	P	S	R			A							
34A	Change Orders greater than \$700k				P	S	R		A								
35	TxDOT/Developer Representations/Warranties - Article 15				P		R	A									
36	Informal Dispute Resolution - Article 17.8.3	P		R	P		R	A									
37	Warning Notice - Article 17.2.1	P		R	P		R	A									
38	TxDOT remedies for Developer Default - Article 17.3						R	A									
39	TxDOT Step-In Rights - Article 17.3.4		S	R	P		R	A									
40	Damages Offset		S	R	P		R	A									
41	Suspension of Work		S	R	P		R	A									
42	Liquidated Damages - Article 17.4.1		S	R	P		R	A									
43	Non-Compliance Points - Article 18		S	R	P		A										
44	Termination - Article 19		S	R	P		R	A									
45	Assignment and Transfer - Article 21		S	R	P		R	A									
46	Public Information Article Section 3, Book 2		S	R	P		R										
47	Replacement of IE - Article 24.1		S	R	P		R	A									
48	FCA Amendments value less than \$20 million - Article 24.3		S	R	P		R	A									
49	Waiver - Article 24.4		S	R	P		R	A									
		P	S	A	R	P	S	A	R	P	S	A	R	P	S	A	R

P= Primary Responsibility S=Supporting Responsibility A= Approval Authority R=Recommending

*Exercise of this approval shall not result in creation of a Relief Event or Compensation Event.