CENTRAL TEXAS
Regional Mobility Authority

AGENDA ITEM #9 SUMMARY

Briefing on business considerations and state law requirements for the use of a comprehensive development agreement to develop a transportation project.

Strategic Plan Relevance:	Innovation
Department:	Finance and Law
Associated Costs:	None
Funding Source:	Not applicable.
Board Action Required:	No

Description of Matter:

Last year the 82nd Texas Legislature passed legislation to authorize the use by the Mobility Authority of a comprehensive development agreement ("CDA") to develop two transportation projects identified by the Legislature: the MoPac Improvement Project and the 183 South Project (Bergstrom Expressway).

This item will brief the Board on the nuts-and-bolts of the CDA tool for developing a transportation project and the process required to use this tool.

Reference documentation:

Presentation to be provided.

Contact for further information:

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Briefing

Overview of Comprehensive Development Agreements (CDA)

March 28, 2012

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Introduction

- A CDA entitles a private entity to a leasehold interest in a project or the right to operate or retain revenue from the operation of a project
- This past legislative session gave authority for certain entities, including the Mobility Authority to enter into Comprehensive Development Agreements (CDAs) for certain specific projects
- The Mobility Authority was given authority to enter into a CDA for the MoPac Improvement Project and Bergstrom Expressway (183-South)
- The legislation requires that environmental clearance for a CDA project be secured by August 31, 2013 and be under contract by August 31, 2015

Introduction

- **A CDA**
  - is a form of project delivery that results in a long-term contractual agreement between public and private sector partners
  - provides for the design and construction of a project and may also include finance, operations and maintenance functions

- **CDAs generally have the following characteristics, some of which are also inherent in Design-Build contracts:**
  - Allocation of risk to the party most suited to manage each specific risk
    - Appropriate risk allocation is dependent on a project's unique characteristics
  - Private innovation that can help shape new solutions
  - Accelerated project delivery
  - Performance-based contracting
  - Whole life costing approach to asset management
  - Long-term single point of responsibility for project delivery and life cycle maintenance
  - Contractual incentives and penalties to ensure timely project delivery and optimize quality of service
  - Benefits derived from economies of scale
  - Private financing alternatives that expand financing options

Risk Allocation Defines the Business Model

	Design	Construction	Financing	Operate & Maintain	Traffic	Revenue
Design Bid Build (Traditional)	○	○	○	○	○	○
Design Build	●	●	○	○	○	○
Design Build Finance	●	●	◐	○	○	○
Design Build Operate Maintain	●	●	○	●	○	○
Design Build Finance Operate Maintain (Availability Payment)	●	●	●	●	○	○
Design Build Finance Operate Maintain (Toll Revenue Risk)	●	●	●	●	●	●

○ – Risk retained by Public Sector ● – Risk transferred to Private Sector

Typical Project Risks / Rewards

- **Risk is an uncertain event or condition that, if it occurs, has a negative or positive (reward) effect on at least one project variable**

- **Design and construction**
  - Site conditions
  - Environmental
  - Cost
  - Changes in project scope
  - Project completion schedule
  - Liability/latent defects
  - Regulatory/permitting
  - Right of Way

- **Operation and maintenance**
  - Asset performance necessary to generate toll revenues
  - Costs and inflation

- **Financing**
  - Credit quality of project
  - Interest rates and market conditions generally
  - Range and adequacy of available financing options
  - Tax treatment
  - Market appetite

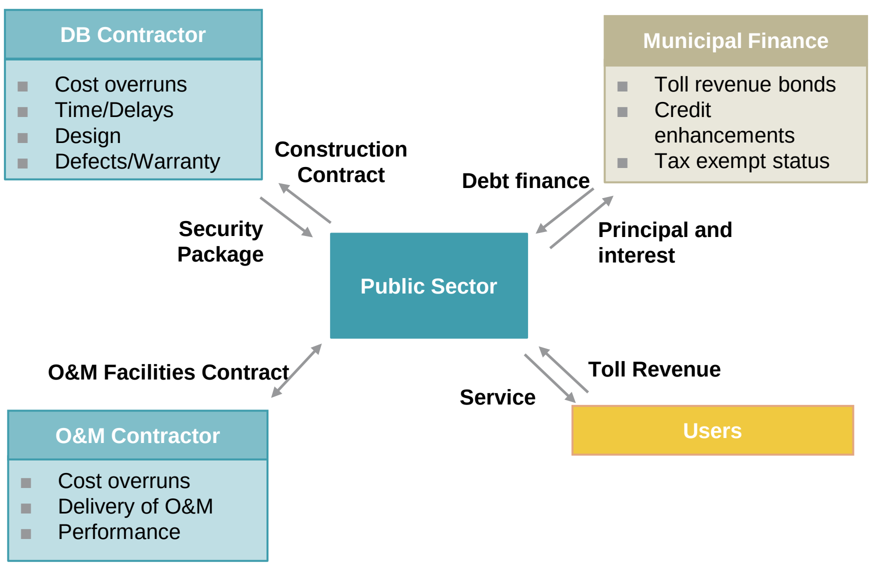
- **Revenue**
  - Dependence on local economic growth and other demand factors e.g. competing facilities
  - Macro economic factors
  - Revenue collection efficiency
  - Ability to meet debt service obligations
  - Ability to meet O&M obligations

Advantages / Disadvantages of CDAs

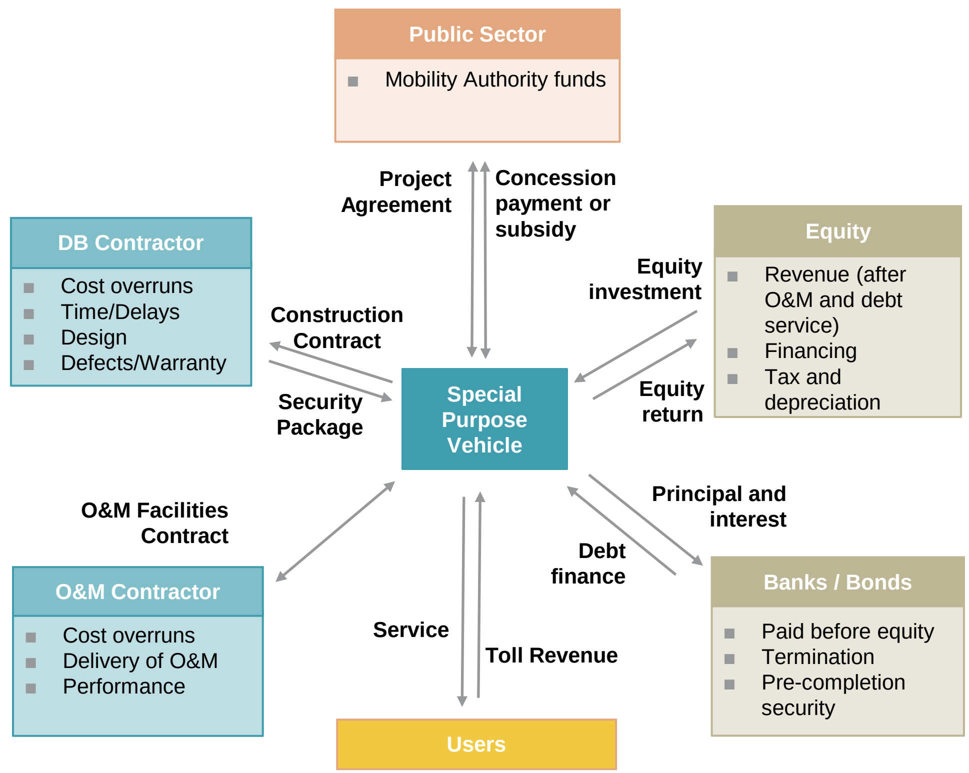
Potential Benefits to Public Sponsor	Potential Drawbacks to Public Sponsor
✓ Innovation leading to more cost effective delivery and long term operations	✓ Political / stakeholder sensitivity
✓ Flexibility through private financing and funding regimes; can free up traditional municipal capital for additional or critical projects	✓ Potential for higher user fees if proper toll-rate setting mechanisms are not in place
✓ Budget certainty over the 'whole life' of an asset	✓ Shared control with the private sector / reduction in public control
✓ Defined cost / rehabilitation schedules	✓ Potential higher cost of financing
✓ Service standards are enforceable – private sector cannot defer maintenance of the asset	✓ Motives of the private partner could conflict with public policy objectives
✓ Competition, accountability, and transparency	
✓ Significant risk transfer to the private sector	
✓ Off balance sheet financing	

How are CDAs Structured?

Traditional Procurement Structure



CDA Structure



Protecting the Public Interest

- The Mobility Authority retains ownership of the Project at all times (required by statute)
- Selecting an experienced and well capitalized Developer team limits risk of Developer Default
- The CDA will contain provisions that protect the public interest, such as:
  - Term of agreement statutorily limited to 52 years including the construction period
    - A shorter concession term would allow the Mobility Authority to realize the upside benefits in the later years, but results in a reduction in the estimated upfront payment
  - Termination for Developer default or bankruptcy
    - Lenders and other equity participants are incentivized to prevent a default and will step-in to cure a default prior to termination of the agreement
  - Termination for convenience (required by statute)
  - Non-compliance points and liquidated damages to incentivize developer performance
  - Hazmat/environmental responsibilities generally include incremental risk sharing between the parties
  - Toll rate setting policy will be prescribed in the agreement therefore Developer must be compliant with the Market Valuation Agreement Terms and Conditions
  - Handback provisions to ensure the asset is returned to the Mobility Authority at the end of the term of the agreement in a state of good repair and without the need for immediate investment

Protecting the Public Interest (cont'd)

- CDA competition incentivizes bidders to assume more aggressive revenue projections
  - The Mobility Authority receives the value of a bidder's optimistic views of project performance as an up front payment
  - This value is locked in for the Mobility Authority at financial close and is not subject to the project actually performing at those levels
  - As a result the developer's expected equity internal rate-of-return (IRR) is at risk and is not a guaranteed return
- If the project does outperform, revenue sharing provisions protect against the Developer making excessive profits
  - Revenue sharing may include sharing in gross revenues once revenues exceed predefined levels or a certain investor return is achieved.
  - Revenue sharing bands allow the Mobility Authority to share in an incrementally greater proportion of revenues
- Refinancing gain share provisions allow the Mobility Authority to participate in savings realized by the developer as a result of changes in financing structure and interest rates throughout the term of the agreement

What CDAs are NOT: Dispelling the Myths

Myth #1	• CDAs = Privatization
Myth #2	• CDAs generate large upfront payments to the public sector
Myth #3	• CDAs cost more to the public
Myth #4	• Private sector participation comes at the expense of service
Myth #5	• Maintenance of facilities will suffer under a CDA
Myth #6	• CDAs are less transparent
Myth #7	• CDAs lead to public sector job losses