2003 Transportation Short Course

Drafting the Future: The Dollars and Sense of Toll Roads

Comprehensive Development Agreements (CDA)

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Comprehensive Development Agreements: What They Are, What They Aren't and How To Use Them

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Highlights

- CDAs: A New Way to Do Business
- What is a CDA?
- New CDA Authority
- Choosing the Right CDA Model
- CDA Risk Allocation Process: Sample Issues
- CDA Procurement Methodologies
- Best Value Selection Process
- Applying Lessons Learned to Avoid Pitfalls

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CDAs: A New Way of Doing Business

- CDAs require a top-down organizational change in thinking and approach
- For the right project, CDAs offer many significant advantages over traditional low bid procurement and pay-as-you-go funding

What is a CDA

- Agreement with one entity (the developer) to design, develop, construct, finance, acquire, operate and/or maintain certain kinds of facilities
- Types of facilities:
  - Highways, Turnpikes, Freight or passenger rail, Public utilities
- Best value selection
- Will not replace conventional project delivery in most cases
- Another tool in the tool box

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New CDA Authority

- HB 3588 passed in May 2003
- Changed name from "Exclusive Development Agreement" to "Comprehensive Development Agreement" ("CDA")
- Essentially unlimited CDA use through 2011
- Can be used in two primary circumstances
  - Trans Texas Corridor ("TTC")
  - Turnpike projects
- Amended rule (amended Summer 2003) sets forth policy and procedures for CDA use

Choosing the Right CDA Model

Selected Forms	Characteristics	Suitable For:	Examples
Design-Build or Design-Build-Maintain	▪ One point of responsibility ▪ Earlier cost certainty ▪ Accelerated delivery ▪ Shifting risk away from owner	Well defined project that is not fully designed	SH 130; SH 45
Strategic Business Partnership	▪ Early private sector involvement in developing short, mid and long term Corridor strategy ▪ Assists TxDOT in packaging specific facilities for procurement ▪ Some "self performance" under specific conditions	Corridor program where project definition, prioritization, packaging and finance would benefit from private sector "bottom line" vision	I-35 TTC procurement
Concession/ Franchise	▪ Revenue sharing ▪ Facilities leasing ▪ Shared operations and revenue risks and responsibilities	Well-defined project that would benefit from entrepreneurial approach to finance and long-term operations	UK; Europe; California SR 91 and SR 125

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Sample CDA Risk Allocation:

Design Process

- Final Alignment Geometry
- Original Geotechnical Data
- Design Criteria
- Station Location and Design
- Design Review Process
- Timeliness of Design Reviews

CDA Procurement Methodologies

HB3588 authorizes two methods

- **Solicited Procurements (TxDOT initiated)**
  - **Issue RFQ**
  - **Evaluate and "short-list" teams**
  - **Issue Request for Detailed Proposals ("RFDP") to short-listed teams**
  - **Evaluate detailed proposals and select apparent best value**
  - **Limited negotiations and award**

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CDA Procurement Methodologies

HB3588 authorizes two methods

- **Unsolicited Procurements (Developer initiated)**
  - **Private entity submits proposal**
  - **If Commission finds merit, issue Request for Proposals and Qualifications ("RFPQ")**
  - **Evaluate original/teams competing proposals and "short-list" teams**
  - **Issue RFDP to short-listed teams**
  - **Evaluate detailed proposals and select apparent best value**
  - **Limited negotiations and award**

Best Value Selection Process

- Best value (BV) = Price and Other Factors
- Takes into account qualitative factors that can have a major impact on the project
- Common "other factors"
  - technical design/approach
  - innovation
  - qualifications, experience, key personnel
  - minimizing public impacts (e.g., traffic maintenance)
  - QA/QC approach
  - schedule
- BV determination is made by combining price with the "Other Factors" scoring based upon a pre-determined weighting and model

Applying Lessons Learned to Avoid Pitfalls

- Don't take design too far (may result in re-design and constraints on innovation)
- Undertake appropriate due diligence early to support risk allocation. Examples:
  - soil and hazardous materials investigation
  - utility surveys
- Devote sufficient resources to procurement administration
- Avoid micro-managing the developer
- Avoid changing your mind mid-stream

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