

## Lease of State-owned ROW for LEFTF: RFP Proposers Questions and Answers Log

No.	Section	Section Topic	Proposer's Question	TTA Response
1	--	--	Does the State owned ROW subject to proposal response include the 400 plus mile ROW of the South Orient Rail Road?	No. Consistent with TxDOT's authority under applicable statutes and rules, identified at Section 1.4.3 of the RFP, TxDOT will only consider proposals to lease right-of-way of a highway on the state highway system.
2	--	--	Proposer requests an extension of an additional six (6) months to the RFP proposal deadline currently set for October 3, 2011. This would re-set the RFP proposal deadline to April 3, 2012	TxDOT has carefully considered this request, and has determined that it will not be granted. The Proposal Due Date will remain October 3, 2011.
3	--	--	Is there any reason that would prohibit us from having Low Pressure Hydrogen Gas within the TX-Dot Right-of-Way to facilitate system's operations?	The RFP, itself, does not prohibit the use of low pressure hydrogen gas lines if they are a necessary component of a freight transportation facility. However, the lease of ROW for freight transportation purposes may not be used to circumvent laws applicable to any aspect of a freight transportation facility. To the extent any federal, state or local regulations or other laws apply to low pressure hydrogen gas lines, the lessee would be entirely responsible for the facility's compliance with them. TxDOT will not lease any ROW for the development of infrastructure unless it will be designed, constructed and operated in compliance with all applicable federal, state and local law. In addition, TxDOT will review any proposal to determine if the safety of the traveling public and work on the highway system will be affected. As a result of such review, TxDOT may prohibit certain facilities or require certain safety measures.
4	--	--	May we sell residual Hydrogen Gas in bulk?	The RFP does not prohibit the sale of excess hydrogen gas incidentally and unavoidably generated in the course of moving freight along the facility. However, TxDOT's rules prohibit the use of this RFP procedure for a pipeline, electric transmission line, or other utility facility. See 43 T.A.C. 21.301(b). The design and operation of any component of a freight transportation facility for the purpose of generating or transporting a product, such as hydrogen gas, in amounts greater than that needed for freight transport, would be beyond the scope of the RFP.
5	--	--	If the proposer's LEFTF system solution is selected for negotiations and a lease is signed for the specific ROW required satisfying the Specific Facility Proposal (say a portion of I-35 or I-69), will the proposer will be given preference on more of that same ROW route if they later propose to extend their system?	TxDOT cannot commit at this time to giving a future lessee any preference for the leasing of additional ROW beyond that required by the specific facility that is the subject of a proposal made under the currently pending RFP.
6	--	--	It seems that TXDoT has not allowed sufficient time to respond to a proposal of this detail and magnitude. Six months may be OK for a demo program or proposing to building a highway to already designed specifications, but it seems a bit short for design, manufacturing and installation of a project of this magnitude.	See TxDOT's response to Proposer Question No. 2. The RFP requires Proposers to prepare for TxDOT's evaluation proposals compliant with the RFP by the October 3rd deadline—it does not require the design, manufacture and installation of a project within a six-month timeframe.
7	--	--	If the proposer chooses to use interstate ROW, in his plan to obtain environmental approval of the LEFTF, will TXDoT help in getting the ROW included in the Environmental Streamlining Executive Order Designation as a corridor of the future? Business as usual could take up to two years to obtain and make the proposer's cost for this approval significantly greater.	TxDOT presumes, but it is not clear from the question, that Proposer is referring to Executive Order 13274, issued by President Bush on September 18, 2002. In any case, as explained on page 16 of the RFP, compliance with environmental requirements will be the lessee's responsibility. TxDOT, which will merely lease ROW for the lessee's development of a LEFTF, cannot commit to providing support for having environmental review of the lessee's project streamlined.
8	--	--	Please explain the rational behind what appears to be a requirement that each proposer expend large amounts of time and money to produce a complaint proposal just to win a chance to negotiate a ROW lease with TXDoT. It seems logical that TXDoT should first negotiate a basic set of lease terms with each proposer or require submittal of general LEFTF system concepts and preliminary economic information, then select those system approaches that TXDoT considers feasible and potentially economically viable and negotiate general ROW lease arrangements with the selected proposers and then ask those selected proposers to submit proposals that would lead to the design, building, installing and operating of their proposed LEFTF system.	TxDOT's rules, which were adopted after notice and opportunity for public comment, require the submittal of detailed, specific proposals. See 43 T.A.C. §21.304.

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9	--	--	Is there any maximum or minimum limitation on the length of the system proposed? If so, what are these limitations?	Route length should be based on the capabilities of the Proposer's transportation facility design and the Proposer's targeted market, and should take into account availability of ROW, potential environmental impacts on adjacent property owners, and any other relevant factors. TxDOT has not pre-determined a maximum or minimum LEFTF length.
10	--	--	If the proposer's LEFET system is capable of carrying items other than freight on the same guideway, i.e. passengers, does TXDOT propose to limit the proposer's system to freight only? If the answer is yes, then what is the TXDOT rationale for such a limitation? Furthermore, is there any reason to prohibit carriage of passengers on the same system in separate passenger vehicles? If yes, what are the reasons?	Yes, in accordance with 43 T.A.C. §21.301, TxDOT will limit any facility developed under the currently pending RFP to the movement of freight only. TxDOT has only developed through rulemaking a procedure for the leasing of state-owned ROW for freight movement—it has not done the same for passenger transport.
11	--	--	What freight size limitations are to be assumed? For example, is the LEFET system intended to carry loaded heavy truck trailers and international shipping containers?	Freight loads/sizes should be based on the capabilities of the Proposer's transportation facility design and the Proposer's targeted market, and should take into account clearance and safety issues associated with the adjacent operation of TxDOT and other transportation facilities, potential environmental impacts on adjacent property owners, and any other relevant factors. TxDOT has not pre-determined any required freight container size.
12	--	--	Would a system with vehicles capable of carrying only smaller than truckload size cargo containers be acceptable to TXDOT? If so, are there any specific size limitations and what are they?	See TxDOT's response to the immediately preceding question.
13	--	--	The RFP indicates that leases will be limited in term length to fifty years. Are we to presume that it will be expected that the proposer remove the LEFET system at the end of the lease term or will there be options for lease extensions and if so, for what length of times?	<p>An opportunity for extension of the lease term may be considered as part of the lease agreement. Conditions for any extension, such as length of additional term(s), will be negotiated with the selected Proposer(s).</p> <p>Note that, contrary to the premise underlying the Proposer's question, removal of the LEFTF is not the only possible outcome at the end of the lease term. TxDOT's rules, at 43 T.A.C. §21.308(d), provide that upon termination of the lease agreement, TxDOT may require the lessee to either (1) dismantle and remove the freight transportation facility and to restore the right of way at no cost to the department, or (2) hand back the facility to the department in a condition complying with minimum specified criteria and standards.</p>
14	--	--	In instances in which some additional right of way is necessary to install the LEFET system, will TXDOT be willing to use its power of eminent domain to acquire such added right of way? If not, can the proposer become designated as a public utility with its own powers of eminent domain.	<p>TxDOT's rules, at 43 T.A.C. §21.307(e)(5), provide that the selected Proposer is responsible for acquiring additional real property rights located outside of the department's holdings that are necessary to conduct the proposed activities. While the lessee may seek TxDOT's assistance in acquisition of additional ROW (subject to agreement to reimburse TxDOT for all costs associated with such assistance) TxDOT cannot commit at this time to using powers of eminent domain to acquire additional ROW.</p> <p>Regarding whether the Proposer can become designated as a public utility with its own powers of eminent domain, note that doing so would disqualify the Proposer from leasing ROW under this RFP, as the applicable rules state that they cannot be used to lease ROW for the purposes of a utility facility. See 43 T.A.C. §21.301(b).</p>
15	--	--	How much time may be allowed between vehicles moving along the lines for switching of vehicles between the main line and the siding lines essential for loading and unloading of carrier vehicles?	Vehicular operations should be established based on the capabilities of the Proposer's transportation facility design and the targeted market needs, and should take into account any applicable Federal regulations on vehicle operation and any other relevant factors. TxDOT has not pre-determined any required vehicle timing.
16	--	--	Is vehicle switching between lines to be accomplished by action of the vehicles or of the guideway?	Switching operations should be determined based on the capabilities of the Proposer's transportation facility design, and should take into account any other relevant factors. TxDOT has not pre-determined any required switching mechanism.

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17	--	--	What is the desired operating speed of vehicles on the LEFET lines?	Vehicular operating speed should be determined based on the capabilities of the Proposer's transportation facility design and the transportation needs of the Proposer's targeted market, and should take into account any other relevant factors. TxDOT has not pre-determined any required vehicle operating speed.
18	--	--	What cargo throughput in terms of tons per day per direction will the LEFET system be expected to provide?	Cargo throughput should be determined based on the capabilities of the Proposer's transportation facility design and the size of the Proposer's targeted market, and should take into account potential environmental impacts on adjacent property owners and any other relevant factors. TxDOT has not pre-determined any minimum cargo throughput.
19	--	--	How much time can be allowed for loading and unloading of each LEFET system vehicle?	Loading and unloading operation parameters should be a function of the capabilities of the Proposer's transportation facility system design and the needs of the Proposer's targeted market, and should take into account clearance and safety issues associated with applicable Federal (e.g. OSHA) regulations, environmental impacts on adjacent property owners, and any other relevant factors. TxDOT has not pre-determined any required loading/unloading time.
20	--	--	Is it essential that the proposer submit a complete, detailed design of the entire Specific Facility or will design details of typical sections be sufficient to satisfy the RFP requirements?	No. TxDOT's expectations with regard to the submittal of designs are set forth at Section 7.2.6 of the RFP. They include the submittal of layout plans (up to a 30% level of design), and schematic and architectural designs sufficient to show the extent and nature of the proposed LEFTF. A complete, detailed design of the entire Specific Facility is not required.
21	--	--	At the opening of the initial meeting, TXDoT made it clear that its goal is to receive significant revenue from lease of TXDoT right of way. Is this the primary reason for the LEFTF project, or does it have goals such as reducing truck traffic from highways and reducing air and noise pollution? Also, does TXDoT expect a large up front lease payment such as in the range of perhaps several billion dollars as has been the case for some privately-built toll roads or lanes or would TXDoT be willing to consider a lease that paid TXDoT a portion of the operating revenue from the system?	In addition to collecting revenue on behalf of the State of Texas, TxDOT hopes to reduce congestion on the state highway system and improve air quality by leasing ROW for LEFTF development.  TxDOT's expectations for the lease payment are set forth at Section 1.4.5 of the RFP. A proposal may offer additional consideration to TxDOT, but it must include a proposed lease payment (per acre of ROW per year of proposed lease term). Unless TxDOT grants an exception under Texas Transportation Code §202.052(d), the total consideration offered in exchange for the lease of ROW must equal or exceed the fair market value of the ROW leased, as determined by TxDOT. TxDOT is not interested in, and will not consider any proposed consideration that is dependent on the use or commercial success of the LEFTF.
22	--	--	Is it the intent of TXDoT to eventually establish a uniform, State-wide cargo shipment network based upon the winning proposal system? It would appear that if frequent transfers of cargo between modes within the State would be highly undesirable to shippers. Such a situation would be equivalent to having railroads with different track gauges.	No, TxDOT has no current plans to establish a uniform, state-wide cargo shipment network based on any selected Proposer's LEFTF.
23	--	--	In view of the statement in the RFP to the effect that the proposed LEFET system shall not interfere with possible highway expansions, the types of such possible future expansions need definition to proposers.	As explained in Section 8.2.3 of the RFP, the Specific Facility Proposal will be evaluated to verify if there is adequate width of TxDOT-owned ROW available in the selected corridor for the proposed operation without impacting existing or planned highway operations or safety, and to check the extent of additional ROW likely to be required for the existing highway facility in the future and how this would be achieved in concert with the proposed LEFTF. Given the number of potential corridors for which Proposers may seek to lease ROW, and the variability of potential LEFTF designs, this type of evaluation can only be done on a case-by-case basis as part of the post-submittal evaluation process.
24	--	--	Is it anticipated that the LEFET system should be elevated above existent highway right of way or is it anticipated that it should be an at-grade system?	Whether the proposed LEFTF will be elevated, at-grade, or a combination should be a function of the available ROW, the Proposer's Specific Facility Proposal, the Proposer's technical design, facility requirements, and any other relevant factors. The design of the LEFTF will be an important consideration in evaluating the technical details or other aspects of a formal proposal under Section 8 of the RFP. However, TxDOT has not pre-determined the LEFTF design.

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25	--	--	Is it to be assumed that the LEFTF carrier vehicles are to be capable of operation both on the LEFTF system and ordinary highway lanes?	The versatility of the carrier vehicles to be used by a proposed LEFTF may be an important consideration in evaluating the technical details or other aspects of a formal proposal under Section 8 of the RFP. TxDOT has not pre-determined any required versatility of carrier vehicles to be used by a LEFTF.
26	7.2.1, 7.2.2, 7.2.3, 7.2.4, 7.2.8, and 7.2.9		<p>RFP sections 7.2.1, 7.2.2, 7.2.3, 7.2.4, 7.2.8, and 7.2.9 do not specify insertion into a specific binder. This is our interpretation of the required format of the response. Is this a compliant submission structure?</p> <p><i>Title:</i> “[Proposer Name] Cover Sheet, Executive Summary, Table of Contents, &amp; Proposer Organization, Experience &amp; Financial Standing”  <i>Contents:</i>            Cover sheet (1 page limit)            Executive Summary (5 pages limit)            Table of Contents (2 pages limit)            Proposer Organization, Experience &amp; Financial Standing (10 page limit)</p> <p><b>BINDER 2</b>  <i>Title:</i> “[Proposer Name] Master Facility Concept”            • Section 7.2.5 Page 30  <i>Contents:</i>            Master Facility Concept (20 page limit)</p> <p><b>BINDER 3</b>  <i>Title:</i> “[Proposer Name] Specific Facility Proposal”            • Section 7.2.6 Page 32  <i>Contents:</i>            Specific Facility Proposal (40 page limit)</p> <p><b>BINDER 4</b>  <i>Title:</i> “[Proposer Name] Business &amp; Finance Plan for the TxDOT Low Emission Freight Transportation Initiative”            • Section 7.2.7 Page 33  <i>Contents:</i>            Business &amp; Finance Plan for the TxDOT Low Emission Freight Transportation Initiative (20 page limit)            Price Proposal (2 page limit)            Surety &amp; Bonds (3 page limit)</p> <p><b>BINDER 5</b>  <i>Title:</i> “[Proposer Name] Appendix of Completed Forms, Certifications, &amp; Supporting Documentation”            • Section 7.1 Page 24  <i>Contents:</i>            Completed Forms, Certifications, &amp; Supporting Documentation            • Including baseline financial model for the term of the lease</p>	<p>Compliant structure below.</p> <p><b>BINDER 1</b>  <i>Title:</i> “[Proposer Name] Proposer Organization, Experience &amp; Financial Standing”  <i>Contents:</i>            • Cover sheet (1 page limit)            • Executive Summary (5 pages limit)            • Table of Contents (2 pages limit)            • Proposer Organization, Experience &amp; Financial Standing (10 page limit)</p> <p><b>BINDER 2</b>  <i>Title:</i> “[Proposer Name] Supporting Documentation for Financial Standing”  <i>Contents:</i>            • Most Recent Audited Financial Statements, and            • Additional Financial Information</p> <p><b>BINDER 3</b>  <i>Title:</i> “[Proposer Name] Master Facility Concept” Section 7.2.5 Page 30  <i>Contents:</i>            • Master Facility Concept (20 page limit)</p> <p><b>BINDER 4</b>  <i>Title:</i> “[Proposer Name] Specific Facility Proposal” Section 7.2.6 Page 32  <i>Contents:</i>            • Specific Facility Proposal (40 page limit)</p> <p><b>BINDER 5</b>  <i>Title:</i> “[Proposer Name] Business &amp; Finance Plan for the TxDOT Low Emission Freight Transportation Initiative” Section 7.2.7 Page 33  <i>Contents:</i>            • Business &amp; Finance Plan for the TxDOT Low Emission Freight Transportation Initiative (20 page limit)            • Price Proposal (2 page limit)            • Surety &amp; Bonds (3 page limit)            • Financial model for the term of the lease (electronic file)</p> <p><b>BINDER 6</b>  <i>Title:</i> “[Proposer Name] Appendix of Completed Forms, Certifications, &amp; Supporting Documentation” Section 7.1 Page 24  <i>Contents:</i>            • Completed Forms,            • Certifications, and            • Supporting Documentation (no page limits, but no guarantee that materials in this location will be reviewed).</p>



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27	7.2.4		RFP section 7.2.4 requires separate volumes not designated to an explicit Binder. We interpret this to mean that we can provide the volumes referenced below in Binder 5 with each section clearly labeled with tabs. Is this a compliant assumption? <ul style="list-style-type: none"> <li>• Proposer Organization, Experience &amp; Financial Standing: Financial Statements – Section 7.2.4 Page 27 <ul style="list-style-type: none"> <li>o “Proposers shall provide the most recent audited financial statements required hereunder as a separate volume to the proposal”</li> </ul> </li> <li>• Proposer Organization, Experience &amp; Financial Standing: Additional Financial Information – Section 7.2.4 Page 30 <ul style="list-style-type: none"> <li>o “The information required under this Section should be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the proposer’s organization.”</li> </ul> </li> </ul>	Both of these items should be included in the Binder Identified as Number 2 above, since the contents of this binder are not subject to page limits associated with the Proposer Organization, Experience & Financial Standing section.
28	7.3		In Section 7.3, page 35, “pages must be numbered sequentially”. Since each section is in a separate binder, is it compliant to use a number scheme of 1-1,1-2...2-1,2-2...3-1,3-2, etc?	Pages should be numbered so as to ensure that page limits are not exceeded and so that in the event of a binder failure, pages can be easily restored to their proper sequence. To aid in the review process, it would be helpful if pages were numbered to reference both binder and page number.
29	7.3, 7.2.5, 7.2.6, and 7.2.7		In Section 7.3, page 35, “submittals must be bound with all pages in a binder”. In section 7.2.5, 7.2.6, and 7.2.7, separate binders are required. Is it compliant to submit multiple binders as long as all pages submitted are in a binder?	One original and ten (10) copies (Section 7.3, page 35) of each proposal are required. The original should be held together with one or more clips. Each section of the ten copies should be organized into its own binder as per the outline provided above so that if a subcommittee were to review specific elements, the binders could easily be distributed, and the number of submittals required would be minimized.
30	7.3		In Section 7.3, page 35, “the proposal shall be clearly indexed”. We interpret this to mean that the proposal is to have a properly labeled table of contents. Is there any additional requirement posed by this statement other than our interpretation?	The intent of this language is to permit the easy location of distinct sections by reviewers. The proposal should have numbered pages and sections, a table of contents and tabbed divider sheets.
31	--		We plan to submit all Appendices, including non-required appendices, into Binder 5 labeled “[Proposer Name] Appendix of Completed Forms, Certifications, & Supporting Documentation.” Is that compliant?	Yes, all required forms and certifications, as well as additional information Proposers wish to submit should be packaged into a single submittal hereafter referred to as Binder 6.
32	--		Is it also compliant to include appendices relevant to a specific Binder, in that specific Binder rather than separated into a new Binder?	No, please follow the outline included above in order to permit the most accurate and efficient review of your submittal.
33	7.3		In Section 7.3, page 35, “Proposer shall provide 1 (one) original and 10 (ten) certified copies of the proposal in cardboard containers.” We interpret this to mean that the original is produced one-sided, and copies are to be produced double-sided with numbers on the Binder cover denoting the specific copy number (#1-10). Does this interpretation fully comply with the quoted RFP statement?	To reduce cost and reduce adverse environmental consequences, minimizing the use of paper by printing items doubled sided is acceptable for both the original and certified copies.
34	7.1		In Section 7.1, page 24, the table of contents is designated a page limit of 2 pages. For ease of TxDOT reviewing the submission, is it compliant to include a full table of contents in each separate Binder included in the submission package?	Yes, this would be desirable, provided no additional information were to be included other than the Table of Contents.
35	Form E		Please confirm that Form E, DBE Certification, located on Page A-23 of the RFP should be signed and returned with the response, but is only applicable if Federal or State law requires the use of DBE enterprises. In other words, if no Federal or State Law requires DBE, then signing and returning Form E will not voluntarily require the Proposer to meet the DBE requirements.	Correct. Form E, DBE Certification, will only be applicable if federal or state law requires the use of DBEs. If no federal or state law requires use of DBEs, then signing and returning Form E will not obligate the Proposer to meet DBE requirements.

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36	--	--	In view of the fact that most, if not all, TxDOT right of way was purchased using taxpayer money for both freight and passenger vehicle use, under what legal authority does TxDOT now have authority to request proposals for lease of this right of way for systems that would be restricted to movement of freight only and not allow for any carriage of passengers as has been emphatically stated in response to previous questions on this subject?	TxDOT's legal authority for leasing ROW is found in Transportation Code, sections 202.052 and 202.053. In section 202.053(a), the Texas Legislature authorized TxDOT to "determine all terms of the lease" with only two exceptions, neither of which require TxDOT to include terms providing for passenger transport in a lease of ROW. Further, as explained in response to proposer question no. 10, TxDOT has only developed through rulemaking a procedure for the leasing of state-owned ROW for freight movement. See 35 Tex. Reg. 11959 (Dec. 31, 2010). TxDOT explained in that rulemaking preamble, and in the RFP (see p. 1), its rationale for considering alternatives to traditional freight transport. Note that no commenter on that rulemaking asked TxDOT to also provide for lease of ROW for passenger transport. While it is possible that, at some point in the future, TxDOT will develop through rulemaking a procedure for the leasing of ROW for passenger transport, it has not done so at this time.
37	Form A-3		For form A-3, pages A-12 through A-14 it is our understanding that this form should be filled out by the proposer only. Is this correct?	This is correct.
38	7.2.4 (ii)		Page 26, Section 7.2.4, (ii), of the RFP states, "The proposal shall include in the appendix Form B regarding the responsibility of the proposer and the Major Participants." However, the form itself only refers to "Proposer/Equity Owner". Is it compliant if only the Proposer fills out this form?	The purpose of the proposer and their Major Participants (as defined in the RFP) in completing Form B is to ensure that the proposing team as a whole is responsible. The proposer and each Major Participant are to complete Form B.
39	7.2.4 (i)		In section 7.2.4., (i), number 1 of the RFP it requests organizational documents for Major Participants. For non-affiliated Major Participants, such as those arranging for financing or doing design and planning work, this requirement has been questioned as to whether and why it is needed. Would it be compliant to include organization documents for any Equity Owner of Proposer and any Major Participant who is an affiliate of Proposer, but not for those Major Participants who are third parties performing a contractual function on the proposed system?	The purpose of this requirement is to provide assurance that the Equity/Owner and largest affiliated components of the Proposer Team (including other Equity and Major Participants) have solid financial standing. Therefore each of those participants should provide the information requested in Section 7.2.4 (i). Other team members do not need to provide this documentation.
40	--	--	The RFP requires 12-point font size, which we are using in the body text for our response to the RFP. However, we have several photos, graphs and other schematics which are graphics files, that will be inserted within the body text, or in the margins as visual aids. Certain of these photos, graphs or schematics have annotations, captions and labels already integrated within them, that may be smaller than 12 point font size, although still quite legible. Please confirm that the 12-point font requirement refers to the body text of the RFP response and not to every character that may appear as an annotation, caption or label in a photo, graph or other schematic.	The use of smaller than standard text that is imbedded or a part of exhibits is acceptable. However, such text should not provide any information except that which is directly related to permitting readers to understand the content of the exhibit.

