



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: TIFIA and SEP-15

Date: December 27, 2005

From: C. D. Reagan
Division Administrator
Austin, TX 78701

Reply to
Attn. of:
HDA-TX

To: Mr. Rick Capka
Acting Administrator
Washington, DC, 20590

Attached is TxDOT's application for SEP-15 involving multiple projects and TIFIA loans. This subject has been discussed at length with the TIFIA office and the details worked out over the last 60 days. The Division fully and strongly supports this approach. Your prompt response will be greatly appreciated.

Attachment

cc: Mr. Ed Kussy, HCC-1
Ms. Suzanne Sales





Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

December 20, 2005

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TEXAS DIVISION
FHWA

Mr. C.D. Reagan
Division Administrator
Federal Highway Administration
Federal Office Building, Suite 826
300 East Eight Street
Austin, TX 78701

RE: Request for SEP-15 Approval: Request for Waivers/Variations of TIFIA Program Procedures in connection with Receipt of Conditional Approval of TIFIA Support in Competitive Procurements for IH 635 Project, US 281/Loop 1604 Toll Project and the SH 161 Project.

Dear Mr. Reagan:

This letter constitutes an application for SEP-15 approval of the Texas Department of Transportation's (TxDOT) plan to more effectively utilize the TIFIA federal credit assistance program and thereby leverage additional private co-investment opportunities for surface transportation projects of national significance. This request relates to our competitive procurements of the following projects:

- The \$3.5+ billion IH 635 (LBJ Freeway) in the Dallas-Fort Worth metropolitan area;
- The \$1.4+ billion, 45-mile US 281/Loop 1604 Toll Project in San Antonio; and
- The SH 161 project through Irving and Grand Prairie.

Descriptions of each of the projects and the procurement process to be used for selecting a developer of each project are included in Exhibit A. The formal application for TIFIA assistance for each of the projects will provide more detailed information regarding the project descriptions and schedules.

For purposes of this application, TxDOT requests that you consider first the application with respect to the IH 635 Project. TxDOT is currently reviewing Qualification Statements from four proposers received in response to its Request for Proposals ar Qualifications issued in September. The formal application for TIFIA assistance v describe the segment(s) of the project which will be the subject of the first TIFIA loan.

We understand that the approval to use the experimental features identified in t request may be withdrawn from one or more of the projects at any time prior

issuance of the conditional term sheet for a project if it's determined that the experiment for that project has failed and does not merit further federal participation in the experiment, provided such a withdrawal will not prejudice the ability of the individual proposers to pursue TIFIA assistance on their own. Furthermore, we understand that the approval to use a particular experimental feature may be withdrawn at anytime if there is a determination that such feature is not in the public interest, and therefore federal participation in such an experimental feature is not warranted.

We reserve the right to supplement this request to seek approval of other experimental features relating to TxDOT's Comprehensive Development Agreement (CDA) program for these projects, including features relating to the design and construction of the projects.

Background

TxDOT is developing each of the projects through a public-private partnership. Specifically, pursuant to a CDA, a private entity ("Concessionaire") would have the right and obligation to develop, design, construct, finance, operate and maintain and charge users fees with respect to the project improvements.

TxDOT will ask the pre-qualified proposers for each project to submit final detailed proposals for the project that include financial proposal requirements. To be effective, TxDOT's financial proposal requirements contemplate that each proposer will have its loan and equity commitments in hand as of the proposal due date. This element of the procurement is crucial because it allows TxDOT to compare the value to the State of each financial proposal.

If any of the proposers are interested in seeking TIFIA credit support for the project (which appears likely), it will need to know the amount, terms and conditions of any TIFIA credit support before it delivers its financial proposal to TxDOT. The Concessionaire's financial commitments should enable it to close the project financing within four months after its selection.

Purpose of Experiment:

Federal policies generally encourage price competition, which this concession procurement contemplates. However, we recognize that it would be burdensome for the TIFIA office to be required to work with multiple proposers during the bid preparation period, when ultimately TxDOT will award only one of them the contract. The primary goal of this request is effectively to utilize the TIFIA program and to streamline the TIFIA approval process in connection with procuring a final proposal for each of the projects

by having TxDOT take the lead in obtaining conditional approval of a TIFIA credit instrument at the time the final request for detailed proposals is issued. Prospective proposers that wish to use the TIFIA assistance will then be in a position to prepare substantially final financial plans with the reasonable assurance that they can achieve financial close if selected. By reducing the risk to the proposers concerning the availability of TIFIA assistance, TxDOT believes that proposers will be encouraged to submit more refined financial proposals and thereby enhance the value of the proposals. Furthermore, TIFIA staff, consultants and officials will be relieved of the burden of having to review multiple proposals and negotiate with multiple potential borrowers. TxDOT's expects this approach to produce time savings and innovation in project development and financing.

Although using the same revenue information obtained from TxDOT, each proposer is likely to have a different project financial plan, with a different combination of equity and debt, different debt terms depending in part on whether they are utilizing bonds or bank loans and different assumptions concerning project revenues over the term of the concession. Another goal of this request is to involve the TIFIA JPO in the procurement process by keeping it informed of the legal and financial structure of each of the proposers, as well as their financial plans. This exchange of information will result in a seamless final approval of the TIFIA credit assistance and execution of the credit agreement upon final selection by TxDOT of a project proposal.

Experimental Features Relating to USDOT Issuing Conditional TIFIA Credit Commitment to TxDOT for Use By Project Proposers

The implementing regulations for the TIFIA program appear at 49 CFR 80.1-80.21. They were drafted based on the assumption that TIFIA applications involving private developers would not be submitted to the US DOT until after the public entity has selected a proposer pursuant to its competitive procurement process. The US DOT typically then evaluates that selected proposer's application for TIFIA credit assistance and decides whether to approve it. The US DOT, the project sponsor, and the lenders also negotiate and agree on the details of the financing package in a conditional term sheet.

TxDOT expects the selected proposer for each project identified above to complete its financing arrangements within four months after award with few contingencies. For these procurements, TxDOT therefore requests the opportunity to submit a letter of interest and application for TIFIA credit assistance for an amount of TIFIA loans/credit support that would be made available to all pre-qualified proposers for purposes of preparing their respective project financial proposals. TIFIA, in other words, would issue a conditional commitment for credit assistance with the understanding that the

final amount of credit assistance may vary and that the entity signing the credit agreement will be the proposer selected by TxDOT. Similar advance commitments are made by the European Investment Bank for highway concession projects in Europe.

To achieve a conditional commitment for TIFIA assistance, TxDOT is asking for several waivers of or variations from the usual TIFIA approval process, in particular, the provisions of Sections 49 CFR 80.7 and 80.11. As the procurement process progresses, supplemental requests may be necessary.

A. Experimental Feature 1 – TxDOT requests that you consider this SEP 15 application its letter of interest to use TIFIA credit assistance for each of the projects. Accordingly, TxDOT is requesting the following waivers/variances:

1. Waiver of Information Relating to Final Project Sponsor. As stated above, TxDOT is considered the initial applicant for TIFIA assistance. As the procurement process proceeds, TxDOT will keep the TIFIA JPO informed concerning the prospective proposers, their qualifications and their legal structures.

2. Waiver of Proposed Plan of Finance. TxDOT will be seeking input from prospective proposers concerning such plan of finance information as project cost and revenue estimates.

B. Experimental Feature 2 – In connection with submission of an initial application by TxDOT for TIFIA credit assistance TxDOT is requesting the following waivers/variances:

1. Waiver of Information Relating to Final Project Sponsor. See A.1 above.

2. Variances/Waivers for detailed financial plan, project management plan, preliminary rating opinion and financing documents. TxDOT intends to submit the application for TIFIA assistance prior to the time it receives this information from the prospective proposers in connection with their response to the request for development proposals. Since the final terms of the finance plan will not be known, TxDOT would submit a pro forma plan of finance that will be based on internal assumptions as well as input from prospective proposers concerning project costs, projected revenues, the senior lien debt, the principal amount of the TIFIA loan and repayment terms, the terms of the TIFIA guarantee or the amount of the line of credit required. The pro forma plan of finance will demonstrate to the reasonable satisfaction of USDOT that the project's future revenue will be sufficient to support repayment of the TIFIA credit assistance. TxDOT will endeavor to follow the "Mega Project Finance Plan" guidelines to the

greatest extent possible; however, given the preliminary nature of project funding some deviation from the guidelines may be necessary.

C. Experimental Feature 3 – In connection with completing the procurement process, TxDOT is requesting the following waivers/variances:

1. Request for review of multiple project proposals. In the usual course of the approval of TIFIA assistance, the TIFIA JPO is involved in reviewing a single proposal from one project sponsor. TxDOT is requesting the involvement of the TIFIA JPO in the review of all of the final development proposals. This input is important to insure that upon award the final developer will receive a final term sheet and execute a credit agreement with USDOT within the time frame established for financial close. Information regarding each of the proposers will be provided as it is obtained by TxDOT as part of the procurement process. To preserve and maximize competition, both TxDOT and the individual proposers will have a strong interest in maintaining the confidentiality of their financial negotiations and in not disclosing to the other proposers the terms and conditions of their respective project financial plans. Those reviewing such information on behalf of the TIFIA JPO will be asked to keep all such information confidential according to the terms of a confidentiality agreement. TxDOT will require each proposer seeking TIFIA assistance to provide a preliminary rating opinion letter in its proposal to the State.

2. Request TIFIA JPO provide a form of credit agreement. Under its usual procedures, the TIFIA JPO would not begin negotiation of a final credit agreement until issuance of the term sheet. TxDOT believes it is critical to the procurement process that prospective proposers have the form of a credit agreement to review in order to prepare final financial plans. Furthermore, the preparation of a draft of the credit agreement will facilitate financial close within the necessary time frame. Accordingly, TxDOT requests that the TIFIA JPO provide TxDOT with a form of credit agreement to be reviewed by TxDOT's special counsel and financial consultants with the goal of including a substantially final form of credit agreement with the request for final detailed proposals.

3. Request for Issuance of Conditional Project Selection and Term Sheet. Following receipt of the TIFIA credit assistance application and sponsor presentations, DOT staff prepares a final evaluation and recommendation for the TIFIA Credit Council. The TIFIA Credit Council in turn makes its recommendation to the Secretary of Transportation who then selects projects to receive credit assistance. A final term sheet is then issued setting forth the key business terms and conditions of the credit assistance. Because the final information concerning the project sponsor as well as the final finance plan will not be known at the time TxDOT issues the request for final

development plans, TxDOT is requesting that the project receive a conditional project selection and term sheet which has received Credit Council approval. In submitting firm proposals, prospective proposers need to know that their project proposals will be receiving TIFIA assistance at the requested levels according to the terms described in the form of credit agreement. Accordingly, TxDOT will need to include in the request for proposal materials a commitment from USDOT to provide TIFIA assistance subject to satisfaction of certain conditions. Project evaluation and conditional selection can be made on the basis of the information submitted by TxDOT in its application with the understanding that any final project selection, the issuance of a final term sheet and the execution of a final credit agreement will require review of the key business terms of the final development proposal to insure that it meets the requirements of the TIFIA program, including receipt of an investment grade rating of the senior debt and a rating of the TIFIA default risk.

Goals

TxDOT believes that the process for obtaining federal credit assistance under the TIFIA program in connection with the procurement process as described herein will serve the following goals:

- Expedite delivery of facilities, consistent with available public and private funding and maximize use of public-private partnerships and private equity in project delivery;
- Attract proposals from the highest quality, most capable and innovative domestic and international multi-modal transportation and utility infrastructure entities and consortia;
- Encourage flexibility, innovation and alternative approaches to financing, design, construction, operation and maintenance;
- Create a process that encourages private sector competition and leveraging of public contributions with private investment;
- Maximize project eligibility for all available forms of financing, allowing a plan of finance to be developed involving a combination of private sector funds (including revenue-based financing), federal, state and other public funds (including both loans and grants), and leveraging scarce public funds to the maximum extent possible; and
- Ensure open, fair and wide competition for project development.

Measures; Evaluation

This experiment in the process for obtaining federal credit assistance under the TIFIA Program, with its innovative features, will be evaluated on a range of factors, including:

Time Savings. TxDOT will (1) compare the actual schedule for receiving TIFIA credit approval and execution of a credit agreement with the finalist with the estimated schedule based on a traditional approval process, (2) evaluate the effect of the experiment on the receipt of final proposals and financial close, and (3) attempt to quantify the value of the streamlined TIFIA credit approval approach described herein.

Innovation in Financing. TxDOT will analyze the financing structures and methods developed in connection with the projects and how those structures and methods compare to TxDOT's historical project financing structures and methods. As part of this analysis and comparison, TxDOT will particularly focus upon the levels of financing and project risk shifted to the private sector and strategies employed to minimize State and TxDOT risk.

Reporting

TxDOT anticipates filing an initial report and a post-acceptance report as described below:

- Initial Report: The initial report will be filed within 120 days after the award of a CDA for each project and will include a preliminary analysis of the CDA procurement. This report will:
 - Describe the process used to select the developer team;
 - Identify any reaction by the industry to use of the TIFIA approval process as described herein;
 - Document major innovations contained in the proposals received; and
 - Discuss any major problems or issues that have occurred and how they were resolved.
- Post Acceptance Report: A post acceptance report will be submitted within 180 days following execution of the CDA and financial close for each Project. This report will provide an overall evaluation of the role of the TIFIA approval process in the procurement of detailed proposals and the execution of the final CDA for each of the projects.

Time is of the essence in obtaining the approval of the experiment requested by this letter in order for TxDOT to proceed with the procurements as planned for each of the Projects. We would greatly appreciate your earliest consideration of our application.

Please feel free to contact Phillip E. Russell, P.E., Director of the Texas Turnpike Authority Division at (512) 936-0903 as you review this application. Please do not hesitate to request that our agency and staff meet with you at your offices and/or meet with FHWA Headquarters representatives to provide any clarifications or further explanations that you deem advisable.

Sincerely,

A handwritten signature in black ink, appearing to read "M. W. Behrens", with a long horizontal flourish extending to the right.

Michael W. Behrens, P.E.
Executive Director

Attachment

cc: Phillip E. Russell, Texas Turnpike Authority Division, TxDOT

Project Descriptions

A. IH 635

On May 24, 2005, TxDOT requested project financing and development proposals and qualifications from proposers desiring to develop, design, construct, finance, operate and maintain improvements to the existing IH-635 (LBJ Freeway) in the Dallas-Fort Worth metropolitan area, pursuant to a Comprehensive Development Agreement.

Qualification statements were received from four (4) proposers on September 22, 2005 and are currently being evaluated. TxDOT expects to make a shortlisting decision in Mid-December. The remaining procurement schedule, which is still under development, is set forth below.

The corridor is approximately 24 miles long from Luna Road to IH 30. Municipalities located adjacent to the corridor include Dallas, Farmers Branch, Garland and Mesquite. The Project also includes a portion of the IH-35E facility that extends south of IH-635 to the Loop 12/IH-35E Interchange (Split). The Project is described by a series of letters from "A" to "T", each of which represent a Project Segment.

The Project is comprised of numerous segments, as more particularly set forth in this project description (individually referred to herein as a "**Project Segment**" and collectively referred to herein as "**Project Segments**").

Each Project Segment (Segments ABC, DE, F, G(1), G(2), H, I and J) has received environmental clearance. TxDOT received a finding of no significant impact (FONSI) for the West Section on April 29, 2004 (includes Segments A, B, F, H and J). TxDOT received a FONSI for the East Section on January 30, 2003 (includes Segments E, G(1) and G(2)). TxDOT received a FONSI for the Dallas High Five project on October 22, 1993 and received a re-evaluation on January 31, 2001 (includes Segment D). TxDOT received a FONSI for the Loop 12/35E project on December 12, 2002 (includes Segments C and I).

Within each Project Segment, subprojects have been identified as requiring priority in completion independent of the Project Segment completion. The milestone completions associated with the subprojects are included in the Project Description.

Project Segment ABC

Developer will be required to achieve Substantial Completion of Segment ABC on or before January 10, 2013.

Project Segment ABC consists of:

A – Development of the managed lanes within the IH-635 right-of-way from east of the IH-35E interchange at Webb Chapel to the IH-635/US 75 Interchange (Dallas High Five or DHF).

B – Development of direct connector ramps within the limits of the existing IH-635/IH-35E interchange necessary to facilitate traffic movement to and from the IH-635 managed lane system in Segment A.

C – Development of the two elevated direct connector ramps within the proposed IH-35E right-of-way. The elevated roadways will be located adjacent to the existing IH-35E general purpose lanes and will extend from the Loop 12/IH-35E interchange (Split) to the IH-635/IH-35E interchange.

Project Segment DE

Project Segment DE, which includes the limits of the DHF and IH-635 from the DHF to east of the DART Garland LRT Line between Skillman Road and Miller Road, consists of:

D – Development of the managed lane components within the limits of the DHF. The DHF infrastructure is currently under construction and is expected to be near final completion at the time of this RFDP.

E – Development of IH-635 within the planned right-of-way from the DHF to east of the DART Garland LRT Line. This segment includes the ramp access to the DART LRT station between Skillman Road and Miller Road.

Project Segment F

Development of the remaining IH-635/IH-35E interchange within the planned right-of-way. This segment includes the development of IH-635 within the planned right-of-way from Luna Road to east of the IH-635/IH-35E interchange approaching Webb Chapel and development of IH-35E within the planned right-of-way from Royal Lane to Valley View Lane and other aspects as required up to Valwood Parkway.

Project Segments G(1) and G(2)

G(1) – Development of IH-635 within the planned right-of-way from east of the DART LRT station between Skillman Road and Miller Road to the IH-635/IH-30 interchange.

G(2) – Development of the IH-635/IH 30 interchange within the planned right-of-way. This segment includes all remaining elements of the IH-635/IH 30 interchange not constructed with Segment G(1) and the phase 2 Mesquite Section.

Substantial Completion of Project Segments G(1) and G(2) on or before the end of 2020.

Project Segment H

Development of IH-635 within the planned right-of-way from east of the IH-635/IH-35E interchange to Preston Road and any point east of there approaching the DHF. This segment includes all remaining elements of the corridor not constructed with Segments ABC and F and the West Early Frontage Road and as Project J.

Project Segment I

Development of IH-35E within the planned right-of-way from the Loop 12/IH-35E interchange (Split) to Royal Lane. This segment includes all remaining elements of the corridor not constructed with Project Segments ABC and F.

Tentative Procurement Milestones

ACTIVITY
Issue 1 st Industry Review Draft Request for Detailed Proposals (RFDP)
Proposer Comments Due
Industry Review One on One Meeting #1
Issue 2 nd Industry Review Draft
Proposer Comments Due
Industry Review One on One Meeting #2
Issue RFDP
One on One Meeting #1
Issue Addendum
One on One Meeting #2 (ATCs)
Issue Addendum
Proposal Due Date
Evaluation and Selection
Commission Meeting
Negotiations
Award
Contract Execution, Financial Close

B. US 281/Loop 1604

TxDOT has requested project financing and development proposals and qualifications from proposers desiring to develop, design, construct, finance, operate and maintain portions of Loop 1604 from SH 151 to IH 10 East in San Antonio in Bexar County and US 281 from Loop 1604 to the Bexar/Comal County line, as well as other potential facilities to the extent necessary for connectivity and financing (the "US 281-Loop 1604 Toll Project"), pursuant to a Comprehensive Development Agreement. Development of the Project is a crucial element in responding to severe traffic congestion that exists in the San Antonio area.

A Request for Proposals and Qualifications was issued by TxDOT on July 29, 2005 and is based on an unsolicited proposal for the Project that TxDOT received on April 27, 2005 from Zachry American Infrastructure and Cintra Concesiones de Infraestructuras de Transporte to develop, design, construct, finance, and operate the US 281-Loop 1604 Toll Project as a concession project. A copy of the Texas Transportation Commission's (the "Commission") Minute Order 110112 dated June 30, 2005, authorizing further evaluation can be reviewed at <http://www.dot.state.tx.us/transcom/default.htm?pg=meet05>. TxDOT's current construction cost estimates for the improvements to be developed under the CDA are \$1.4 billion.

Proposals and Qualification Statements were due on Oct. 27, 2005. A shortlisting decision will be made in December of 2005. This project also involves the Alamo Regional Mobility Authority. The CDA should be executed in late 2006.

Tentative Procurement Milestones

ACTIVITY
Issue 1 st Industry Review Draft Request for Detailed Proposals (RFDP)
Proposer Comments Due
Industry Review One on One Meeting #1
Issue 2 nd Industry Review Draft
Proposer Comments Due
Industry Review One on One Meeting #2
Issue RFDP
One on One Meeting #1
Issue Addendum
One on One Meeting #2 (ATCs)
Issue Addendum
Proposal Due Date
Evaluation and Selection
Commission Meeting
Negotiations
Award
Contract Execution, Financial Close

C. SH 161 Project

On August 11, 2005, TxDOT received an unsolicited proposal from the DFW Southern Gateway Consortium, a consortium established by AECOM Enterprises, to finance, design, construct, operate and maintain tolled main lanes along an extension of SH 161 from SH 183, south to I-20 through the Cities of Irving and Grand Prairie. The project would be located within the existing right of way and inside the frontage roads currently under construction.

A procurement schedule for this project is currently under development.