TEXAS PUBLIC-PRIVATE-PARTNERSHIPS RECENT DEVELOPMENTS

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Evolution/Development of P3s - Legislative Authority & Limitations

- 2002 - TxDOT began procuring PPP projects
  - $1.3 billion (SH-130 Seg 1-4) toll road

- 2003 – Legislation provided TxDOT concession authority
  - 2005 – Negotiated SH-130 Segments 5 & 6 Concession

- TxDOT's present authority came in 2011 with Senate Bill 1420 and 2013 with Senate Bill 1730

- Texas 2011, 82nd Legislative Session:
  - Primacy Legislation (SB 1420)
    - Stakeholder committee must concur to deliver via concession

- Texas 2013, 83rd Legislative Session:
  - Concession Authority (SB 1730)
    - Authorized 22 specific CDA projects
    - Termination Formula Required
    - Concession procurement authorization expires in 2017
## Texas Public Private Partnerships

### Design-Build
- May not include private financing
- Not a prescriptive design
- Innovation by the Developer
- Review at project level as packages are released
- Coordination with FHWA as needed
- May include optional Maintenance Agreement
- Limited to 3 projects per fiscal year approved by Commission
- Construction must be estimated at $50 million or more

### Comprehensive Development Agreements
- Same as Design-Build (D-B)
- May also include:
  - Toll Concession (Revenue Risk)
  - Gap Financing (f)
  - Maintenance
  - Toll Operations
- More risk transfer than D-B
- May include private financing
- Limited to specific projects identified in Senate Bill 1730
Texas 2015, 84th Legislative Session:

- Anticipate Transportation Funding to be at the forefront
- Potential Legislation regarding:
  - Additional CDA and or DBOM with finance
  - Construction Manager at Risk or Construction Manager/General Contractor
  - Innovative Rail Agreements
### TxDOT P3 Program Overview

#### Transportation Projects Program Overview

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### Pre-Provision

- **$7.9 Billion**

### Procurement

- **$3.6 Billion**

### Design - Construction

- **$10.0 Billion**

### Operations & Maintenance

- **$6.1 Billion**
  
  Includes SH 130 Seg 1-4, **$1.3B**
TxDOT P3 Program Overview

Current Design-Build and Concession Projects

Future Design-Build and Concession Projects
Past Industry Challenges and Today’s Solutions

**Keys to Success**

- **Departmental Paradigm Shift Allowing Innovation**
  - Internal TxDOT D/B Training
  - Enterprise Risk Workshops
- **Partnering (Industry Outreach)**
  - Project Specific
  - General Industry
- **Innovative Capture Initiative**
  - Sought input from Private and Public Sector Across the Nation
  - Capturing lessons learned from innovation in contracting and ATCs
- **Contract/ATC Reviews**
  - Regular Validation of Technical and Contractual Requirements
  - Streamlining Submittal Requirements

**Lessons Learned**

- Ensure Maximum NEPA flexibility
- Early Delivery Method Selection
- Pre-ATC Submittals/Confidentiality
- Pre FHWA Approvals on exceptions
- Don’t Over Design
- Early Technical Information
- Proposal Evaluation Alternatives
- Expand ATC Definition
- Performance Based Specifications
- Post Award Innovation
# Concession Project Challenges and Today’s Solutions

| **Transparency and Accountability** | • Legislative authority and rules mandate an open and public process  
|                                      | • Detailed and transparent process (TxDOT website) |
| **Loss of Public Control**          | • TxDOT retains ownership – lease agreement  
|                                      | • Texas Transportation Commission establishes toll rates  
|                                      | • TxDOT sets performance requirements and audits  
|                                      | • SB 1420 Committees – Local Stakeholder Committees |
| **Private Profits at Public Expense**| • TxDOT sets maximum payment curves  
|                                       | • TxDOT sets revenue caps & maximum toll rates  
|                                       | • TxDOT receives shared revenue |
| **Risk of Bankruptcy**              | • Project reverts to TxDOT at owner’s expense  
|                                       | • TxDOT not liable for private debt payments  
|                                       | • Contract terms protect TxDOT from liability |
| **Buy-Out**                         | • TxDOT able to terminate contract and buy-out private interest  
|                                       | • Price greater of fair market value or outstanding debt |
Questions?

TxDOT website
http://www.txdot.gov/business/partnerships/cda.htm

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