

REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN
THE
IH 635 MANAGED LANES PROJECT
THROUGH A COMPREHENSIVE DEVELOPMENT AGREEMENT

VOLUME I
INSTRUCTIONS TO PROPOSERS
A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION

RFP ISSUED SEPTEMBER 18, 2007
ADDENDUM #1 ISSUED JANUARY 9, 2008
ADDENDUM #2 ISSUED MARCH 3, 2008

Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701

This Addendum #2 to the RFP for the IH 635 Managed Lanes Project is hereby issued by the Texas Department of Transportation, an agency of the State of Texas, to set forth certain changes in the ITP, which will be incorporated into the RFP documents in Addendum #3. All provisions in the RFP, as amended by Addendum #1, shall remain in full force and effect, except as otherwise expressly set forth herein. All initially capitalized terms and acronyms used but not defined herein, shall have the meaning set forth in the RFP.

The following changes will be made to the ITP:

1. Section 1.6.1 shall be revised to include a deadline of April 14, 2008 for the submittal of AFCs to TxDOT, and a date of April 28, 2008 as the deadline for TxDOT's response to the AFCs.
2. The Proposal Due Date set forth in Section 1.6.1 shall be revised to June 23, 2008.
3. The last date for submittal of ATCs set forth in Section 1.6.1 shall be revised to April 14, 2008, and the last date for TxDOT's response to the ATCs set forth in Section 1.6.1 will be revised to April 28, 2008.
4. The heading of Section 3 will be revised to include AFCs and other corresponding changes to the ITP will be made to reference and include the AFCs, as applicable (e.g. Sections 2.2.5, 2.3.1, 2.5.2, 2.5.3, 2.10.3, 3.7, 4.2, 6.1.1, 6.3).

5. The existing Section 3.6 (Confidentiality) will be renumbered as Section 3.7.

6. The following AFC section will be inserted into the ITP as Section 3.6.

3.6. Alternative Financial Concepts

This Section 3.6 sets forth a process for pre-Proposal review of Alternative Financial Concepts (“AFCs”). This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing TxDOT to consider Proposer AFCs in making the selection decision, to avoid delays and potential conflicts in the commercial terms associated with deferring of reviews of AFCs to the post-award period, and, ultimately, to obtain the best value for the public.

AFCs are defined as changes to the terms of the CDA Documents, subject to the exclusions set forth in Section 3.6.1, that allow (a) financing structures (“Financial AFCs”) or (b) structures for the Developer entity and/or Project management and operations (“Structure AFCs”) that would otherwise be prohibited or impracticable due to the terms of the as-issued CDA Documents.

TxDOT has sole discretion to allow or reject any AFC submitted. Proposers are advised that TxDOT will allow an AFC only if TxDOT determines that the terms and conditions of the CDA Documents, as modified by the AFC, allow TxDOT substantially the same or better value for money, rights and remedies as the unmodified terms and conditions.

3.6.1 Exclusions to AFCs

A concept is not an AFC if, in TxDOT’s sole judgment, it reduces TxDOT’s value for money, or TxDOT’s contractual rights or remedies, including any concepts that include the following:

- a) An increase in the Term;
- b) A change to the tolling provisions, including tolling systems, rates, managed lane pricing and speed requirements, user classifications, exempt vehicles and post-termination tolling provisions;
- c) An increase in TxDOT liability for Project Debt;
- d) Reduction in compensation to TxDOT, including the Concession Payment, Revenue Payments and Refinancing Gain sharing;
- e) Increase in the Public Funds Amount or an adverse change in the draw requirements from the terms set forth in Exhibit 7 to the CDA;

- f) Increase in compensation to the Developer in the event of termination, including provisions relating to Compensation Amounts and Termination Compensation;
- g) A change in the conditions to, or procedures for certifying, Substantial Completion, Service Commencement and Final Acceptance;
- h) A change regarding allocation of responsibilities between TxDOT and Developer for performance of design, permitting, ROW acquisition, Utility Adjustments, construction, operations, maintenance, Renewal Work, Upgrades, Technology Enhancements, Safety Compliance or Handback Requirements;
- i) A change to the provisions addressing Compensation Events and Relief Events, or any other modifications that would allocate additional risk to TxDOT or reduce risks assumed by Developer;
- j) A change to the provisions on the role or scope of the Independent Engineer;
- k) A change to the provisions relating to Unplanned Revenue Impacting Facilities;
- l) A change to the provisions regarding Developer default, notice, cure periods, remedies and dispute resolution, except to the extent such change would result in more favorable terms to TxDOT;
- m) A change to the Lender rights and protections provided in the CDA Documents, except insofar as an AFC not directed at such provisions incidentally would require amendment of such provisions in order for the AFC to work;
- n) A change to the provisions relating to Noncompliance Points and related remedies, except to the extent such change would result in more favorable terms to TxDOT;
- o) A change to the termination provisions, except to the extent such change would result in neutral or more favorable terms to TxDOT;
- p) A change to the provisions regarding lender direct agreements, except insofar as an AFC not directed at lender direct agreements would require entry into or amendment of a direct lender agreement in order for the AFC to work; or
- q) A change resulting in requirements for insurance, performance security, proposal security or indemnities that would be less favorable to TxDOT.

3.6.2 Pre-Proposal Submission of AFCs

Proposer may submit AFCs for review to TxDOT at the address specified in Section 2.2.1, until the applicable last date and time identified in Section 1.6.1. All AFCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "IH 635 Managed Lanes Project – Confidential AFCs." Proposer shall clearly identify the submittal as a request for review of an AFC under this ITP. If Proposer does not clearly designate its submittal as an AFC, the submission will not be treated as an AFC by TxDOT.

Any AFC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an AFC by TxDOT, TxDOT recommends that Proposer submit such concept for review as an AFC.

Pre-Proposal AFC submissions shall include five copies of the following:

- a) a sequential AFC number identifying Proposer and the AFC number (multi-part or multi-option AFCs shall be submitted as separate individual AFCs with unique sequential numbers);
- b) a detailed narrative description of the AFC, including a designation of the AFC as either a Financial AFC or a Structure AFC;
- c) an explanation of the value of the AFC to TxDOT;
- d) an explanation and detailed description of each proposed change to the as-issued CDA Documents, including a detailed mark-up of each provision in the as-issued CDA Documents that will be changed as a result of the AFC;
- e) the analysis justifying use of the AFC, which may include an explanation of how the proposed changes to the CDA Documents will provide TxDOT substantially the same (or better) rights and remedies as the unmodified terms and conditions; and
- f) an estimate of any savings that would accrue to TxDOT should the AFC be approved and implemented.

3.6.3 Modifications to RFP

If TxDOT determines, as the result of review of a proposed AFC or otherwise, that the RFP contains an error, ambiguity or mistake, TxDOT reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed AFC. Furthermore, TxDOT may modify the RFP Documents to incorporate modifications proposed by an AFC, provided that

TxDOT (a) will not advise the other Proposers that the modification is associated with an AFC, and (b) will not make any modification if TxDOT determines that such modification would compromise a Proposer's intellectual property.

3.6.4 TxDOT Review of Pre-Proposal Submission of AFCs

TxDOT may request additional information regarding proposed AFCs at any time and will, in each case, return responses to each Proposer regarding its AFC on or before the applicable last date set forth in Section 1.6.1, provided that TxDOT has received all requested information regarding such AFC.

TxDOT's responses will be limited to one of the following statements:

- a) the AFC, as submitted, is acceptable for inclusion in the Proposal;
- b) the submittal is not acceptable for inclusion in the Proposal;
- c) the AFC is not acceptable in its present form, but will be acceptable upon satisfaction, in TxDOT's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or
- d) the concept in the submittal is permitted under the RFP Documents.

Approval of an AFC will constitute a change in the specific requirements of the CDA Documents associated with the approved AFC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit AFCs was offered to all Proposers, and waives any right to object to TxDOT's determinations regarding acceptability of AFCs.

TxDOT anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its AFCs. However, if a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

3.6.5 Incorporation of AFCs in the CDA

Following award of the CDA, the AFCs that were pre-approved by TxDOT and incorporated in the Proposal by the successful Proposer shall be included in the CDA Documents in the form pre-approved by TxDOT. If TxDOT responded to any AFC by stating that it would be acceptable if certain conditions, clarifications or modifications were met, those identified conditions, clarifications or modifications will become part of the CDA Documents. The CDA Documents will be conformed after award, but prior to execution of the CDA, to reflect the AFCs.

Following award of the CDA, AFCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer as a TxDOT Change Order in accordance with the CDA.