



Overview of Public-Private Partnerships for Highway and Transit Projects

Testimony before the House
Transportation and Infrastructure
Committee Panel on Public-Private
Partnerships

March 5, 2014 10 a.m.

2167 Rayburn House Office Building

I. Introduction

The Texas Department of Transportation (TxDOT) appreciates the opportunity to provide written testimony to the Transportation and Infrastructure Committee's Panel on Public-Private Partnerships outlining our experience with, and thoughts about, public private partnerships (P3), including our involvement in using P3s in conjunction with the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

While I have the opportunity, TxDOT would like to thank the Committee for the Moving Ahead for Progress in the 21st Century Act (MAP-21). In terms of constructive benefit to the states, we consider it to be the most significant surface transportation legislation passed over the last 20 years. Since its passage, Texas has worked diligently to implement all the positive changes the legislation provides to the states. We will continually work to implement elements of MAP-21 in this second year of the bill. Texas intends to take full advantage of opportunities generated by the new law.

As the Committee is well aware, states are struggling with the lack of predictable funding for our transportation projects. The Surface Transportation Program, until very recently, was the most reliable of all federal undertakings. Now, it has joined the list of federal responsibilities that get fixed at the last minute. There are rescissions, earmark claw-backs, short term extensions, and a trust fund that can no longer fully replenish itself. This is not the best way to deliver projects because it impacts the planning process for agencies, local communities and our private sector construction and engineering partners.

Recognizing the shortage of traditional funds for transportation, the Texas Legislature authorized several tools that TxDOT uses to realize the benefits of private sector participation. Some examples are:

- Long-term Debt: TxDOT was provided the authority to issue long-term bonds paid back by state motor fuels tax revenue, state general revenue and other dedicated revenue streams.
- Toll Revenue Bonds: TxDOT has the ability to issue bonds for specific tolled projects and use toll revenue to repay the bonds.
- Comprehensive Development Agreements: Texas' version of public-private partnerships allows the state to partner with the private sector to finance and develop new, state-owned mobility projects.
- Private Activity Bonds (PABs): The Legislature passed legislation in 2005 to allow the state to issue PABs in order to keep a private developer's borrowing costs as low as possible. This was in direct correlation to Congress allowing PABs to be used for transportation projects as part of SAFETEA-LU.

In recent years Texas has looked to the private sector more frequently to help us not only pay for, but construct large scale projects that otherwise would be years away from construction. These P3s are enabling the state to leverage our resources and deliver projects to our citizens much more efficiently and expeditiously than with the standard pay-as-you go methods of the past.

II. Public-Private Partnerships in Texas

In Texas, P3s for transportation projects are entered into using a procurement process that allows TxDOT to select the proposal that provides the best value to the state. These agreements provide for the design and construction, rehabilitation, expansion, or improvement of a transportation project and may also provide for the financing, maintenance, or operation of such a project.

Through the use of P3s TxDOT has been able to narrow the gap between our transportation needs and our transportation assets, and has helped citizens to realize our transportation goals such as improved traffic flow and air quality in areas of greatest need and demand. Without the option of P3s, several projects would not be developed for a number of years, such as SH 130 Segments 5 & 6 in Central Texas and some long-awaited projects in the Houston and Dallas-Fort Worth regions. These projects are needed to improve mobility and reduce congestion.

Design-Build and Concession Models

There are different ways to structure a P3 agreement. The terms of these agreements vary based on the level of private sector participation.

A design-build contract allows for right-of-way acquisition, design and construction to occur simultaneously under one contract, but does not include financial participation from the private sector or a long-term lease of the facility. These agreements have many advantages, including:

- Single point of responsibility for design and construction;
- Contract is usually fixed price, allowing for earlier cost certainty;
- Expedited project delivery by overlapping portions of design, construction, and right-of-way (ROW) acquisition;
- Developer innovation through close coordination between the construction contractor and designer; and

- Shifting the responsibility of many of the inherent risks associated with design and construction to the private sector. Examples can include cost overruns, schedule delays, inclement weather, material shortages, etc.

A concession agreement gives the developer responsibility to perform some or all of the development, financing, operation and maintenance of a facility for up to 52 years. In exchange, the developer is provided a right to the revenue generated by the project. These projects can potentially provide for revenue sharing with TxDOT over the life of the contract. In some cases, such as SH 130 Segments 5 and 6 (detailed below in a case study), the agreement may also include an upfront lump sum payment from the developer to TxDOT. Other potential advantages of concession agreements include:

- Developer assumes the risk for cost, schedule, traffic and revenue, financing, and meeting state and federal standards;
- Removes the financial burden of operating and maintaining the facility from TxDOT; and
- Reduces or eliminates the amount of public funds needed to construct the project.

One of the benefits of building projects under a P3 is that substantial elements of risk are transferred from the public to the private developer. However, some risks are better managed by TxDOT rather than by the developer. One of our core principles is to allocate risk in such a way that we maximize the benefits of the P3 to the public. These risks are identified and allocated on a project-by-project basis. In general, individual risks should be allocated to the party best able to manage and mitigate that risk for the best overall value to the taxpayers.

TxDOT has made many project-by-project adjustments to its risk allocation provisions during the course of procurements. It does so by listening to the proposers; assessing the characteristics of the project, the competition and current market conditions; and carefully applying these principles and practices to the procurement.

III. TIFIA

A point that is generally missed in descriptions of MAP-21 is that the reinvigorated TIFIA program has the practical effect of adding at least an extra year of project delivery to the two year bill. According to the Federal Highway Administration (FHWA), each dollar of federal TIFIA funds can provide up to \$10 in TIFIA credit assistance and leverage up to \$30 in transportation infrastructure investment. If the entire \$1.75 billion of TIFIA funds allocated in MAP-21 is leveraged at this 30x multiple, over \$52 billion in much-needed infrastructure would be possible. Given this clear benefit, TIFIA is a valuable tool in the financing toolbox

but it should continue to be a supplement, not a complete substitute for conventional federal-aid highway, highway safety and transit grant programs.

MAP-21 solved key challenges that have historically held back the TIFIA program. We were very encouraged by the substantial increase in funding for the program, the increased share of project costs that TIFIA can finance, and the Congressional desire to make the TIFIA program more efficient.

Since TIFIA's inception in 1998 as part of the Transportation Equity Act for the 21st Century (TEA-21), Texas has been an early user of the program. We view TIFIA as a critical component in the delivery of our larger scale projects. Within the last 10 years, the Texas Legislature has enacted several innovative financing initiatives that may be used in conjunction with TIFIA to deliver projects sooner and more efficiently.

To date, Texas has received \$4.2 billion in TIFIA assistance which, combined with state, local, and private investment, yielded over \$13 billion in total project funding. Because TIFIA loans are scored at about 10 percent of the amount of the loan, the federal budget impact for these projects is estimated at only \$420 million. Compared to the 80 percent that the federal program contributes to projects under the traditional formula funding system, the TIFIA program saved the federal government \$10.4 billion to deliver the same projects. TIFIA is a great example of states doing more with fewer federal dollars.

According to FHWA TIFIA data, Texas is home to three of the largest TIFIA loans in the nation. These projects have been critical to relieving congestion and contributing to efficient movement of goods in heavily populated areas of the state.

IV. TIFIA and MAP-21

Prior to MAP-21, USDOT was allowed discretion to evaluate and choose eligible projects under specific criteria. USDOT also had authority to weigh and compare the relative merits of eligible projects under these selection criteria, and to choose those that scored highest under a weighted scoring system. Over time, USDOT continued to add criteria, such as liveability, to its list of selection criteria. These criteria, while seen by some as beneficial to help narrow down projects for funding, went beyond what was laid out in law. Too much discretion seemed to be permeating the process and made the program more about meeting subjective criteria, as opposed to finding the best credit-worthy projects to meet mobility demands.

MAP-21 eliminates discretionary selection criteria. It establishes a limited set of objective eligibility criteria that require a "yes" or "no" determination of satisfaction. In the new language, it expressly states:

"a project shall be eligible to receive credit assistance ... if the project meets the criteria described in this subsection."

(§602(a)(1).)

“... projects that are eligible to receive credit assistance ... shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available ...” (§602(b)(1)).
(emphasis added)

TxDOT welcomed this change in MAP-21 because we believe that projects which meet credit requirements, maintain a safe and reliable transportation system, address congestion and foster economic opportunity should be selected to receive TIFIA funding. Congress can rightly point to this as a decision which created a level playing field designed to send funding exactly where there is demand. It is very close to succeeding.

Given that MAP-21 is only a two year bill, we have a compelling reason to get the TIFIA program back on track. MAP-21 provides critical changes and increased funding, but changes can be made to further enhance the program:

- Reinforce the 49 percent of eligible project cost allowed under MAP-21;
- Streamline the Letter of Interest phase and enforce strict deadlines for review of LOIs;
- Incorporate the TIFIA application process with project procurement schedules so as to maximize the competition that sponsoring agencies can stimulate.

V. Project Case Study SH 130 Segments 5 and 6

An example of a successful P3 in Texas is the procurement of the contract to develop SH 130 Segments 5 and 6. For many years, central Texans had planned a bypass to accommodate frustrated motorists plagued with ever-increasing traffic and safety concerns along the portions of Interstate Highway 35 from San Antonio to Georgetown. Funding for this project through traditional means would take decades to become available. Through bonding, local government participation, and state taxes and fees, the SH 130 toll road from Georgetown to the Austin-Bergstrom International Airport began in 2002. However, TxDOT did not have available funds and could not borrow enough money to complete Segments 5 and 6 from South Austin to Seguin. Therefore these segments were put on hold, again for decades, until traditional funding sources would become available.

Alternatives

When private contractors Cintra-Zachry proposed to fund Segments 5 and 6, TxDOT had already been considering other funding alternatives, including future construction on TxDOT's traditional pay-as-you-go basis, construction using traditional tax exempt municipal bonds and a new competitive P3 procurement.

The pay-as-you-go funding mechanism was not financially feasible as TxDOT did not have sufficient state highway fund revenues to afford Segments 5 and 6. Also, cost inflation would potentially further increase the needed amount of funds. The funding gap could have significantly widened over time, causing additional substantial delays to due to lack of funds.

Concurrent with procurement for Segments 5 and 6, TxDOT created a tool to determine whether to undertake a P3 or to pursue a traditional toll revenue bond financing method. The results showed that a traditional tax-exempt municipal bond financing method would require approximately \$700 million from state highway fund dollars which were not available.

However, a public-private partnership offered multiple benefits. The project was being built with private financing, with no public funds subsidy of capital, operations, and maintenance costs. The Cintra-Zachry P3 included an upfront payment to TxDOT of \$140 million. TxDOT has received payment and the funds are being targeted for other projects in the region. In addition, the State will receive roughly 5 percent of gross revenue from the start of the project's operation. The percentage of revenue shared with TxDOT could increase if the project's financial performance improves over time, with the State's share possibly reaching 50 percent. Also, Cintra-Zachry's estimated design and construction costs of \$1.35 billion are similar to TxDOT's estimated capital costs. Finally, the project began construction years before it would have been able to using TxDOT's traditional project delivery and financing methods.

VI. Conclusion

P3s in Texas have, and continue to play a vital role in how we deliver critical transportation projects. Federal tools like TIFIA and PABs add to our tool box to leverage the ever shrinking fuel tax receipts. The private sector is flush with funds to invest in infrastructure projects and it is Congress' duty to continue to create an environment for those funds to be utilized to build and maintain our vast transportation network.

APPENDIX

SH 130 Segments 5 & 6

CDA Concession

Cintra-Zachry

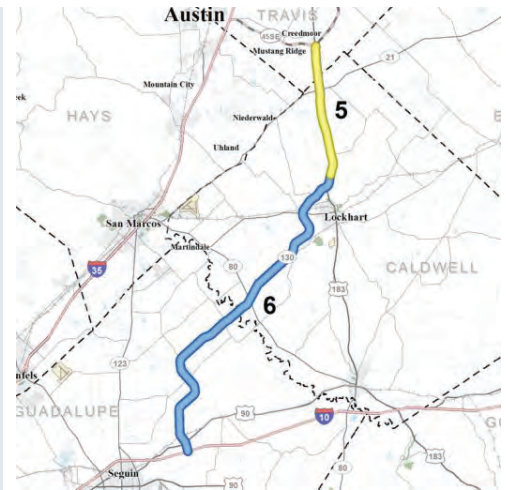


Project Description

Report Period Jan-14

Stage Operations & Maintenance

Project Scope Segments 5 & 6 of the State Highway 130 form a 40-mile link through Travis, Caldwell, and Guadalupe counties to I-10 near Seguin. Segment 5 stretches from north of Mustang Ridge to FM 1185 north of Lockhart (11 miles), following the old US 183 alignment. Segment 6 runs from FM 1185 to I-10 northeast of Seguin (29 miles). Improvements consisted of constructing two toll lanes and two discontinuous frontage road lanes in each direction.



Proposed Typical Sections

US 183 to FM 1185



Estimated Capital Cost¹

<u>Design/Construction</u>	\$927,166,172 ²
<u>Right of Way</u>	\$377,464,172
<u>Utilities</u>	\$44,000,000
<u>Tolling/ITS</u>	\$18,369,656
<u>Total Capital Costs</u>	\$1,367,000,000

Note 1: All costs are in nominal dollars

Note 2: \$27.053M Upfront Concession Fee Included in Design/Construction Cost

Estimated Funding Sources

<u>TIFIA Loan</u>	\$476,000,000
<u>Developer Equity & Bank Loans</u>	\$891,000,000
<u>Total Funding Sources</u>	\$1,367,000,000

Schedule

<u>Contract Execution</u>	March 22, 2007
<u>Notice to Proceed 1</u>	May 2007
<u>Financial Close</u>	March 2008
<u>Notice to Proceed 2</u>	April 2009
<u>Substantial Completion</u>	October 24, 2012
<u>Service Commencement</u>	November 11, 2012
<u>Final Acceptance</u>	May 8, 2013

All future dates are anticipated

North Tarrant Express (NTE) Segments 1 & 2W

CDA Concession
Cintra-Meridiam



Project Description

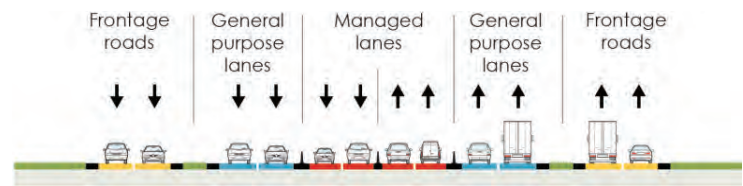
Report Period Jan-14
Stage Design & Construction
Project Scope The 13.3-mile NTE project will double the capacity of SH 121/183 and I-820, two of Tarrant County's most congested highways. It will provide 8 to 10 lanes, including both general purpose lanes and managed lanes, that feature dynamic pricing. This project is estimated to be completed by 2015.



Proposed Typical Sections

SH 183/SH 121

I-820



Estimated Capital Cost¹

<u>Design/Construction</u>	\$1,327,112,429
<u>Right of Way</u>	\$211,226,000
<u>Utilities</u>	\$139,189,571
<u>Tolling/ITS</u>	\$57,571,000
<u>TIFIA Fees/Interest/Subsidy</u>	\$113,366,000
<u>Sr Debt Fee/Interest</u>	\$156,742,000
<u>Development and Advisory Fees/Bid</u>	\$102,230,000
Total Capital Costs	\$2,107,437,000

Note 1: All costs are in nominal dollars

Estimated Funding Sources

<u>Developer Funds (Shareholder Equity)</u>	\$426,027,000
<u>Developer Funds (TIFIA)</u>	\$649,437,000
<u>Developer Funds (Sr Debt/PABs)</u>	\$397,775,000
<u>Developer Funds (Capitalized Interest)</u>	\$53,366,000
<u>Public Funds (Federal)</u>	\$453,923,182
<u>Public Funds (State)</u>	\$118,806,818
<u>Public Funds Dedicated for CO's (Fed)</u>	\$21,479,968
Total Funding Sources	\$2,120,814,968

Schedule

<u>Contract Execution</u>	June 23, 2009
<u>Notice to Proceed 1</u>	July 2009
<u>Financial Close</u>	December 2009
<u>Notice to Proceed 2</u>	December 2009
<u>Substantial Completion</u>	June 2015
<u>Final Acceptance</u>	September 2015

All future dates are anticipated

LBJ Managed Lanes

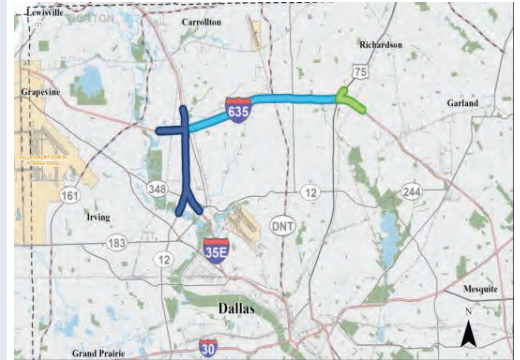
CDA Concession

Cintra/Meridiam/Macquarie



Project Description

Report Period	Jan-14
Stage	Design & Construction
Project Scope	The 16 mile LBJ managed lanes project includes the finance, construction, operation and maintenance of a corridor of frontage roads, general purpose lanes and tolled managed lanes from Greenville Avenue to Luna Rd on IH 635 and tolled managed lanes from Northwest Highway to Valwood Parkway on IH 35.

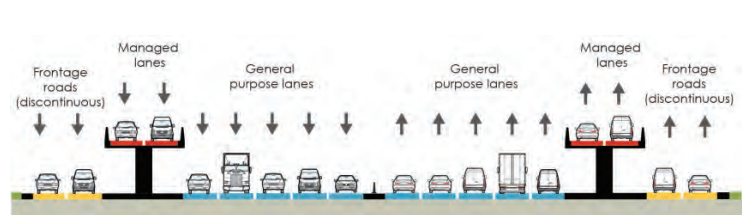


Proposed Typical Sections

IH 635E



IH 35E: Loop 12 to North of I-635



Estimated Capital Cost¹

Design/Construction	\$2,485,456,000 ²
Right of Way	\$242,197,730
Utilities	\$200,599,000
Tolling/ITS	\$54,797,000
Total Capital Costs	\$2,983,049,730

Note 1: All costs are in nominal dollars

Note 2: Design/Construction includes O&M - Construction, TIFIA Fees, Senior Debt Fee, Interest Development Fee, Bid Cost, Debt Services Fee and Major Maintenance Reserve

Schedule

Contract Execution	September 2009
Notice to Proceed 1	September 2009
Financial Close	June 2010
Notice to Proceed 2	December 2010
Substantial Completion	December 2015
Final Acceptance	March 2016

All future dates are anticipated

Estimated Funding Sources

Private Activity Bonds	\$606,035,000
TIFIA Loan	\$850,000,000
Equity	\$681,407,000
Public Funds (ROW)	\$242,197,730 ³
Public Funds	\$489,828,000
Contingency Fund (Fed)	\$24,000,000
Contingency Fund (State)	\$6,000,000
Toll Revenue During Construction	\$17,036,000
Interest Income	\$820,000
Capitalized Interest	\$95,726,000
Total Funding Sources	\$3,013,049,730

Note 3: All Right of Way acquired by TxDOT prior to procurement

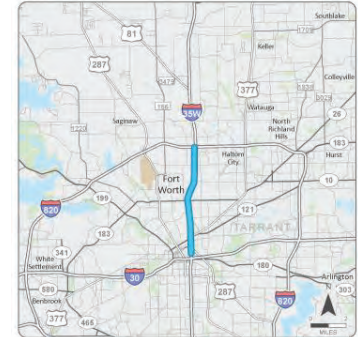
North Tarrant Express (NTE) Segment 3A

Concession
Cintra-Meridiam

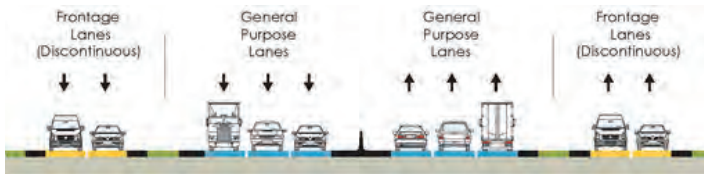


Project Description

Report Period	Jan-14
Stage	Design & Construction
Project Scope	The 6.5 mile project extends along IH 35W from IH 30 to Fossil Creek Boulevard. The project will add frontage roads and managed-toll lanes, reconstruct general purpose lanes, as well as complete the construction of a new interchange at IH 35 W and IH 820. The project will be delivered as a Comprehensive Development Agreement.



Existing Typical Sections



Proposed Typical Sections



North of NE 28th Street



South of NE 28th Street

Estimated Capital Cost¹

<u>Design/Construction</u>	\$984,600,000
<u>Right of Way</u>	\$104,218,000
<u>Utilities (TxDOT ONCOR)</u>	\$15,000,000
<u>Tolling/ITS</u>	\$95,792,000
Total Capital Costs	\$1,199,610,000
<u>Reserves, Development Cost, Interest and Fees, Financing Fees and Financial Close Payment</u>	\$208,020,000
Total Project Delivery Cost	\$1,407,630,000

Note 1: All costs are in nominal dollars

Estimated Funding Sources

<u>Public Funds</u>	\$126,990,000
<u>Senior Bond Debt (PABs)</u>	\$274,030,000
<u>TIFIA Loan</u>	\$531,000,000
<u>TIFIA Interest Capitalized</u>	\$46,530,000
<u>Equity</u>	\$442,160,000
<u>Interest Income</u>	\$320,000
<u>ROW Strategy 102</u>	\$15,000,000
Sub Total	\$1,436,030,000
<u>Contingency Provided by TxDOT</u>	\$40,500,000
Total Funding Sources	\$1,476,530,000

Note 2: Funding source not determined

Schedule

<u>Contract Execution</u>	March 1, 2013
<u>Notice to Proceed 1</u>	March 13, 2013
<u>Notice to Proceed 2</u>	September 25, 2013
<u>Substantial Completion</u>	September 2018
<u>Final Acceptance</u>	December 2018

All future dates are anticipated

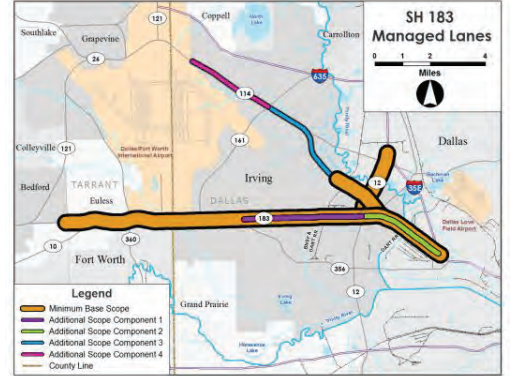
SH 183 Managed Lanes

CDA

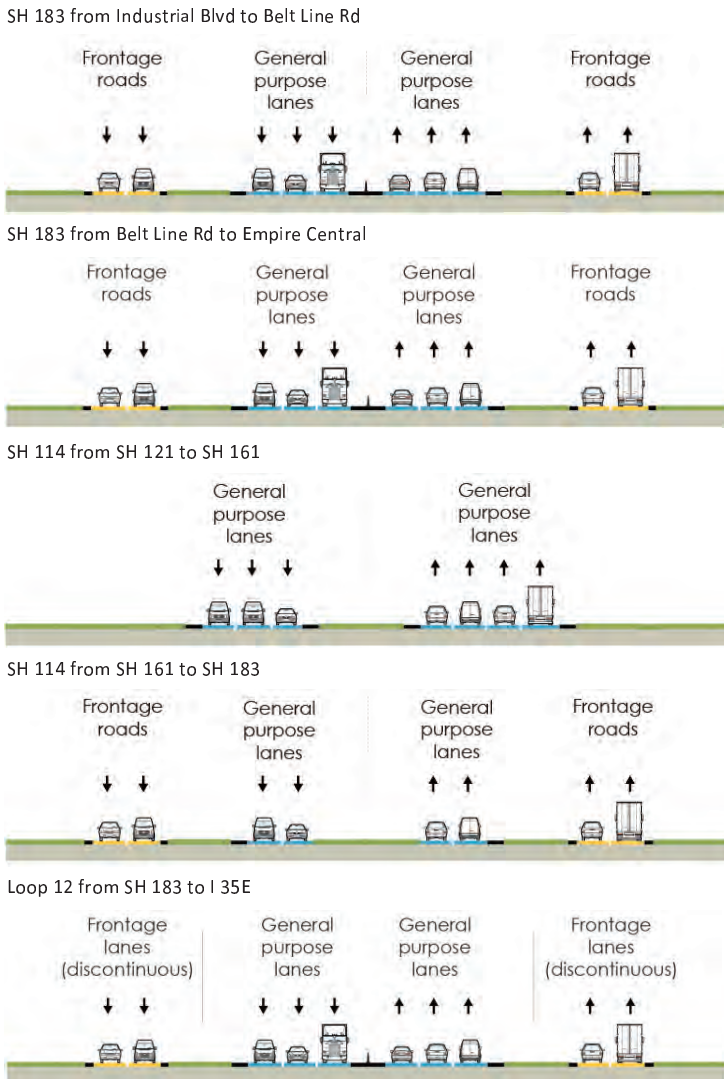


Project Description

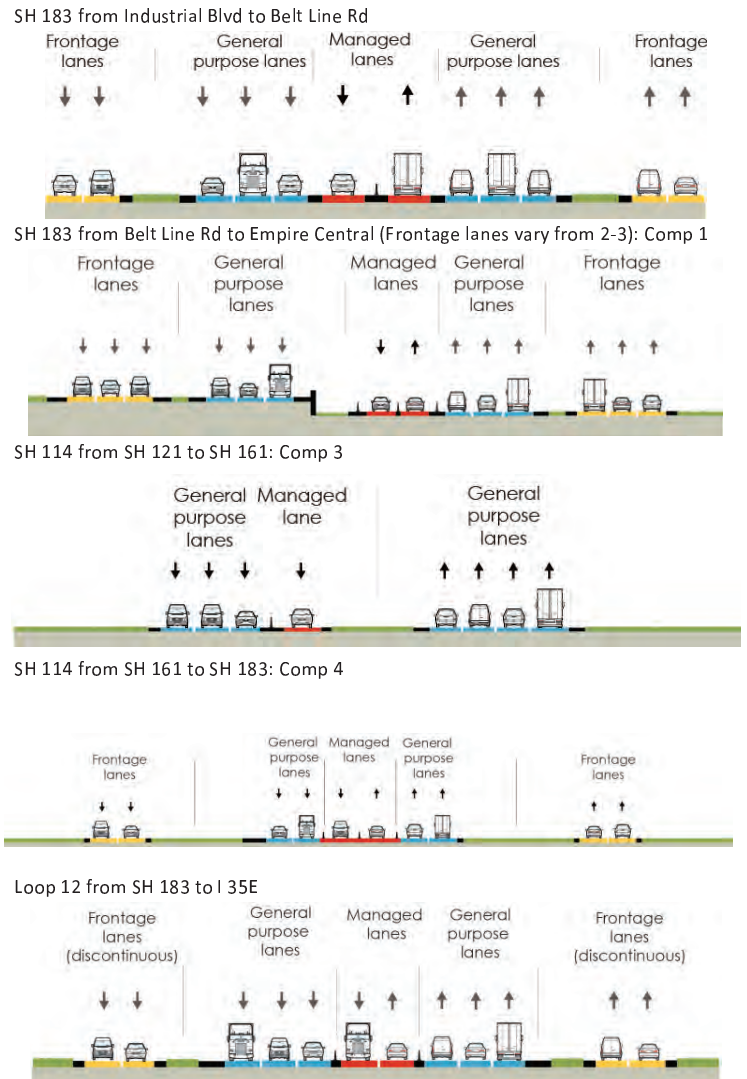
Report Period	Jan-14
Stage	Procurement
Project Scope	The SH 183 Managed Lanes Project is comprised of 13.5 miles of SH 183 from near SH 121 to near Interstate 35E and portions of Loop 12 and SH 114 as depicted in Dallas and Tarrant Counties. The scope of the project may be expanded to include the additional scope components if the available funds support them. The project is being procured as a CDA with a long term (25 year) operations and maintenance component. (D.B.f.O.M.)



Existing Typical Sections



Proposed Typical Sections



SH 183 Managed Lanes

CDA



Estimated Capital Cost ¹	
SH 183	
<u>Design/Construction</u>	\$623,178,817
<u>Right of Way</u>	\$190,000,000
<u>Utilities</u>	\$85,863,418
<u>Tolling/ITS</u>	\$15,007,530
<u>Total Capital Costs</u>	\$914,049,765 ²
SH 183 Component 1	
<u>Component 1 Design/Construction</u>	\$76,000,000
<u>Component 1 Right of Way</u>	\$0
<u>Component 1 Utilities</u>	\$0
<u>Component 1 Tolling/ITS</u>	\$0
<u>Component 1 Total Capital Costs</u>	\$76,000,000 ²
SH 183 Component 2	
<u>Component 2 Design/Construction</u>	\$91,000,000
<u>Component 2 Right of Way</u>	\$0
<u>Component 2 Utilities</u>	\$0
<u>Component 2 Tolling/ITS</u>	\$0
<u>Component 2 Total Capital Costs</u>	\$91,000,000 ²
SH 183 Component 3	
<u>Component 3 Design/Construction</u>	\$85,585,257
<u>Component 3 Right of Way</u>	\$0
<u>Component 3 Utilities</u>	\$700,128
<u>Component 3 Tolling/ITS</u>	\$4,725,293
<u>Component 3 Total Capital Costs</u>	\$91,010,678 ²
SH 183 Component 4	
<u>Component 4 Design/Construction</u>	\$40,294,897
<u>Component 4 Right of Way</u>	\$0
<u>Component 4 Utilities</u>	\$700,128
<u>Component 4 Tolling/ITS</u>	\$970,260
<u>Component 4 Total Capital Costs</u>	\$41,965,285 ²

Note 1: All costs are in nominal dollars

Note 2: Capital Costs do not include O&M, Lifecycle, or Tolling Operations Costs

Estimated Funding Sources	
<u>TxDOT Funds</u>	\$190,000,000
<u>UTP</u>	\$600,000,000
<u>TIFIA Loan or Other TxDOT Funds</u>	\$250,000,000
<u>Total Funding Sources</u>	\$1,040,000,000

Schedule	
<u>Issue RFQ</u>	February 20, 2013
<u>SOQ Date</u>	July 19, 2013
<u>Issue Industry Review RFP</u>	September 3, 2013
<u>Issue Final RFP</u>	November 7, 2013
<u>Proposals Due</u>	April 14, 2014
<u>Conditional Contract Award</u>	May 29, 2014
<u>Contract Execution (NTP1)</u>	November 2014

All future dates are anticipated