State Auditor's Office

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An Audit Report on

The Department of Transportation and the Trans-Texas Corridor

February 2007

Report No. 07-015

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Overall Conclusion

In 2005, the Department of Transportation (Department) signed a $3.5 million Comprehensive Development Agreement contract with a private sector entity (Cintra Zachry, LP) to partner in planning Trans-Texas Corridor 35 (TTC-35).

TTC-35 will comprise 14 percent of the Trans-Texas Corridor's planned 4,000 miles (see Appendix 6 for maps). According to the Department, Cintra Zachry, LP's role is to assist in:

- Identifying priority projects.
- Assessing those projects' preliminary feasibility.
- Establishing a process to develop potential corridor projects over an extended time period by creating a Master Development Plan.

Background Information

Trans-Texas Corridor 35 (TTC-35) is the highest priority portion of the Trans-Texas Corridor. TTC-35 is currently planned to run parallel to Interstate Highway 35 (IH-35).

In March 2005, the Department of Transportation (Department) executed a $3.5 million Comprehensive Development Agreement contract with Cintra Zachry, LP, a private consortium, to develop a long-range plan to potentially design, build, finance, operate, and maintain TTC-35 (see Appendix 4). The plan identifies near-, mid-, and long-range projects, with preliminary cost and revenue projections for some of these projects.

The Master Development Plan for TTC-35 shows that either Cintra Zachry, LP or other developers could build any of the segments of TTC-35 that the Department chooses to build.

It is important to note that financial plans associated with TTC-35 are expected to change and updates are required every six months. Changes in a variety of factors—such as interest rates, construction costs, and revenue forecasts—could result in significant changes to the financial plans for TTC-35.

Administration of Contracts. The Department has been successful in certain key aspects of administering its Comprehensive Development Agreement contract with Cintra Zachry, LP and negotiating the first road project for TTC-35. However, weaknesses in the Department's accounting for project costs create risks that the public will not know how much the State pays for TTC-35 or whether those costs are appropriate.

TTC-35 Estimates. The Master Development Plan contains conceptual plans for the design, construction, financing, operation, and maintenance of TTC-35. The Master Development Plan anticipates that TTC-35 could be developed through a series of 50-year contracts over a staggered timeframe and could cost more than $105.6 billion.[1] According to the Master Development Plan, the design, right of

[1] Unless otherwise specified, dollar amounts in this report are expressed in current dollars.

This audit was conducted in accordance with Texas Government Code, Section 321.0132.

For more information regarding this report, please contact Sandra Vice, Assistant State Auditor, or John Keel, State Auditor, at (512) 936-9500.

way, construction, operations, maintenance, and financing costs will be provided through a developer, but in some cases these items could be partially paid by the State. There will be a separate contract for each segment, or group of segments, of TTC-35; each contract will be between the segment's developer and the Department. As of January 2007, none of these segment development contracts had been executed, although the Department is currently negotiating such a contract for State Highway 130 (segments 5 and 6) with Cintra Zachry, LP.

Reliability of Financial Information. There is a lack of reliable information regarding projected toll road construction costs, operating expenses, revenue, and developer income. Auditors made an effort to sum the elements of costs, operating expenses, revenue, and developer income contained within the TTC-35 Master Development Plan. Upon its review of the sums, the Department stated that this financial information was not correct because it is not possible to accurately estimate profits due to many unforeseen variables. This report contains financial information auditors summed from the Master Development Plan for every 10 years of the 50-year life of the projects (see Table 8 in Appendix 2).

Key Points

The Department has been successful in meeting contractual requirements but should strengthen certain aspects of its financial and administrative oversight of TTC-35.

Although there are weaknesses in the Department's oversight, the Department has been successful in certain key aspects of administering its Comprehensive Development Agreement contract with Cintra Zachry, LP and procuring the first road project for TTC-35. For example:

- Cintra Zachry, LP produced a Master Development Plan for TTC-35 that met requirements of the Comprehensive Development Agreement contract.
- The Department is negotiating the first road project, State Highway 130 (segments 5 and 6), through the TTC-35 Comprehensive Development Agreement contract in a manner that complied with applicable laws, rules, and regulations.
- Weaknesses in the Department's accounting for project costs creates risks that the public will not know how much the State pays for TTC-35 or whether those costs were appropriate.

Although the Department could receive $3 billion in concession payments from the developers of TTC-35, it could be required to forgo that revenue and, instead, the State could pay from available resources for any segment to be built.

Concession payments could be reduced if factors such as the cost of financing each road segment, inflation, and interest rates increase the developers' costs.

Significant changes in the cost of financing each road segment could result in the Department foregoing any concession payment. Instead, if the Department chooses to build the road segment, the State may have to pay a portion of the costs from available resources.

The development of TTC-35 could involve the use of public funds.

The Master Development Plan for TTC-35 states that the development of TTC-35 will require minimal public funds and that the near-term facilities will require no public funds. Some potential uses of public funds include:

- Some of the TTC-35 development and planning costs, including $3.5 million to produce the Master Development Plan; shared costs for future updates of the plan; and the cost of environmental studies and preliminary engineering, according to the Department.
- Some costs for two of the near-term road projects, freight rail lines, and high-speed rail lines using available state resources if the Department chooses to build these projects, according to the Master Development Plan. (See also Table 6 on page 49 for additional cost estimates.)
- Additionally, the Department does not define federal credit assistance as public funds. The Master Development Plan anticipates that developers may apply for $3.9 billion in federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loans to fund the construction of the seven near-term facilities of TTC-35.

The Department did not initially make all documentation related to the Trans-Texas Corridor public.

For 18 months, the Department kept confidential the conceptual financial plan and the conceptual development plan contained in the TTC-35 Comprehensive Development Agreement contract with Cintra Zachry, LP. It did this because it considered these plans to be proprietary information and incomplete for purposes of the Texas Transportation Code, Section 223.204. The TTC-35 Comprehensive Development Agreement contract required Cintra Zachry, LP to finalize the financial and conceptual development plans, and the Department considered the contract to be incomplete until they were delivered. The Texas Transportation Code, Section 223.204, exempts Comprehensive Development Agreement contracts from public disclosure until a final contract is executed.

In May 2005, the Office of the Attorney General ruled that the contract was an open record under the Texas Public Information Act. The Department and Cintra Zachry, LP exercised their rights to challenge that ruling by suing the Attorney General to maintain the confidentiality of portions of the contract. In September 2006, when Cintra Zachry, LP delivered the Master Development Plan containing the finalized plans, the Department posted the Master Development Plan and the entire Comprehensive Development Agreement contract on the Trans-Texas

Corridor Web site. Subsequently, the Department and Cintra Zachry, LP terminated their suits against the Attorney General.

Given the scope and public nature of the Trans-Texas Corridor project, it is important that the Department makes all documents, plans, and contracts related to the project public in a timely manner.

Summary of Key Recommendations

This report contains recommendations addressed to the Legislature and the Department of Transportation, including the following:

Legislative Oversight

The Legislature should consider taking action to increase the availability and reliability of financial information by requiring:

- The Department of Transportation to increase transparency by increasing the public's access to information about the Trans-Texas Corridor.
- The Department of Transportation to transfer the toll revenue projection function and associated resources, from the Department to the Office of the Comptroller of Public Accounts (Comptroller) and having the Comptroller project the toll revenue for each geographic region of a toll road segment prior to the Department signing an agreement with a developer to operate, lease, or finance that toll road segment. Having an independent third party project toll revenue could play a valuable role in increasing the reliability of financial estimates.
- The State Auditor's Office to audit each annual financial statement for a toll road segment (or a combination of segments).

Reliability of Financial Information

The Legislature should consider taking action to:

- Clarify the Texas Transportation Code to require that surplus[2] toll revenue and other revenue paid to the Department associated with toll projects be deposited into the State Highway Fund (Fund 006) in the State Treasury and be subject to legislative appropriation.

[2] According to the Department, Texas Transportation Code, Section 228.053(b), provides that a project could have surplus revenue if revenue exceeds (1) the cost for maintaining, repairing, and operating the project and (2) the principal and interest on bonds as they become due and payable. The section also provides for the creation of unspecified reserves for these purposes.

The Department of Transportation should:

- Prepare a financial forecast that includes toll revenue, construction costs, operating expenses, and developer income before a contract is signed for each toll segment. It should provide that forecast to the Governor, Legislature, and Comptroller of Public Accounts.
- Account for project costs in a manner that allows the public to know how much the State pays for TTC-35 and whether those costs were appropriate. In addition, it should post these costs on its Web site in a timely manner.

Legal Review

The Department of Transportation should submit draft Comprehensive Development Agreement contracts and draft agreements to design, build, operate, maintain, lease, or finance sections of toll roads that will last more than four years or involve the State or another entity spending more than $250 million to the Office of the Attorney General for review and approval.

Summary of Management's Response

The Department generally agrees with our recommendations, and its responses are included in Chapter 6.

Summary of Objectives, Scope, and Methodology

The objectives of this audit were to:

- Verify that Cintra Zachry, LP is developing the Master Development Plan and Master Financial Plan for the I-35 high priority segment of the Trans-Texas Corridor (TTC-35) in accordance with the contract terms.
- Determine whether the Department's procurement for the first Trans-Texas Corridor construction project complied with applicable laws, rules, and regulations, including requirements in the March 2005 Comprehensive Development Agreement contract.
- Determine whether costs charged to the project are allowable under the contract.

The scope of this audit was limited to the procurement, contractual, and reporting activities associated with the Trans-Texas Corridor for fiscal years 2002 through 2006. The audit also included a review of costs for consulting services the Department received in fiscal years 2002 through 2006.

The audit methodology included:

- Collecting and reviewing information through interviews with Department staff and examination of documentary evidence such as the Comprehensive Development Agreement contract between the Department and Cintra Zachry, LP executed on March 11, 2005.
- Conducting procedures and tests such as testing and reviewing contractual expenditures for accuracy; reasonableness; and compliance with agency, statutory, and contractual provisions.
- Reviewing and sum totaling projected toll revenue and construction, financing, and operations expenses contained in the TTC-35 Master Development Plan.

Contents

Detailed Results

Appendices

Detailed Results

Chapter 1

The Department Has Been Successful in Meeting Contractual Requirements, But It Should Strengthen Certain Aspects of Its Financial and Administrative Oversight of TTC-35

Although there are weaknesses in the Department of Transportation's (Department) oversight, the Department has been successful in administering certain key aspects of its Comprehensive Development Agreement contract with Cintra Zachry, LP and negotiating the first road project for TTC-35. For example:

- Cintra Zachry, LP produced a Master Development Plan for TTC-35 that met requirements of the Comprehensive Development Agreement contract.
- The Department negotiated the first road project (segments 5 and 6 of State Highway 130) through the TTC-35 Comprehensive Development Agreement contract in a manner that complied with applicable laws, rules, and regulations.
- The Department has improved its process for procuring TTC-35 consulting contracts.

Weaknesses in the Department's accounting for project costs and monitoring of the developer create risks that the public will not know how much the State pays for TTC-35 or whether those costs were appropriate. Not adequately monitoring developers also exposes the State to future financial liability. The Department can improve its oversight by:

- Improving its allocation and reporting of costs so that (1) the State's total cost for TTC-35 can be made available to the public and (2) the Department can ensure it complies with spending limits.
- Increasing its monitoring of the developer's compliance with requirements of the Comprehensive Development Agreement contract, including whether the developer has sufficient insurance and is financially stable.

Chapter 1-A

The Department Should Improve Its Allocation and Reporting of the Costs Associated with TTC-35

The Department can improve how it allocates expenditures among projects to enable it to accurately determine and report the total costs associated with TTC-35 and other road projects.

The Department does not always charge costs to the correct project and excludes indirect costs from total project costs.

Texas Transportation Code, Section 201.616, requires the Department to submit an annual report to the Legislature that details the expenditures made in connection with the Trans-Texas Corridor. Additionally, Texas Transportation Code, Section 223.202, and the Department's Comprehensive Development Agreement for the development of TTC-35 each specifies a spending cap.

However, the information the Legislature relies on to ensure compliance with the above requirements may be incorrect because the Department has allocated costs to other projects and activities, and it excludes indirect costs associated with the project. Because of these misallocations and exclusions, the Department's cost accounting records do not accurately reflect the true costs of individual projects. Auditors sampled from $36.4 million in payments made to five of the Department's vendors over a four-year period. Auditors tested 32 of these invoices totaling $16.8 million in costs associated with projects managed by the Texas Turnpike Authority (including the TTC-35 project) and determined that:

- For 21 of these invoices, $4.3 million was allocated to incorrect projects (see Table 1).
- A total of $4.5 million associated with the 21 invoices described above was charged to the incorrect activity. For example, $52,000 of a $628,000 invoice that was charged to engineering was actually for public relations expenses.

Table 1

Department of Transportation Project Invoices Charged to Other Projects				
Type of Error	Number of Invoices	Total Invoice Amount (in millions)	Amount Allocated Incorrectly [a] (in millions)	Percent of Costs Allocated Incorrectly
Invoices with errors:				
TTC-35 costs incorrectly allocated to other projects	7	$ 5.1	$ 2.7	52.9 %
Costs incorrectly allocated to TTC-35 from other projects	14	9.1	1.6	17.6%
Subtotal	21	$14.2	$4.3	30.3%
Invoices with no errors:	11	$ 2.6	$0.0	0.0%
Totals for all invoices tested	**32**	**$16.8**	**$4.3**	**25.6%**

[a] The lack of detail in the documentation of these costs prevented us from determining the exact amount of costs that were charged to other projects.

Source: Department accounting records.

The Department excluded indirect costs associated with the Trans-Texas Corridor from the report.[3] According to a Department memo, these indirect costs include general and administrative costs such as accounting, auditing, budgeting, centralized purchasing, and legal services. The Department omitted indirect costs of $906,774 in fiscal year 2005 and $583,642 in fiscal year 2004.

The Department does not always require vendors to submit information that could enable it to allocate costs to specific projects.

The Department does not always require its vendors to provide information on invoices that is necessary to allocate costs to activities and projects accurately. In addition, inconsistencies in the invoice submittal and approval process also could prevent the Department from verifying that vendor charges are accurate.

Auditors identified invoices that:

- Included hours billed that could not be tied to any progress reports or tasks performed.

[3] See the Department's *Annual Report to the Legislature on Certain Matters for* 2004 and *Transportation Program Expenditures - Fiscal Year 2005.*

- Were inconsistent in the amount of detail provided. For example, some invoices included detailed timesheets while others did not.
- Did not contain information needed to link direct costs to specific projects.
- Did not contain documentation of the applicable indirect cost rate.

Although there was not sufficient supporting detail to verify the accuracy of invoice data that auditors tested, dollar amounts in the Department's financial accounting system were consistent with dollar amounts on the invoices. Additionally, goods and services documented on these invoices were allowable under contract provisions. For 13 of 14 invoices tested, the Department followed its invoice approval process; the remaining invoice, which was processed in 2002, had only one of two required approval signatures.

Recommendations

The Department of Transportation should account for project costs in a manner that allows the public to know how much the State pays for TTC-35 and whether those costs were appropriate. It should do this by:

- Creating uniform requirements for vendor invoice documentation and the associated submittal and approval processes. Documentation should include sufficient detail to determine the allocation and allowability of all costs, including wages.
- Requiring all vendors to provide it with sufficiently detailed invoices that could enable it to allocate costs properly. This information should include timesheets and other information needed to link direct charges to the correct project.
- Prepare a financial forecast that includes toll revenue, construction costs, operating expenses, and developer income before a contract is signed for each toll segment. It should provide that forecast to the Governor, Legislature, and Comptroller of Public Accounts.
- Account for project costs in a manner that allows the public to know how much the State pays for TTC-35 and whether those costs were appropriate.
- Posting its costs for the Trans-Texas Corridor on its Web site in a timely manner.
- Including indirect costs associated with the Trans-Texas Corridor in the cost reports it submits to the Legislature, or by indicating that these costs have been excluded.

Management's Response

Management agrees with the recommendations. See Chapter 6 for the full responses.

Chapter 1-B

The Department Should Strengthen its Monitoring of the Developer's Compliance with the Comprehensive Development Agreement Contract

It is essential for the Department to develop and implement effective policies and procedures for monitoring key aspects of (1) the Comprehensive Development Agreement contract with Cintra Zachry, LP and (2) the related segment agreements necessary to build, operate, and maintain TTC-35.

The Department has had some early success in working with Cintra Zachry, LP to ensure successful creation of deliverables in the Comprehensive Development Agreement contract. For example, Cintra Zachry, LP created the Master Development Plan for TTC-35 in September 2006, and that plan generally contains the elements of the Master Financial Plan and the Master Development Plan required by the Comprehensive Development Agreement contract. Some required elements are not present; however, auditors agree with management's decision that these elements would be better addressed later in the development process.

To continue to successfully complete the Comprehensive Development Agreement contract and related segment agreements, the Department should improve its monitoring of the developer. The Department is not adequately monitoring:

- **Whether the developer is meeting the Comprehensive Development Agreement contract's insurance requirements.** The Department received documentation in January 2006 that Cintra Zachry, LP was meeting some, but not all, of the insurance requirements for 2006. The Department did not receive documentation that Cintra Zachry, LP met all insurance requirements for 2006 until October 2006. If Cintra Zachry, LP cannot cover the liabilities that the Comprehensive Development Agreement contract requires it to meet, it is possible that plaintiffs could seek recovery of these damages from the State.

- **Data regarding the developer's financial stability that the Comprehensive Development Agreement contract requires the developer to provide to the Department.** This financial data would help indicate whether the developer has the financial stability required to incur debt anticipated in the Master Development Plan. The Department has not monitored the required financial data for Cintra Zachry, LP since executing the $3.5 million Comprehensive Development Agreement contract in March 2005.

- **Reasonableness of key financial assumptions, such as inflation and interest rates, that the developer used in creating the Master Development Plan.** Department management was unable to document that it verified the reasonableness of key financial assumptions used in the Master Development Plan. The accuracy of these assumptions is key in accurately anticipating the Department's financing risks.

The Department's Finance Division is responsible for monitoring the developers' financial condition and the financial assumptions developers provide.

The Department has improved the process for procuring TTC-35 consulting contracts since the original consulting contracts were signed. At the time the primary consulting contracts were procured, the Department required only that proposers be interviewed by Department evaluation teams, instead of requiring them to prepare written proposals. The Department recognized this was a weakness and strengthened the process. Its new process requires proposers to submit written proposals, in addition to being interviewed by Department evaluation teams. Requiring written proposals helps the Department better evaluate a proposer's level of understanding regarding the project and also helps the Department assess whether the proposer merits further consideration.

Recommendations

The Department of Transportation should implement a process to ensure adequate monitoring of its key contracts related to TTC-35, including the Comprehensive Development Agreement contract and related segment agreements. Specifically, the Department should:

- Examine key contracts related to TTC-35 and identify provisions that require monitoring.
- Create monitoring policies and procedures that will ensure timely and complete monitoring of provisions. For example, the Department should create procedures to ensure it receives complete documentation that developers have obtained insurance coverage required in contracts.
- Monitor developers' financial status to ensure that developers have the financial capacity consistent with their anticipated role in the Master Development Plan.
- Obtain assurance regarding the reasonableness of the assumptions that the developers use in developing plans and financial projections for TTC-35.

Management's Response

Management agrees with the recommendations. See Chapter 6 for the full responses.

Chapter 1-C

The Department's Procurements for the Comprehensive Development Agreement Contract and the Contract for Segments 5 and 6 of State Highway 130 Complied with Applicable Requirements

The procurement of the Comprehensive Development Agreement contract complied with applicable laws, rules, and regulations.

The Department's procurement for the Comprehensive Development Agreement contract complied with applicable laws, rules, and regulations. In addition, the proposal evaluation and scoring process for the Comprehensive Development Agreement contract was objective. Although the procurement of the Comprehensive Development Agreement contract complied with requirements, auditors noted some areas that could be strengthened to enhance the integrity of the process:

- The Department has not finalized its internal policies and procedures regarding acceptance, review, analysis, and processing of unsolicited proposals. As a result, it used draft policies and procedures to review two unsolicited proposals for the Comprehensive Development Agreement contract. The Department has not implemented the recommendations its internal auditor made in May 2006 to finalize the policies and procedures.

- The Department did not retain proposal evaluation committee and sub-committee members' individual scoring sheets as part of the documentation of the Comprehensive Development Agreement contract selection process. According to Department management, retaining individual scoring sheets is not necessary because the final scores on each element of the evaluation criteria were the result of a consensus agreement and not an average of the individual scores.

  Key documents being missing or destroyed has been an issue in other State Auditor's Office audit reports.[4] Not retaining the individual scoring sheets of each committee member can lead to an appearance of impropriety in the selection process.

[4] See *An Audit Report on Routine Maintenance Contracts at the Department of Transportation,* State Auditor's Office Report No. 06-034, April 2006 and *An Audit Report on the Texas Department of Transportation's Motor Vehicle Registration and Titling System,* State Auditor's Office Report No. 06-007, September 2005

The procurement of the contract for segments 5 and 6 of State Highway 130 complied with applicable laws, rules, and regulations.

The Department's procurement for the contract for segments 5 and 6 of State Highway 130 complied with applicable laws, rules, and regulations. In addition, the contract for segments 5 and 6 of State Highway 130 also will fulfill the self-performance requirements of the Comprehensive Development Agreement contract. Specifically, the Comprehensive Development Agreement contract stipulates that the contractor will be allowed to self-perform one or more near-term road segments with a total aggregate estimated road segment cost of at least $400 million (see text box for additional details). The Department estimates the cost of developing this project is $1.35 billion.

Self-Performed Facilities

According to the Comprehensive Development Agreement, a **facility** (segment) is each separate transportation or utility project that is a segment of the Transportation Corridor.

Self-performed means any segment-related work or services to be performed by Cintra Zachry, LP or any affiliate of Cintra Zachry, LP.

Recommendations

The Department of Transportation should:

- Implement its internal auditor's recommendation to finalize the policies and procedures for unsolicited proposals prior to procuring other projects under the Comprehensive Development Agreement contract or awarding other development agreements, such as the agreement for Interstate Highway 69.
- Retain the individual scoring sheets of evaluation committee members as part of the documentation of its procurement process.

Management's Response

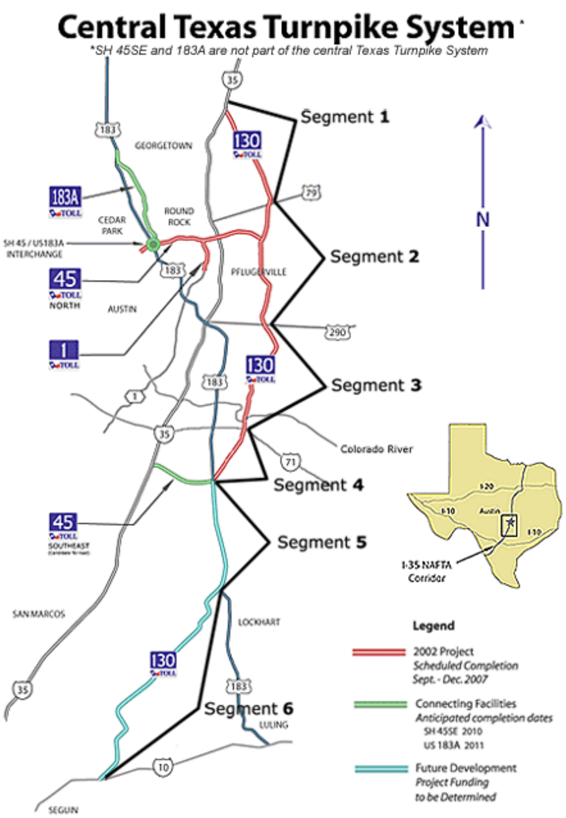
Management agrees it is important for procurements to comply with applicable requirements and it asserts it has complied. Management also states that during future evaluations, it will retain individual scoring sheets of evaluation committee members. See Chapter 6 for the full responses.

The Draft Agreement for the Last Two Segments of State Highway 130 (Segments 5 and 6) Illustrates Potential Terms for Future TTC-35 Segment Agreements

Although the last two segments of State Highway 130 (segments 5 and 6) are not part of TTC-35, the draft segment agreement for these segments offers insight regarding how future segment agreements that relate to TTC-35 might be crafted. As of January 2007, the draft segment agreement for segments 5 and 6 of State Highway 130 is the only example of the provisions that may be included in a facility agreement awarded under the TTC-35 Comprehensive Development Agreement contract.

Background Information on State Highway 130

State Highway 130 is a tolled highway that is being built to improve mobility and relieve congestion on Interstate Highway 35 and other major transportation facilities within the Austin-San Antonio corridor. When completed, State Highway 130 will extend from north of Georgetown, east of metropolitan Austin to Interstate Highway 10 near Seguin. Segments 1 and 2 are currently open, and the Department anticipates that segments 3 and 4 will be open in 2007. The Department funded and will operate segments 1 through 4. Cintra Zachry, LP will design, construct, maintain, finance, and operate segments 5 and 6. Construction has not begun on segments 5 and 6.



Source: Department of Transportation.

Cintra Zachry, LP and the Department have not yet signed the segment agreement for segments 5 and 6 of State Highway 130. Cintra Zachry, LP and the Department have signed a commitment agreement that states they will finalize the segment agreement after Cintra Zachry, LP completes 23 deliverables. As of November 2006, Cintra Zachry, LP had completed six of those deliverables.

Development of individual segments of TTC-35 will be pursued through separate segment agreements.

The Comprehensive Development Agreement contract for TTC-35 is designed to be an umbrella agreement for individual projects, each of which can use a variety of delivery options. The Comprehensive Development Agreement contract is not intended to contain all key contractual information for building TTC-35. Instead, specific contractual requirements regarding the design, construction, maintenance, financing, and operation of individual transportation projects will be included under contracts known as facility (segment) agreements.

The draft segment agreement for segments 5 and 6 of State Highway 130 is more detailed than the Comprehensive Development Agreement contract for TTC-35.

The differences between the TTC-35 umbrella Comprehensive Development Agreement contract and the draft segment agreement for segments 5 and 6 of State Highway 130 are summarized in Table 2. These differences show the inherent limitations of Comprehensive Development

Agreement contracts in providing detailed business terms. Certain provisions of the draft segment agreement for segments 5 and 6 of State Highway 130 could provide an indication of the provisions to be included in future facility agreements. For example:

- **Non-compete clause.** The draft segment agreement for segments 5 and 6 of State Highway 130 includes a non-compete clause to protect the developer's interests. In this clause, the Department may compensate the developer for lost revenues if certain roadways are built within a predesignated zone. However, the Department is entitled to some exceptions, including any future expansions or improvements to Interstate Highway 35.

- **Toll enforcement.** Although the draft segment agreement for segments 5 and 6 of State Highway 130 states that all toll revenues belong exclusively to the developer, the Department is responsible for all collection and enforcement efforts against non-paying riders. The Department assumes all costs associated with collection and enforcement.

- **Toll Rates.** Texas Transportation Code, Section 227.023 (e), requires that the developer submit its proposed methodology for setting toll rates to the Department for approval. There is no statutory requirement that the Department approve actual toll rates, which are set by the developer.

- **Financing.** The draft segment agreement for segments 5 and 6 of State Highway 130 allows the Department to sign the agreement prior to the close of finance. The developer will provide the Department with a $100 million letter of credit that can be drawn upon if the developer is unable to provide financing.

Table 2

Differences between the Comprehensive Development Agreement Contract for TTC-35 and The Draft Segment Agreement for Segments 5 and 6 of State Highway 130

Area	Comprehensive Development Agreement Contract for TTC-35	Draft Segment Agreement for Segments 5 and 6 of State Highway 130
Non-compete clause	To be addressed in each segment agreement.	The Department has sole right and discretion to finance, develop, approve, and construct any new or existing transportation facilities. However, if it builds a road within the stipulated non-compete zone, with certain exceptions including IH-35, the developer may be entitled to compensation
Ownership of toll revenues	Not addressed.	All toll revenues are the property of the developer. However, the developer's lenders have first rights to toll revenues.
Toll rate adjustment	Not addressed.	Texas Transportation Code, Section 227.023 requires that the developer submit its proposed methodology for setting toll rates to the Department for approval. There is no statutory requirement that the Department approve actual toll rates, which are set by the developer.

Differences between the Comprehensive Development Agreement Contract for TTC-35 and The Draft Segment Agreement for Segments 5 and 6 of State Highway 130		
Area	**Comprehensive Development Agreement Contract for TTC-35**	**Draft Segment Agreement for Segments 5 and 6 of State Highway 130**
Toll enforcement	Establishes that toll enforcement will be addressed in each segment agreement.	The Department provides all toll collection and enforcement services.
Toll enforcement – collection of unpaid tolls	Toll facilities must include video equipment designed to capture the image of a violator's license plate. However, there are no provisions regarding payment of toll shortfalls or tolls for non-paying riders	The Department is required to pay toll revenues to the developer for all non-paying riders, even though the Department may not have sufficient information to pursue collection. Additionally, the Department must make up any shortfalls in toll revenue associated with non-paying riders.
Toll rates	Rates are not designated.	Initial toll rates charged per mile range from 12.5 cents for cars to 62.5 cents for trucks with two trailers.
Lease terms	Segment agreements could last up to a maximum of 50 years.	The developer will lease the segment from the Department for a 50-year period.
Revenue Sharing	The Department could receive all of its revenue at financial close in the form of a concession fee and could not participate in revenue sharing.	The Department will receive both a concession payment and participate in revenue sharing. The Department's share increases as the amount of toll revenues collected and allowable speed limit increases, up to 50 percent.
Fees payable to the Department	Not addressed.	The Department will receive or will charge certain fees, which it will retain as its property. The fees include: ▪ A 15 cent transaction fee payable by the developer for each toll or video trip (non-paying rider) transaction, whether collectible or not. ▪ Up to $1.50 per video trip (non-paying rider) payable by the rider.
Financing	Includes planned financing models for each segment and a discussion of other potential sources of funds.	▪ The manner of financing had not been resolved as of November 2006. ▪ The Department can sign the segment agreement before the developer concludes financing arrangements.
Speed Limit	An 85 mph speed limit is assumed in revenue models.	The concession payment is $25 million plus interest earned. The concession payment amount may be increased an additional $67 million if the Department changes the maximum daytime speed limit to 80 mph. The payment is due when the final route is determined by the Federal Highway Administration, not when the segment agreement is signed.
Business Opportunities	Not Addressed	The Department reserves all right and opportunity to develop business interests along the SH 130 segment 5 and 6 right of way.
Construction Equipment	Not Addressed	The developer shall furnish all equipment, material, and labor for construction.

Recommendations

The Department of Transportation should:

- Analyze revenue sharing for all segment agreements to determine if it is appropriate to include a revenue sharing provision.
- Evaluate and consider requiring that the developers should attain close of finance upon or before signing future segment agreements. This may include provisions for adjustment of financing methods upon certain future events, such as environmental clearances. Any such adjustment should require the Department's explicit approval.
- Make no payments for uncollectible fees.

Management's Response

Management generally agrees with the recommendations, but it states that "uncollectible fees" is a business term that will be addressed considering the unique aspects of each project in the CDA facility agreement for that project. See Chapter 6 for the full responses.

Clarification of the Administration and Financing of TTC-35

The concept for the Trans-Texas Corridor is to build and finance a 4,000-mile transportation network over at least 50 years. The Trans-Texas Corridor could include lanes for passenger vehicles; trucks; high-speed, commuter, and freight rail lines; and a utility zone. The Trans-Texas Corridor could become the longest network of toll roads in the world. In 2002, the Department anticipated that the cost of the entire project could be between $145 billion and $184 billion (including right of way).

The first portion of the corridor to be developed through a public-private partnership is TTC-35, which is currently planned to run parallel to Interstate Highway 35 from the Texas-Oklahoma border to Laredo (560 miles, see Appendix 6 for maps of the Trans-Texas Corridor). The Department and Cintra Zachry, LP, a private consortium, produced a Master Development Plan to guide the development of TTC-35 over the next 50 years. This plan identifies 333 miles as the primary near-term portion of TTC-35 to be planned, designed, and built between 2010 and 2017.

The Comprehensive Development Agreement does not award the right to construct any specific section of TTC-35. The Department will award TTC-35 construction contracts through more detailed contracts called facility agreements.

Reliability of financial information in the Master Development Plan.

Information taken from the TTC-35 Master Development Plan is intended to clarify some of the questions resulting from its unique administrative and financing structure. According to the Department, it is not possible to accurately estimate profits because of many currently unforeseen variables on each of the project segments. In addition, the Department states that only when the negotiation process for the financing, design, construction, operation, and maintenance of a specific project segment is undertaken will sufficient, current, and reasonably accurate information be developed to enable such a judgment.

How much could TTC-35 cost?

In its June 2002 report, *Crossroads of the Americas: Trans-Texas Corridor Plan - Report Summary*, the Department estimated that the entire 4,000-mile long Trans-Texas Corridor could cost between $145 billion and $184 billion.

The TTC-35 Master Development Plan does not compute a total cost for TTC-35, which has a planned length of 560 miles (14 percent of the planned length of the entire Trans-Texas Corridor). Auditors identified a total of $105.6 billion in projected costs for TTC-35 throughout the TTC-35 Master Development Plan (see Table 6 in Appendix 2 for additional details). The

Master Development Plan did not contain information on other costs including:

- Contract monitoring costs incurred by the Department.
- Financing costs associated with mid-term and long-term facilities.
- Estimated costs for State Highway 130 and Loop 9, which are connecting roads to TTC-35 and are included in the TTC-35 Master Development Plan's list of potential self-performed projects.

Could the Department receive a $3 billion concession payment from developers for development of five near-term facilities for TTC-35?

Under the Master Development Plan for TTC-35, developers could design, build, finance, operate, and maintain any or all of the seven near-term roadway facilities to be open to traffic in the next 10 years. In exchange, the developers could pay the Department net concession payments estimated at $3 billion.

However, these concession payments could be reduced if factors such as the cost of financing each road segment, inflation, and interest rates increase the developers' costs (see Table 7 in Appendix 2 for additional details). Significant changes in the cost of financing each road segment could result in the Department foregoing any concession payment. Instead, if the Department chooses to build the road segment, the State may have to pay a portion of the costs from available resources. Department management stated that:

- Developers are not guaranteed to earn precisely the 12 percent rate of return that has been used for planning purposes.
- The Master Development Plan included an assumption that the developers of TTC-35 would want a 12 percent return on equity.
- The actual rate of return on developers' investment could be higher or lower.
- It plans to delete language about a "12% guaranteed return on equity" in the Master Development Plan.

Could the development of TTC-35 require the use of public funds?

As discussed above, auditors identified that the total cost to develop TTC-35 is $105.6 billion. The Master Development Plan states that the development of TTC-35 will require minimal public funds and that the near-term facilities will require no public funds. Some potential uses of public funds include:

- Some of the TTC-35 development and planning costs, including $3.5 million to produce the Master Development Plan; shared costs for future updates of the plan; and the cost of environmental studies and preliminary engineering, according to the Department.

- The State may fund 55 percent or $16.5 billion of the $29.9 billion cost of constructing all of the high-speed rail lines and freight rail lines for all of TTC-35. In comparison, the developers may fund 24 percent or $7.2 billion of the rail line cost. The Master Development Plan for TTC-35 shows that the remaining $6.2 billion in financing could come from interest earned on cash balances from project funds that have been raised but not yet spent.

- The State may also pay $563.3 million to construct two of the seven near-term facilities of TTC-35.

Developers may apply for $3.9 billion in federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loans to fund the construction of the seven near-term facilities of TTC-35. It is important to note that federal TIFIA funding is limited, and the use of TIFIA funds for this project may limit the State's use of TIFIA funds for other projects. The Department does not define federal credit assistance as public funds.

The Master Development Plan for TTC-35 estimates that developers may contribute $5 billion of their own funds toward the construction of TTC-35. The developers may receive significant income over the combined staggered, 50-year span of the contracts for seven road segments.

What is the source of toll revenues for TTC-35?

Toll revenues are user fees paid by road users to travel on a restricted access road or road section. For TTC-35, these road users could include Texas residents, visitors, and commercial truckers.

The Master Development Plan assumes that initial toll rates will be $0.125 per mile for cars and $0.48 per mile for trucks. The plan also assumes that toll rates may increase by the annual rate of inflation or about 2.5 percent annually. Texas Transportation Code, Section 227.023 requires that the developer submit its proposed methodology for setting toll rates to the Department for approval. There is no statutory requirement that the Department approve actual toll rates, which are set by the developer.

Table 3 shows the amount road users could pay for tolls initially when making certain trips.

Table 3

Projected Tolls Initially Paid by TTC-35 Users			
Trip	Miles [a]	Projected Toll Expense to User	
		Auto	Truck
Oklahoma Border to San Antonio	333	$41.63	$159.84
Dallas to Austin	164	$20.50	$78.72

[a] The miles include only those miles traveled on the seven primary TTC-35 roads that could be constructed in the short term. Additional travel will be necessary for both trips, which may involve travel on non-TTC-35 tolled roads, such as State Highway 130.

Source: State Auditor's Office calculations based on information in the Master Development Plan, Chapter 3-A.

The Master Development Plan shows that tolling could begin for the Trans-Texas Corridor in 2013, when the first road segment is scheduled to open. All of the first seven road segments are scheduled to be open by 2017. Table 4 shows the amount of toll revenue that is projected after TTC-35 begins to produce toll revenue.

Table 4

Projected TTC-35 Toll Revenue	
Year	Projected Total TTC-35 Toll Revenue (in millions)
2013	$70.3
2014	$182.6
2015	$415.2
2016	$624.0
2017	$817.9

Source: Master Development Plan, Appendices 5 and 7.

How much could developers receive over the life of its Comprehensive Development Agreement contract with the Department?

The Comprehensive Development Agreement contract is an umbrella contract for the development of TTC-35. The Comprehensive Development Agreement contract required Cintra Zachry, LP to create the Master Development Plan for TTC-35, which contains detailed plans for developing TTC-35 and financial projections of TTC-35 costs and revenues.

The TTC-35 Master Development Plan assumes that developers will develop the seven near-term road segments, although no contracts for road construction had been executed as of January 2007. The Master Development Plan includes a schedule of expenses, income, and toll revenue for each of six segments over the contract period. The Department stated that "It is impossible to accurately estimate profits because of many currently unforeseen variables." No one can accurately project multiple and dynamic variables based upon a 50-year timeframe. Table 8 in Appendix 2 is a sum totaling of toll revenue, operating expenses, and income based on schedules provided to the State Auditor's Office by the Department that were included in the Master Development Plan.

Because the Comprehensive Development Agreement contract and the Master Development Plan are not meant to include specific business terms, neither document includes revenue sharing provisions between developers and the Department. (In contrast, the draft agreement between the Department and Cintra Zachry, LP for the development of segments 5 and 6 of State Highway 130 does include revenue sharing provisions.) If facility agreements for individual road segments do not contain provisions for revenue sharing, then the State's cash return could be limited to the concession payment it receives at the time the segment agreement is signed. The State also could receive $3.7 billion in business taxes it assesses on toll revenue from the seven near-term road segments.

How much of the Department's TTC-35 expenses have been funded from the Texas Mobility Fund?

In 2001, Texas voters approved amending the Texas Constitution to create the Texas Mobility Fund. The amendment allows the Department to use Texas Mobility Fund monies to fund a portion of the costs of publicly owned toll roads.

As of November 2006, Department records show that the Department has funded its costs for TTC-35 from the State Highway Fund. None of the funds from the State Highway Fund that have been spent on TTC-35 came from the Texas Mobility Fund.

Will all components (vehicle lanes, truck lanes, high-speed rail lines, freight rail lines, utility right of way) of TTC-35 be constructed at the same time?

The Master Development Plan for TTC-35 specifies that these components will not be developed simultaneously. According to the Master Development Plan, seven road segments totaling 332.6 miles between Oklahoma to south of San Antonio could be constructed in the near-term. Each segment is planned to open with four vehicle lanes. The estimated initial cost of constructing these seven road segments is $7.5 billion. After analysis of traffic patterns on those lanes, the need for additional lanes will then be evaluated. Additional information regarding the construction of TTC-35 is discussed in Appendix 3.

If the high-speed rail lines are constructed, they may not be open until 2024. In addition, these rail lines are not currently planned to parallel all portions of TTC-35; instead they could be constructed from Fort Worth to Dallas to San Antonio.

The Master Development Plan for TTC-35 states that utility right of way for TTC-35 is not expected to be developed until 2030.

Management's Response

See Chapter 6 for the Department's full responses to this chapter.

Oversight of Trans-Texas Corridor Projects

Historically, freeway construction projects in Texas were funded largely on a pay-as-you-go basis, using motor fuel tax revenue and federal funds. Options for financing highway projects were limited because the Texas Constitution generally prohibited the State from incurring debt. Additionally, the Texas Constitution specifically prohibited the State from financing any entity that builds toll roads.

The financing of Trans-Texas Corridor 35 (TTC-35, a 560-mile component of the Trans-Texas Corridor) represents a significant change in the approach to funding highway construction. This change is characterized by financing road construction through long-term contracts with private companies that rely on toll revenue to pay for construction and recoup their investment. Chapter 5 of this report contains the Department's description of this change.

To bring about this change, the Texas Constitution and the Texas Transportation Code have been amended to allow for:

- State funding of toll projects.
- The issuance of bonds for transportation projects, including toll roads.
- The Department to enter into partnerships with private entities to build the Trans-Texas Corridor.
- Private entities to collect tolls on corridor segments for up to 50 years.[5]

These changes raised issues regarding oversight of the decision-making process for the financing of road construction. In March 2005, the Department signed a Comprehensive Development Agreement contract with Cintra Zachry, LP to develop a plan for the design, construction, financing, operation and maintenance of TTC-35. For 18 months, until September 2006, the Department kept confidential the conceptual development plan and the conceptual financial plan for TTC-35 because it claimed those plans contained proprietary information.

[5] Private entities may collect tolls for up to 70 years if the contract contains a specific mechanism for "buying back" or purchasing the interest of the private entity in the project and outlines the benefit to the State resulting in the long-term.

Chapter 4-A

Recent Events Have Resulted in the Department Having Greater Autonomy in Contracting to Build Roads

A series of changes beginning in the early 1990s to the Texas Constitution and state statutes allowed the Department greater autonomy in contracting to build roads. Specifically:

- Constitutional provisions that formerly prohibited the Legislature from providing funding or granting credit to entities authorized to construct, maintain or operate toll roads and turnpikes within Texas were amended in 1991. The amendments allowed the Legislature to authorize the Department to spend funds from any available funding source for the costs of toll projects. Provisions requiring that funds from the State Highway Fund be repaid from toll revenue were deleted by a subsequent constitutional amendment in 2001.

- Changes in the Texas Constitution allowed the Department to incur large amounts of debt ($4 billion as of May 2005) to build roads (including toll roads) through the Texas Mobility Fund. Additionally, funds taken from the State Highway Fund no longer had to be repaid from toll revenue.

- Subsequent changes in the Texas Transportation Code allowed the Department to**:**

  - Contract with private entities to construct and operate the Trans-Texas Corridor and to pay these entities with toll proceeds.

  - Issue bonds for the Trans-Texas Corridor.

  - Create trust funds outside of the State Treasury for toll revenues and debt proceeds for state highway toll projects.

  - Assign ownership of toll revenues to the developer. The TTC-35 Comprehensive Development Agreement contract anticipates that a developer may receive toll revenues. The agreement for segments 5 and 6 of State Highway 130, which is the first segment agreement under the Comprehensive Development Agreement contract, states that toll revenues from that highway belong to the developer and not to the State.

A timeline of events that have enabled this shift in control is detailed in Table 5.

Table 5

Timeline of Events	
Date	**Event**
November 5, 1991	Voters approved Proposition 2 to amend Texas Constitution, Article III, by removing express prohibitions against state funding of toll projects. The amendment allowed the Legislature to authorize the Department to pay the costs of toll projects from any available source of funds.
September 1, 1997	Senate Bill 370 made the Texas Turnpike Authority a division of the Department of Transportation (Department). Powers granted to the Department included the power to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system.
September 1, 2001	Senate Bill 311 (77th Legislature) created the Statewide Contract Advisory Team to assist state agencies in improving contract management practices. This legislation specifically exempted Department contracts related to highway construction or highway engineering from review by the Statewide Contract Advisory Team. For example, the Department is exempt from the requirement to include provisions relating to auditing in its contracts.
November 6, 2001	Voters approved Proposition 15 to amend Texas Constitution, Article III, by: ▪ Creating the Texas Mobility Fund. The Texas Mobility Fund may be used to pay for the construction of toll roads. ▪ Repealing the provision that any funds spent from the State Highway Fund must be repaid to that fund from tolls or other turnpike revenue.
June 21, 2003	House Bill 3588 (78th Legislature, 3rd called session) added Chapter 227 to the Texas Transportation Code, which provided for the Trans-Texas Corridor. Additionally, this bill: ▪ Allowed the Department to authorize a private entity to construct or operate the Trans-Texas Corridor. ▪ Authorized the Department to increase speed limits in excess of statutory limits on the Trans-Texas Corridor. ▪ Authorized the issuance of bonds to pay for the Trans-Texas Corridor. ▪ Allowed for tolling. ▪ Allowed the Department to create trust funds outside of the State Treasury without prior approval from the Comptroller of Public Accounts. The Department also was allowed to deposit bond proceeds into trust funds.
March 10, 2005	House Bill 2702 (79th Legislature, Regular Session) was filed. That bill related to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities.
March 11, 2005	The Department and Cintra Zachry, LP executed a Comprehensive Development Agreement contract, which is an agreement to plan the designing, building, financing, operating, and maintenance of TTC-35.
June 14, 2005	House Bill 2702 (79th Legislature, Regular Session) went into effect immediately upon being signed by the Governor. This legislation: ▪ Gave the Department the authority to enter into Comprehensive Development Agreement contracts. ▪ Exempted Comprehensive Development Agreement proposals from disclosure, inspection, or copying under the Texas Government Code or certain other means of legally required disclosure until a final contract for a project is entered into. ▪ Allowed the Department to enter into agreements with a public or private entity that provide for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity. ▪ Gave the Department the ability to operate toll roads and collect and deposit toll revenues.

Timeline of Events	
Date	**Event**
	▪ Exempted projects built under Comprehensive Development Agreement contracts from statutory prohibitions against incurring a financial obligation for a private entity that designs, develops, finances, constructs, maintains, or operates a state highway or other facility. ▪ Changed the use of toll revenues collected from the state highway system to allow assessment by an entity under contract and allocation as depicted in the entity's agreement. ▪ Required the Texas Transportation Commission to approve the methodology for setting toll rates, but did not include any requirements for approval of the actual toll rates.

Recommendations

The Legislature should consider enacting laws that increase its oversight of the Trans-Texas Corridor, as well as oversight by elected officials and the public, by:

- Requiring the Department of Transportation to increase transparency by increasing the public's access to information about the Trans-Texas Corridor.

- Increasing the monitoring of Trans-Texas Corridor contracts by requiring the Department of Transportation to:

  - Submit draft Comprehensive Development Agreement contracts and draft agreements to design, build, operate, maintain, lease, or finance sections of toll roads that will last more than four years or involve the State or another entity spending more than $250 million to the Office of the Attorney General for review and approval.

  - Transfer the toll revenue projection function and associated resources, from the Department to the Office of the Comptroller of Public Accounts (Comptroller) and have the Comptroller project the toll revenue for each geographic region of a toll road segment prior to the Department signing an agreement with a developer to operate, lease, or finance that toll road segment. Having an independent third party project toll revenue could play a valuable role in increasing the reliability of financial estimates. The revenue projection should be provided to the Department, the Legislative Budget Board, the Governor, and the State Auditor's Office within a reasonable time period before the agreement is signed.

- Requiring the State Auditor's Office to audit each annual financial statement for a toll road segment (or a combination of segments).

- Clarify the Texas Transportation Code to require that surplus[6] toll revenue and other revenue paid to the Department associated with toll projects be deposited into the State Highway Fund (Fund 006) in the State Treasury and be subject to legislative appropriation.

Management's Response

Management acknowledges that transparency is critical. It agrees to submit draft contracts to the Office of the Attorney General for a legal sufficiency review. It also agrees an independent third party in state government can play a valuable role; however, it disagrees that studies to determine traffic and revenue projections should be transferred to the Office of the Comptroller of Public Accounts. Management also states that the State Auditor's Office has the ability to audit the financial statements of toll road projects in this state; and that current statute requires concession payments and revenue sharing to be deposited into the state highway fund. *See Chapter 6 for the full responses.*

Chapter 4-B

The Department Did Not Initially Make All Documentation Related to the Trans-Texas Corridor Public

The Department kept confidential the conceptual financial plan and the conceptual development plan of its Comprehensive Development Agreement contract with Cintra Zachry, LP for TTC-35 from the March 2005 signing of that contract until September 2006 or for 18 months. It did this because it considered these plans to be proprietary information and incomplete for purposes of the Texas Transportation Code, Section 223.204.[7] The TTC-35 Comprehensive Development Agreement contract required Cintra Zachry, LP to finalize the financial and conceptual development plans; and the Department considered the contract to be incomplete until they were delivered. The Texas Transportation Code, Section 223.204, exempts Comprehensive Development Agreement contracts from public disclosure until a final contract is executed.

Challenging Open Record Decisions

The Texas Public Information Act grants the public the right to request access to certain governmental information, with some exceptions for particular types of information. If an agency's governing body believes the request is subject to such an exception, it must refer the matter to the Office of the Attorney General for a ruling as to whether an exception applies.

If the Attorney General rules that the information is open to the public, the agency's governing body must release the information. If the governing body disagrees, it must challenge the ruling by filing suit, as the Department did in this instance.

Source: Texas Government Code, Chapter 552.

[6] According to the Department, Texas Transportation Code, Section 228.053(b), provides that a project could have surplus revenue if revenue exceeds (1) the cost for maintaining, repairing, and operating the project and (2) the principal and interest on bonds as they become due and payable. The section also provides for the creation of unspecified reserves for these purposes.

[7] Texas Transportation Code, Section 223.204, became effective in June 2005, four months after the Comprehensive Development Agreement contract was signed, and exempted Comprehensive Development Agreement contracts from public disclosure until a final contract is executed.

During the time the Department kept these plans confidential, the Office of the Attorney General ruled that the Comprehensive Development Agreement contract was an open record under the Texas Public Information Act.

The Department and Cintra Zachry, LP then sued the Attorney General to maintain the confidentiality of portions of the Comprehensive Development Agreement contract.

In September 2006 Cintra Zachry, LP finalized these plans, which are contained in the Master Development Plan. The Department then posted the Master Development Plan and the entire Comprehensive Development Agreement contract on the Trans-Texas Corridor Web site. Subsequently, the Department and Cintra Zachry, LP terminated their suits against the Attorney General.[8]

The Comprehensive Development Agreement contract specifies that updates to the Master Development Plan will occur at least every six months. In addition, the Department is in the process of procuring a long-term strategic partner for the development of the Interstate Highway 69 portion of the Trans-Texas Corridor. As of November 2006, no contracts had been signed for the development of Interstate Highway 69. With the continued development of the Trans-Texas Corridor, the Department will likely face additional decisions to release information. The Department has engaged a private law firm to provide contract and legal services in the Comprehensive Development Agreement program.

Recommendations

The Department of Transportation should increase the transparency of the development of the Trans-Texas Corridor by increasing the public's timely access to information. Specifically, it should:

- Make all documents, plans, and contracts related to the Trans-Texas Corridor public in a timely manner.

- Make all updates to the Master Development Plan for TTC-35, including the financial plans, public in a timely manner.

The Legislature should consider:

- Incorporating the above recommendations into statute.

[8] The Comprehensive Development Agreement is on the Internet at http://www.keeptexasmoving.org/projects/ttc35/contracts.aspx. The Master Development Plan is on the Internet at http://www.keeptexasmoving.org/projects/ttc35/master_development_plan.aspx.

- Requiring the Department of Transportation to send electronic versions of all updates to the Master Development Plan for TTC-35 to the Governor's Office of Budget and Planning, Senate Finance Committee, House Appropriations Committee, Legislative Budget Board, State Auditor's Office, and Comptroller of Public Accounts in a timely manner.

Management's Response

Management states that all Trans-Texas Corridor information was made public upon approval. Management also agrees to make all updates to the Master Development Plan for TTC-35 public in a timely manner. See Chapter 6 for the full responses.

Chapter 5

Department Information Regarding the Potential Benefits from the Trans-Texas Corridor

The Department requested that the following information be included in this report. The State Auditor's Office has not audited or otherwise verified the accuracy of this information.

Texas is the 10th largest economy in the world (Comptroller 2005). The State Demographer estimates that by 2030, Texas' population could grow to 40.5 million people, a 55% increase over 2000 population figures. However, without a new source of funding, these population increases coupled with the rising age of our states infrastructure and a lack in traditional gasoline tax funding means that congestion on all our major highways will grow exponentially worse as time goes on.

Even with planned improvements to I-35, traffic demand will reach or exceed capacity by 2025. According to a 1999 study by the Federal Highway Administration, I-35 would need to be expanded to 16 lanes in metro areas and 12 lanes through Central Texas to meet the corridor's traffic demands over the next 20 years. It is for this reason that a new, parallel corridor is needed in this state. The Trans-Texas Corridor 35 (TTC-35) project seeks to relieve congestion, improve safety, expand economic opportunities, improve air quality, and increase the value of our transportation assets over the next 50 years.

According to information gathered through the TTC-35 Draft Environmental Impact Statement, approximately 45 percent Texans live within 50 miles of I-35. With this significant portion of the population centered around I-35, the corridor is no longer an efficient option for intercity and freight travel but rather has become a commuter route, particularly in the urban areas. The parallel TTC-35 is a proposed multi-use, statewide network of transportation routes in Texas that will incorporate existing and create new highways, truck lanes, freight and passenger railways and utility right-of-ways. It will not only help both through and connecting freight and commuter traffic get to its destination quicker, it will provide new multi-modal options for Texas.

In addition to relieving congestion, studies show that investment in transportation adds back to the economy. The Perryman Group, an economic research firm from Waco studied the Trans-Texas Corridor and found that it could create $1.6 trillion in new private spending; increase the gross state product in Texas by $667 billion, boost personal income in Texas by $376 billion; and generate 3.7 million permanent jobs.

The segments that are needed most on TTC-35, known as the near term facilities, stretch from Dallas-Fort Worth all the way to San Antonio. These *segments could be complete within five to ten years. Other segments and other modes will be built on an as needed basis.*

TTC-35 is the most efficient and cost effective way of breaking the gridlock on our highways. Though private development it can be built with a minimum amount of public money, and will provide its own long-term source of funding for operations, maintenance, and connecting infrastructure.

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

February 21, 2007

Mr. John Keel
State Auditor
Texas State Auditor's Office
P. O. Box 12067
Austin, Texas 78711-2067

Dear Mr. Keel:

Thank you for attending the meeting on January 29 to listen to our comments regarding the draft report, *The Department of Transportation and the Trans Texas Corridor* (the Report). We found the discussion helpful and productive. We share your goal of having a good audit report that is factual and understandable.

The Report addresses the new and innovative tools that our elected officials have provided us to address the state's transportation needs. Because these tools are new, as well as complex, your report has provided significant content to help the reader understand these new tools. Our response to the Report received February 14, 2007 (attached) has also included a significant amount of content for the same purpose: to help the readers understand the tools and how we are using these tools to improve transportation.

We value the audit process and appreciate the professionalism of your staff. Hopefully members of this audit team will be available for additional audits of these new tools and transportation projects. Again, thanks for your hands on approach in working with us.

If you have any questions, please contact me at (512) 305-9501 or Owen Whitworth, Director, Audit Office at (512) 463-8637.

Sincerely,

M. W. Behrens

Michael W. Behrens, P.E.
Executive Director

Attachment
cc: Texas Transportation Commission
Owen Whitworth, Director, Audit Office, TxDOT

THE TEXAS PLAN
REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY
INCREASE THE VALUE OF OUR TRANSPORTATION ASSETS

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TTC-35 SAO MANAGEMENT RESPONSES
02/21/07

Management's Response – General Comments

We at the Texas Department of Transportation (TxDOT) are committed to serving the State of Texas by reducing congestion, improving safety, expanding economic opportunity, improving air quality and increasing the value of our transportation assets. We use the following four strategies to help us meet our five goals: use all financial tools given to us by the Legislature, involve local and regional leaders in decision making, demand consumer-driven decisions, and use competition to drive down the cost of transportation projects. We are facing a large gap in funding over the next 25 years. A tremendous increase in population and a lack of traditional state and federal funding has caused a transportation crisis in this state. Rather than waiting for the problem to get worse, we are implementing a plan now. Much of this plan is the subject of this audit.

We were instructed to build more infrastructure without raising taxes and we have been successful. Our tactics include, but are not limited to, toll roads and private investment. The Comprehensive Development Agreement process is the primary method of attracting private investment in our state's infrastructure, and it has worked. There are at least half a dozen projects getting started now that would have stayed on the planning books waiting to be funded. Instead, we will complete this infrastructure years earlier, with little state money included.

The Trans-Texas Corridor (TTC) may be the most shining success of the CDA program thus far. TTC-35 will provide new mobility options over the next 50 years (such as roads and rail lines for passenger and freight). It will be constructed in a series of project segments on an as-needed basis with a minimum amount of state money, and will provide, on its own, a long-term source of funding for operations and maintenance. A project of this magnitude could never be completed in our lifetime if it was financed with traditional government funding sources. That is why we have invited the private sector to help us find a way to finance and build it. Here are some of the successes of TTC-35:

- The segments that are needed most (the near term facilities) stretch from Dallas all the way to San Antonio. These segments could be complete within five to ten years.
- Other segments will be built when they are needed.
- A 2006 traffic study we conducted showed that by 2014 approximately 18 percent of the total traffic on I-35 between San Antonio and Austin could be diverted to TTC-35 and by 2030, this number could reach 24 percent.
- This same traffic study concluded that by 2014, 15 percent of the traffic on I-35 between Austin and Waco could be diverted to TTC-35, with a total diversion of 23 percent by 2030.

- **TTC-35 will give drivers the choice to get to their destination faster, while at the same time reducing congestion on the existing IH-35 which was paid for with gasoline taxes and other dedicated state highway funds.**

Here are some of the successes of the SH 130 Segments 5 and 6 CDA:

- **The first connecting facility to the TTC-35 project, SH 130 Segments 5 and 6, is the first example in this state showing how a concession CDA can work.**
- **With SH 130 Segments 5&6, the state will receive an asset worth $1.3 billion that could not have been built with traditional funding sources for at least another 25 years.**
- **In addition, the state will receive an upfront concession payment of $25 million plus revenue sharing over time.**
- **It's expected that the total concession package could be worth $1.6 billion over the life of the concession.**
- **This project, in addition to the $1.6 billion concession package and the $1.3 billion asset built with private money, will significantly improve air quality, congestion, and safety in the I-35 corridor.**
- **It will also bring new economic opportunities to the Austin-San Antonio region.**

Having noted these successes, it is clear that the department works diligently to exceed the expectations of the public and elected officials. We believe the audit process works and we are willing to implement any recommendations that would help improve efficiencies within the department.

Chapter 1

The Department Has Been Successful in Meeting Contractual Requirements, But It Should Strengthen Certain Aspects of Its Financial and Administrative Oversight of TTC-35

Chapter 1-A

The Department Should Improve Its Allocation and Reporting of the Costs Associated with TTC-35.

Recommendations

The Department should account for project costs in a manner that allows the public to know how much the State pays for TTC-35 and whether those costs were appropriate. It should do this by:

- Requiring vendors to provide it with sufficiently detailed invoices that would enable it to allocate costs properly. This information should include timesheets and other information needed to link direct charges to the correct project.

We agree project invoices should account for project costs in a manner allowing the public to know how much the state pays for TTC-35 and whether those costs were appropriate. Vendors already provide detailed invoices along with time sheets and other information needed to link charges to the correct project in accordance with the contractual requirements, however, additional coordination with both prime and sub-contractors will improve accuracy and consistency. The time frame for implementation is June 30, 2007 and the Director of the Turnpike Division is responsible.

- Prepare a financial forecast that includes toll revenue, construction costs, operating expenses, and developer income before a contract is signed for each toll segment. It should provide that forecast to the Governor, Legislature, and Comptroller of Public Accounts.

We agree to provide a financial forecast that includes projected toll revenue, estimated construction costs and operating expenses, and projected developer income after bids are received and evaluated and before a contract is signed for each toll segment. We also agree that it could be provided confidentially to the Governor, Legislature, and the Comptroller of Public Accounts. However, the premature release of this information, and the resultant "tipping of TxDOT's hand" could impair the Department's ability to negotiate and finalize an agreement in the best interest of the State. This will begin with the next procurement and the Chief Financial Officer is responsible.

Account for project costs in a manner that allows the public to know how much the State pays for TTC-35 and whether those costs are appropriate.

We have a detailed cost accounting system to allocate expenditures to particular projects in order to accurately determine total costs and will continue using it to track costs on the TTC-35 project, however, additional training for project managers and related personnel will ensure that the system is being used as accurately as possible. The time frame for implementation is June 30, 2007 and the Director of the Turnpike Division is responsible.

- Posting its costs for the Trans-Texas Corridor on its Web site in a timely manner.

We will implement a system for updating the website to include project costs on the Trans-Texas Corridor. The time frame for implementation is June 30, 2007 and the Chief Financial Officer is responsible.

- Including indirect costs associated with the Trans-Texas Corridor in the cost reports it submits to the Legislature, or by indicating that these costs have been excluded.

In future cost reports, we will include indirect costs associated with the Trans-Texas Corridor or indicate these costs have been excluded. This will be

3

implemented on the next cost report that is developed in December, 2007. The Chief Financial Officer is responsible.

- Creating uniform requirements for vendor invoice documentation and the associated submittal and approval processes. Documentation should include sufficient detail to determine the allocation and allowability of all costs, including wages.

The department has uniform and detailed requirements for invoice documentation, submittal and approval. We require sufficient detail to determine the allocation and wages of the service providers, however, the department agrees that this is important and will review existing requirements, documentation, and training to see if they are sufficient and supplement them as needed. The time frame for implementation is June 30, 2007. The Chief Financial Officer is responsible.

Chapter 1-B
The Department Should Strengthen its Monitoring of the Developer's Compliance with the Comprehensive Development Agreement Contract

Recommendations

The Department should implement a process to ensure adequate monitoring of its key contracts related to TTC-35, including the CDA and related segment agreements. Specifically, the Department should:

- Examine key contracts related to TTC-35 and identify provisions that require monitoring.

We agree with this recommendation and are in the process of adopting policies and procedures to address long-term CDA contract monitoring. Independent Engineering firms have been selected to assist in this effort. The Independent Engineer will assist in identifying specific provisions in each contract and putting procedures in place to uphold state commitments. The Director of the Turnpike Division is responsible.

- Create monitoring policies and procedures that will ensure timely and complete monitoring of provisions. For example, the Department should create procedures to ensure it receives complete documentation that developers have obtained insurance coverage required in contracts.

As previously stated, we agree with this recommendation and are in the process of contracting with Independent Engineering firms for each CDA project whose duties will include, among other tasks, creating monitoring policies and procedures to ensure complete monitoring of provisions and compliance with those provisions by the private developer, including documentation of required insurance coverage. The Director of the Turnpike Division is responsible.

4

- Monitor developers' financial status to ensure that developers have the financial capacity consistent with its anticipated role in the Master Development Plan.

As stated above, the Independent Engineer will assist with developing procedures for all contract provision monitoring including coordination within the department to monitor financial capacity. Additionally, the financial capacity of a developer will be assessed prior to selection for each separate facility agreement. The time frame for monitoring the on-going financial capacity of Cintra-Zachry is June 30, 2007. The Chief Financial Officer is responsible.

- Obtain assurance regarding the reasonableness of the assumptions that the developers use in developing plans and financial projections for TTC- 35.

We agree with this recommendation and in fact we did provide assurance that Cintra-Zachry's assumptions used in developing the plan and financial projections were reasonable. We hired financial advisors who provided this reasonableness assurance. Effective immediately, documentation will be kept to substantiate reasonableness of assumptions for development plans and financial plans. The Chief Financial Officer is responsible.

Chapter 1-C
The Department's Procurements for the CDA and the Contract for Segments 5 and 6 of State Highway 130 Complied with Applicable Requirements

Recommendations

The Department should:

- Implement its internal auditor's recommendation to finalize the policies and procedures for unsolicited proposals prior to procuring other projects under the CDA or awarding other development agreements, such as the agreement for Interstate Highway 69.

We agree it is important for our procurements to comply with applicable requirements and we assert we have complied.

The Audit Office's recommendation to finalize our internal policies and procedures regarding acceptance, review, analysis, and processing of unsolicited proposals was based on the requirements of Section 223.209, Transportation Code. This section requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a CDA and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts. The commission has adopted those rules in 43 TAC §§27.1-27.6 (and recently amended those rules

to add §§27.7-27.9). Specifically, 43 TAC §27.5 contains policies and procedures for the acceptance, review, analysis, and processing of unsolicited proposals.

We have also been working on a CDA manual, envisioned as a "how-to" manual regarding the development of CDAs, with sample documents. It will supplement the procurement rules in §§27.1-27.9. This is already being implemented and procedures are being continually refined and improved. The Director of the Turnpike Division is responsible.

- Retain the individual scoring sheets of evaluation committee members as part of the documentation of its procurement process.

During future evaluations we will retain the individual scoring sheets of evaluation committee members. This will begin with the next CDA procurement. The Director of the Turnpike Division is responsible.

Chapter 2

The Draft Agreement for the Last Two Segments of State Highway 130 (Segments 5 and 6) Illustrates Potential Terms for Future TTC-35 Segment Agreements

Recommendations

Analyze revenue sharing for all segment agreement to determine if it is appropriate to include a revenue sharing provision.

We agree that revenue-sharing provisions should be analyzed for inclusion in all facility agreement CDAs, and we anticipate requiring revenue sharing in these agreements as appropriate. SH 130 5&6 includes provisions for revenue sharing, but it also includes an upfront concession fee. It also includes a greater degree of revenue sharing if allowable speed limits should increase over the lease term. TTC-35 did not include revenue sharing provisions because it is essentially a contract to develop a plan, not a contract to finance, build or operate a specific facility. We have developed standard business terms for the program which are posted on the internet. These terms state that the department will be entitled to a share of gross toll revenues received during the term of the lease. Our share of gross revenues will increase if toll revenues exceed expectations. Currently, on all contracts, we have the flexibility to receive gross revenues upfront (with a concession fee), over time (with revenue sharing), or have a mix of the two. This recommendation is already a Department procedure. The Director of the Turnpike Division is responsible.

- Evaluate and consider requiring that the developers should attain close of finance upon or before signing future segment agreements. This may include provisions for adjustment of financing methods upon certain future events, such as environmental clearances. Any such adjustment should require the Department's explicit approval.

6

The department agrees that evaluation of financial close in relation to contract award is important to consider for each project in the context of unique project attributes such as the date of environmental clearance. This will be carefully evaluated for each project, and any conditions precedent to closing will be closely monitored by the Department with explicit approval upon final acceptance. Additional safeguards are in place to protect the public. Even though the SH 130 5&6 contract may be executed prior to Cintra-Zachry closing their financing agreements, they will be required to post security in the amount of $100 million which protects the public and provides substantial incentive for the developer to attain financial closing. Additionally, the department has approval rights related to the financings and any adjustments in the financial plan that occur prior to financial close. This recommendation is already a Department procedure. The Director of the Turnpike Division is responsible.

- Make no payments for uncollectible fees.

The department generally agrees with this recommendation, but it is a business term that will be addressed considering the unique aspects of each project in the CDA facility agreement for that project. The Director of the Turnpike Division is responsible.

Chapter 3
Clarification of the Administration and Financing of TTC-35

This section is a narrative and does not contain any recommendations for the department

The purpose of this section of the management response is to restate certain distinctions between the TTC-35 CDA and the SH 130 Segments 5 and 6 CDA that should be understood prior to comparison.

The CDA for TTC-35 <u>does not</u> guarantee Cintra-Zachry will construct any segment or mode of the corridor. The primary purpose of the CDA with Cintra-Zachry on TTC-35 was to create and update the TTC-35 Master Development Plan, which lays out cost estimates for building each segment of roadway and each segment of the other modes (freight and passenger rail, truck lanes, and utility lines). The plan also lays out reasonable timeframes for when each of the segments and modes could be needed.

The TTC-35 CDA and the facility agreement for SH 130 Segments 5 and 6 cannot be compared because the SH 130 agreement actually includes the financing, design, construction, maintenance, and operation of a specific project segment, whereas the TTC-35 CDA is a more general agreement that covers the planning of the entire corridor. It includes only the planning of a group of various types of facilities, it does not guarantee that these facilities will actually be built and does

not specify who the builder will be. The only commitment given to Cintra-Zachry as part of the award of the TTC-35 CDA was the right of first negotiation on a minimum of $400 million worth of construction contracts, and that limited commitment will be met with the award of the SH 130 Segments 5 and 6 contract.

When building each segment of the Trans-Texas Corridor the department will not only seek to find the best value for the state in terms of the developer of each segment, it will also seek, through rigorous negotiations on each segment, the best value in terms of the mix between revenue sharing and upfront concession fees. The TTC-35 CDA does not specify that the department's revenues will be limited to upfront concession fees it receives, nor is this stated in the Master Development Plan. General projections of possible concession fees were listed in the Master Development Plan for each of the near term facilities in order to accurately compare each project. However, when it comes time to negotiate a contract for any one of these near term facilities, both revenue sharing and concession fees will be discussed using more precise information about the specific facility.

With regard to the profits a developer will make, the audit states we could be required to forgo any upfront payments and instead be required to pay Cintra-Zachry so the hypothetical 12% guaranteed rate of return is met. It is very important to make the distinction that this rate of return is <u>not guaranteed</u>, and TxDOT will never be required to make payments so that Cintra-Zachry gets a 12% return. In order to estimate the extent of concession fees available (or subsidy required) the financial model used in the preparation of the Master Development Plan included <u>an assumption</u> that the developers of TTC-35 would want a 12% return on equity. The nature of private investment in public infrastructure means that the risk of financing projects is shifted from the public sector to the private sector. TxDOT will not be responsible for compensating any developer of any segment of the Trans-Texas Corridor if any developer's expected rate of return is not met. The 12% was merely a modeling assumption.

In addition, any forecasts the SAO made as to the expected profit of Cintra-Zachry would be flawed. Even if one assumed that Cintra-Zachry was the builder of the entire TTC-35 (even though, as has been stated before, they are not guaranteed any work), it is impossible to accurately estimate profits because of many currently unforeseen variables on each of the project segments. Only when the negotiation process for the financing, design, construction, operation and maintenance of a specific project segment is undertaken will sufficiently current and reasonably accurate information be developed to enable such a judgment.

With regard to public subsidies, loans, or payments, we have never committed to loaning money to Cintra-Zachry. While we have not discussed specifics on providing money for constructing the corridor, we are indeed financing some of the TTC 35 development and planning costs including $3.5 million to produce the Master Development Plan, shared costs for future updates of the Master

8

Development Plan, and the cost of environmental studies and preliminary engineering. No specific budget is available for these activities because the level of effort has only now been defined clearly enough to begin making those forecasts.

In addition, it is important to note there are no non-compete clauses in our contracts. We will never agree to a contract where we are precluded from building a project that is in the best interest of the state. As such, none of our current CDA contracts preclude us from building any projects, planned or unplanned, around a tolled facility. The clauses the auditor may be referring to are agreements that define "competing facilities" for purposes of acknowledging that we have a duty to develop transportation projects for the benefit of the public and that we have the unfettered right to build any transportation project no matter the effect on the CDA facility.

The contract lays out a framework for determining whether and how much compensation must be paid to the project developer in the event that a project negatively affects traffic. However, in each of our CDA contracts, we specifically list existing and planned infrastructure that will be exempted from these compensation requirements. In addition, the contract specifically outlines a methodology for compensation in the event that a non-exempt competing facility, as defined in the agreement, affects traffic on the CDA project, resulting in an impact on CDA project revenues. It is the developer's responsibility to prove that traffic has adversely affected the project. If the competing facility causes a beneficial impact to the project, that impact may be used to offset adverse impacts of another competing facility. Restated, the clauses included in our CDA contracts do not prevent major maintenance projects or new facilities from being built around a tolled facility. However, in some cases the clauses allow the developer to be compensated for negative traffic impacts.

In regard to financing the construction of any TTC-35 facility, it is not accurate to say the state will subsidize many of the projects. There is no commitment to build or to subsidize any project. The Master Development Plan lays out a timeline of the near, mid, and long term projects. Some are self sustaining and will likely provide a concession fee to the state, and some, in order to be financially feasible might need a subsidy. However, the decision to build a project needing a public subsidy has not yet been made. In addition, it is likely that the subsidy would be paid from the concession fees received.

If we find there is value to the state to subsidize a certain project, we plan to find the best way to use the least amount of state money possible. For example, in 2004 we agreed to give $65 million to the Central Texas Regional Mobility Authority in toll equity to support the construction of the US 183A toll project. The state, in return for this minimal investment, will receive an asset that may have never been built without a subsidy. Also, in January 2007, as part of the protocol agreed upon by the department and the North Texas Tollway Authority,

we began negotiating a $160 million investment in right-of-way and utility relocation costs on the eastern extension of the George Bush Turnpike. Pending completion of these negotiations, in return, the state will receive revenue sharing on the project once it is completed and the revenue will be used to build other needed projects in the DFW region. Both of these projects can now move forward, years sooner than expected with a minimal state investment.

Likewise, we can see these benefits on TTC-35. If we chose to help finance future projects that are not financially feasible on their own, such as passenger or freight rail, we could provide tremendous benefits to the state. This financial help could come from concession fees received on financially viable TTC-35 projects, not from gasoline taxes, registration fees, or general revenue.

These concession fees would not exist if it weren't for the corridor. Without the corridor there may be no other options for financing these important multimodal projects around the state.

Chapter 4
Oversight of the Trans Texas Corridor Projects

In light of the current transportation crisis, it is fortunate that legislative changes over the past ten years have given Texans many new options in transportation infrastructure delivery. The ability to issue toll revenue bonds and build toll roads was implemented in Texas in the early 1950s and within TxDOT in 1997. The turnpikes in Dallas, Houston, and the recently opened Central Texas Turnpike in Austin are all examples of projects that were accelerated by tolling. In addition, the precursor to CDAs, the Exclusive Development Agreement, which allowed the winning bidder to both design and build a transportation project, was authorized by statute in 1991. In 2001, citizens approved the creation of the Texas Mobility Fund (TMF) to address the growing transportation funding gap. This fund offers a new financial tool for Texas, providing new money and the ability to leverage it to improve mobility in Texas. That same year, with SB 342, creation of Regional Mobility Authorities was authorized. In 2003, with HB 3588, the ability for the state to accelerate transportation projects was expanded by provisions that allowed the use of public-private partnerships. The term Comprehensive Development Agreement was coined at that time. In addition, under HB 3588, the Trans-Texas Corridor was authorized, as well as a Pass-Through Financing Program, and the expansion of the powers of Regional Mobility Authorities. In 2005, with HB 2702, many safeguards were enacted to protect landowners, and many of the provisions enacted in HB 3588 were clarified. HB 2702 also requires the Transportation Commission to approve a methodology for the setting of tolls and increases to tolls, as well as provide procedures for the collection of tolls and penalties for non-payment of tolls on all CDA contracts with private developers.

Chapter 4-A
Recent Events Have Resulted in the Department Having Greater Autonomy in Contracting to Build Roads

Recommendations
The Legislature should consider enacting laws that increases its oversight of the Trans-Texas Corridor, as well as oversight by elected officials and the public, by:

- Requiring the Department to increase transparency by increasing the public's access to information about the Trans-Texas Corridor.

We know that transparency is critical. The following bullets list aspects of the Comprehensive Development Agreement (CDA) Program already in place that promote transparency:

- **We maintain www.keeptexasmoving.org, a website dedicated to information about the Trans-Texas Corridor.**
- **We have held a public hearing in all of Texas' 254 counties to share information about the Trans-Texas Corridor. In addition to these hearings, since 2004, we have conducted 171 public hearings within the TTC-35 study area.**
- **We have provided numerous briefings to civic groups and elected officials.**
- **We attended frequent public interim hearings around the state before members of the Legislature. We provided testimony on CDAs, the Trans-Texas Corridor, and tolling, and were available to answer questions asked by members of the Legislature.**
- **We host monthly Trans-Texas Corridor Advisory Committee meetings; attendees include citizens with an interest in the Trans-Texas Corridor.**
- **We have held two industry workshops in the past year that have attracted hundreds of participants, one of which was held in the state capitol last year.**
- **We have received and relied upon input from Metropolitan Planning Organizations and other regional transportation leaders to make decisions on establishing a recommended preferred alignment and decisions concerning impacts to the region, and also on revenue sharing policies, toll rates, and toll rate escalation for regional toll roads.**
- **We post programmatic CDA business terms on the internet.**
- **We post business terms for specific projects as well as information on awarded contracts on the internet as soon as possible.**
- **We included the Office of the Attorney General in negotiations on the SH 130 5&6 facility agreement and plan to include them on all other CDAs.**
- **We include the Federal Highway Administration as an advisor on all CDA procurements.**
- **We obtain traffic and revenue studies as part of the procurement process from industry professionals to determine the anticipated project revenues.**

- **We are required by statute to have an annual independent audits conducted for each toll project.**

- Increasing the monitoring of Trans-Texas Corridor contracts by requiring the Department to:

    - Submit draft Comprehensive Development Agreement contracts and draft agreements to design, build, operate, maintain, lease, or finance sections of toll roads that will last more than four years or involve the State or another entity spending more than $250 million to the Office of the Attorney General for review and approval.

The department agrees and will submit draft contracts to the Office of the Attorney General for a legal sufficiency review. The AG has been involved in CDA negotiations for past projects, including the SH 130 5&6 facility agreement.

Transfer the toll revenue projection function and associated resources, from the Department to the Office of the Comptroller of Public Accounts (Comptroller) and have the Comptroller project the toll revenue for each geographic region of a toll road segment prior to the Department signing an agreement with a developer to operate, lease, or finance that toll road segment. Having independent third party project toll revenue could play a valuable role in increasing the reliability of financial estimates. The revenue projection should be provided to the Department, the Legislative Budget Board, the Governor, and the State Auditor's Office within a reasonable time period before the agreement is signed.

We agree an independent third party in state government can play a valuable role, however we disagree that studies to determine traffic and revenue projections should be transferred to the Comptroller. A more suitable suggestion would be to require the Bond Review Board or Attorney General to review our traffic and revenue projections. Both of these entities have staff experienced in transportation and toll-related matters.

Traffic and revenue studies, obtained from specialized traffic and revenue firms, are highly technical and include network travel demand models, demographic analysis, sensitivity analysis, and origin and destination surveys. Experienced judgment derived from doing this type of analysis for many years qualifies these firms to make projections. A project typically undergoes an initial feasibility study to determine if it is suitable as a toll road, and if preliminary studies appear feasible, more studies may be done to help determine what type of delivery model will best suit the needs of the project and the region. This traffic and revenue activity is overseen by Department transportation engineers. It would be impractical to transfer engineering resources to the Comptroller.

Additionally, the party that bears the traffic and revenue risk for a toll road should be the one most concerned about traffic and revenue projections. Since the

developer typically assumes the traffic and revenue risk and is not guaranteed a rate of return, the effect of less traffic than projected will result in a developer earning less return on investment than anticipated. If the revenue is greater than projected, the public interest is protected by revenue sharing clauses in the contract. (Both SH 130 5&6 and SH 121 contain revenue sharing clauses).

- Requiring the State Auditor's Office to audit each annual financial statement for a toll road segment (or a combination of segments).

Currently, the State Auditor's Office has the ability to audit the financial statements of toll road projects in this state. We also include this as part of our CDA contracts. For example, Section 22.2.9 of the SH 130 Segments 5 and 6 contract as stated above, states the State Auditors Office can audit the contract.

- Clarify the Texas Transportation Code to require that surplus toll revenue and other revenue paid to the Department associated with toll projects be deposited into the State Highway Fund (Fund 006) in the State Treasury and be subject to legislative appropriation.

Current statute requires concession payments and revenue sharing to be deposited into the state highway fund. Therefore, concession payments are already subject to appropriation. See section 228.005 of the Transportation Code. Concession fees will be used to build other important transportation infrastructure throughout the state.

Chapter 4-B
The Department Did Not Initially Make All Documentation Related to the Trans-Texas Corridor Public in a Timely Manner

Recommendations

The Department should increase the transparency of the development of the Trans-Texas Corridor by increasing the public's timely access to information.
Specifically, it should:

- Make all documents, plans, and contracts related to the Trans-Texas Corridor public in a timely manner.

We agree that transparency in these types of documents is paramount. All Trans-Texas Corridor information was made public upon approval. Providing information prior to approval could jeopardize competition during the procurement process. The public will receive the best value when those competing for government projects compete on an even playing field. Since the

13

department is already complying with this recommendation, no implementation period is needed. The Director of the Turnpike Division is the responsible party.

- Make all updates to the Master Development Plan for TTC-35, including the financial plans, public in a timely manner.

TxDOT agrees with this recommendation. We have always planned to make all updates to the Master Development Plan, including the financial plans, available to the legislature and the public in a timely manner. Since the department is already complying with this recommendation, no implementation period is needed. The Director of the Turnpike Division is responsible.

The Legislature should consider:

- Incorporating the above recommendations into statute.
- Requiring the Department to send electronic versions of all updates to the Master Development Plan for TTC-35 to the Governor's Office of Budget and Planning, Senate Finance Committee, House Appropriations Committee, Legislative Budget Board, State Auditor's Office, and Comptroller of Public Accounts in a timely manner.

We seek to improve transparency in the development of the Trans-Texas Corridor and in the development and implementation of the CDA program. As part of our daily activities we post information on the internet, respond to requests for information, meet with reporters, conduct public hearings and meetings, actively participate in the Trans-Texas Corridor Advisory Committee and many other actions, including requesting the Attorney General's opinion if the situation warrants. We disclose all information as soon as possible and in accordance with the Public Information Act.

As was discussed in the audit, we made all parts of the TTC-35 contract public as soon as it was approved, and thus considered final. We feel that this was the best way to maintain the integrity of the competitive process.

It is standard operating procedure for governmental entities to ask the Attorney General (AG) for the right to withhold certain information from public disclosure if disclosure of that information would create an uneven playing field among competitors during the procurement process. It is a process set out in law to protect private entities doing business with governmental entities and maintain the integrity of the competitive process. The state will receive the best value when the competitive process is fair and equitable. The Texas Public Information Act ensures government business and records are open to the public, but it also contains protections against those who abuse the law or who attempt to use it to gain an unfair business advantage. In many cases, if the information were

released it would give advantage to a competitor or bidder by making trade secrets and competitively sensitive information public.

Requests to the AG for exceptions from disclosure are made on a regular basis by state and local governmental agencies. The following are some examples:

A request was made by the Department of Information Resources (DIR) to the AG in 2005 to withhold information related to deliverables produced by Gartner, Inc. in response to bid number DIR-RFO-ASSESSMENT. It was argued that Exhibits B and C be excepted from disclosure because that information, "if released, would give advantage to a competitor or bidder." The AG ruled in OR2005-11187 that DIR may withhold the Exhibits until such time as a contract has been executed.

Another example is OR2001-0769 from 2001, in which the Comptroller asked to withhold from the public information regarding the winning bids and staff analyses of all the bids submitted for a Request for Proposals for investment management services. The Office of the Comptroller explained 'this is a single competitive bidding situation that resulted in several signed and potential contracts and that the types of services requested are closely interrelated. …. the release of the winning bids and staff analyses while some contracts are still being negotiated would provide an advantage to those companies still negotiating their contracts and thereby would cause harm to this particular competitive situation.' The AG ruled the Comptroller could withhold the requested information. This information could be withheld until after the competitive bidding process was complete and all of the contracts responsive to the RFP had been awarded and finalized.

Closing Comments:

CDAs allow us to accelerate projects that would be waiting for funding for decades, or maybe never even be built. Anyone who drives on I-35 understands the congestion is substandard, the level of safety is worse, and the air quality problems will only get worse if we do nothing to improve it. The Trans-Texas Corridor 35 project is a visionary plan to improve congestion, air quality, and safety on I-35 over the next 50 years. Until now, we have only looked at the needs over the next 20 to 25 years, and we feel it's time to look beyond that timeframe. This new corridor will be expandable over the next fifty years to meet traffic needs and will include multiple travel options for commercial and passenger traffic including rail. In addition it will bring new economic opportunities to Texas, and also help our current assets to be preserved throughout the state. This project will give people a choice, and it is a move in the right direction.

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives and sub-objectives were to:

- Verify that Cintra Zachry, LP is developing the Master Development Plan and Master Financial Plan for the I-35 high priority segment of the Trans-Texas Corridor (TTC-35) in accordance with the contract terms.
  - Does the Comprehensive Development Agreement protect the State's interests?
  - Is the current draft of the Master Development Plan in accordance with agreement terms?
  - Is the current draft of the Master Financial Plan in accordance with agreement terms?
  - Does the draft contract for State Highway 130 Segments 5 and 6 protect the State's interests?
- Determine whether the Department of Transportation's (Department) procurement for the first Trans-Texas Corridor construction project complied with applicable laws, rules, and regulations, including requirements in the March 2005 Comprehensive Development Agreement contract.
  - Was the process for unsolicited proposals appropriately followed for the agreement?
  - Did the proposal process for State Highway 130 Segments 5 and 6 follow appropriate transportation rules and regulations?
  - Have consultants used on Texas Turnpike Authority projects been procured correctly?
- Determine whether costs charged to the project are allowable under the contract.
  - What are the total costs for TTC-35 and State Highway 130 Segments 5 and 6?

- Are the expenses for each project allowable under their respective contracts?
- Are project costs accurately stated?

Scope

The scope of this audit was limited to the procurement, contractual, and reporting activities associated with the Trans-Texas Corridor for fiscal years 2002 through 2006. The audit also included a review of costs for consulting services the Department received in fiscal years 2002 through 2006.

Methodology

The audit methodology consisted of gaining an understanding of the procurement, contractual, and reporting process of the Trans-Texas Corridor. Auditors tested the controls and accuracy of these processes by reviewing financial reports, financial data, expenditures, contracts, and compliance with related requirements.

Information collected and reviewed included the following:

- Information from interviews with staff at the Department, including staff from the Texas Turnpike Authority, finance, design, general services, and the Corridor Engineering Team.
- Information from interviews with staff from the U.S. Department of Transportation's Federal Highway Administration.
- Financial data from the Department's accounting system (the Financial Information Management System).
- Documentary evidence such as:
  - The Comprehensive Development Agreement contract between the Department and Cintra Zachry, LP executed on March 11, 2005.
  - The Master Development Plan published on September 2006 on the Department's Web site.
  - Draft segment agreement documents related to the project for segments 5 and 6 of State Highway 130.
  - The Department's *Annual Report to the Legislature on Certain Matters* for 2004 and *Transportation Program Expenditures – Fiscal Year 2005.*
  - Department internal audit reports related to the audit objectives.

Procedures and tests conducted included the following:

- Determined whether the Comprehensive Development Agreement contract deliverables were processed effectively and in accordance with requirements.
- Reviewed and added projected toll revenue and construction, financing, and operations expenses contained in the Master Development Plan.
- Determined whether the Master Development Plan complied with the general and financial requirements of the Comprehensive Development Agreement contract.
- Reviewed the unsolicited proposal process for compliance with all applicable requirements in effect at that time.
- Tested and reviewed contractual expenditures for accuracy; reasonableness; and compliance with agency, statutory, and contractual provisions.

Criteria used included the following:

- The Comprehensive Development Agreement contract between the Department and Cintra Zachry, LP executed on March 11, 2005.
- Title 43, Texas Administrative Code, Chapter 27.
- Texas Transportation Code.
- Texas Government Code, Chapter 552.
- Department procedures.
- Department contracts and work authorizations.

Project Information

Audit fieldwork was conducted from April 2006 through November 2006. This audit was conducted in accordance with generally accepted government auditing standards.

The following members of the State Auditor's staff performed the audit:

- Gregory Scott Adams, CPA, MPA, CGFM (Project Manager)
- Mary Ann Wise, CPA (Assistant Project Manager)
- Kathy Aven, CIA, CFE
- Lucien Hughes

- Walton Persons, CPA
- Anca Pinchas
- Michael Simon, MBA, CGAP
- Lisa M. Thompson
- Dennis Ray Bushnell, CPA (Quality Control Reviewer)
- Sandra Vice, CIA, CGAP, CISA (Assistant State Auditor)

Appendix 2

Key TTC-35 Master Development Plan Financial Data

The Master Development Plan for Trans-Texas Corridor 35 (TTC-35) presents a large amount of projected financial data about TTC-35. This appendix summarizes that financial data.

Auditors identified $105.6 billion in TTC-35 costs in the Master Development Plan. The Master Development Plan anticipates that the Department of Transportation (Department) could receive $3 billion in concession payments from developers if the most likely economic conditions forecasted by the developer were to occur. Additionally, the Department could own the TTC-35 facilities. However, the Master Development Plan also estimates that, under the same economic conditions, the State also could have to pay a net $13.6 billion as its share of financing the initial costs of TTC-35.

According to the Department, it is not possible to accurately estimate profits because of many currently unforeseen variables on each of the project segments. In addition, the Department states that only when the negotiation process for the financing, design, construction, operation, and maintenance of a specific project segment is undertaken will sufficient, current, and reasonably accurate information be developed to enable such a judgment.

Auditors identified $105.6 billion in TTC-35 costs.

The costs in Table 6 below were located in different parts of the Master Development Plan. Table 6 also shows an estimated $13.6 billion that the State could pay as part of the financing of TTC-35. The costs to the State could include $16.5 billion in payments for rail projects. The Department may receive a net concession payment of $3 billion for near-term road facilities.[9]

[9] This net concession payment includes concession payments to the Department of $3.5 billion for five road segments and $0.6 billion paid by the State for the remaining two near-term road segments.

Table 6

TTC-35 Estimated Costs in the Master Development Plan		
Project Type	**Costs Shown in the Master Development Plan (in billions)**	**Net Concession Paid to the Department/ (Payments from the State) (in billions)**
Near Term Road Facilities – Start-up Costs	$ 8.1	$3
Near Term Road Facilities – Expansions	7.0	
Concession Payment to be Paid to the Department	3.5	
Financing Costs – Near Term Roads	24.8	
Long-Term Road Facilities	2.4	
Connecting Roads	4.7	
Freight Rail	14.2	($9.7)
High Speed Rail	9.9	($6.8)
Financing Costs - Rail	21.6	
Utilities Zone	9.4	
Totals	**$105.6**	**($13.6)**

Source: Master Development Plan.

Costs listed in Table 6 do not include the following:

- Contract monitoring costs incurred by the Department.
- Most construction and financing costs associated with mid-term and long-term facilities.
- Estimated costs for State Highway 130 and Loop 9, which are connecting roads to TTC-35 and are included in the TTC-35 Master Development Plan's list of potential self-performed projects.

Economic conditions could have a significant effect on the amount of the concession payment the Department could receive or the amount the State could pay.

Table 7 shows the potential effects of economic changes on the State's cost and receipts for TTC-35.

Table 7

Effect of Changing Economic Conditions on The Estimated TTC-35 Payments by the State or Concession Paid to the State

Economic Condition	Interest Rate	Inflation Rate	Initial Near-Term Project Cost (in millions)	Concession Paid to the Department/ (Payments from the State) (in millions)	Developers' Equity (in millions)
Base Case	5.6%	2.5%	$7,471.0	$715.6	$2,807.8
Positive Case	4.6%	1.5%	$7,471.0	$2,216.4	$3,163.0
Negative Case	7.1%	4.0%	$7,471.0	($1,562.5)	$2,201.9

Source: Master Development Plan, Chapter 6.

Developers could receive substantial profits over the life of the TTC-35 project.

Table 8 is a sum totaling of toll revenue, operating expenses, and income based on schedules provided to the State Auditor's Office by the Department that were included in the Master Development Plan. We did not verify or audit these numbers.

Table 8

Sum Totaling of the Master Development Plan's Projected Revenue and Expenses for TTC-35 Near-Term Projects [a] (in billions)

	Years						
	1-10	11-20	21-30	31-40	41-50	51-60	Total - All Years
Revenues:							
Toll Revenue	$1.2	$15.2	$42.5	$84.5	$165.2	$214.4	$ 523.1
Interest Earnings	0.2	0.6	0.5	0.8	0.1	0.0	2.2
Total Revenues	$1.4	$15.8	$43.0	$85.4	$165.4	$214.4	$ 525.3
Expenses:							
Operating Expenses	$0.6	$2.9	$4.7	$7.5	$12.6	$12.6	$ 41.0
Depreciation Expense	0.7	2.9	3.4	6.0	7.9	6.5	27.4
Interest Expense							
From Private Sector Bonds	1.4	6.3	5.5	0.5	0.0	0.0	17.1
From Federal Transportation Infrastructure Finance and Innovation Act Bonds	0.5	2.5	2.5	1.5	0.0	0.0	7.1
Total Interest Expense	1.9	8.8	8.0	5.0	0.5	0.0	24.2
Total expenses	$3.3	$14.6	$16.1	$18.5	$21.0	$19.1	$ 92.6
Earning Before Taxes	$(1.9)	$1.2	$26.9	$66.9	$144.4	$195.3	$ 432.7
State Business Tax	$0.0	$0.1	$0.3	$0.6	$1.2	$1.5	$ 3.7
Federal Income Tax	$0.0	$0.0	$7.3	$22.7	$49.3	$63.3	$ 142.5
Net Income	$(1.9)	$1.1	$19.3	$43.6	$93.9	$130.5	$ 286.5

[a] Although individual segment agreements may last 50 years, the Master Development Plan projects financial revenue and expenses for 60 years because the contracts could have beginnings and endings that are staggered across a 60-year time frame.

Source: Master Development Plan's projected profit and loss statements from Appendices 5 and 7.

The earnings presented in Table 8 have a net present value between $1.9 billion[10] and $19.0 billion.[11]

[10] For a discount rate of 12 percent. 12 percent is the assumed target rate of return on equity used in the Master Development Plan.

[11] For a discount rate of 6.2 percent. 6.2 percent is the average of the monthly bank prime loan rates for 2000 – 2006.

Table 9 shows developers' projected costs and revenues associated with the seven near-term TTC-35 road segments.

Table 9

Estimates of Developers' Combined Revenue and Expenses for the TTC-35 Near-Term Road Segments (in billions)

	Near-Term Road Segments [a]							
	P1-P2	P3	P4	P12	P13	P17a	P17b	Total
Revenues:								
Toll Revenue	$44.6	$59.7	$101.8	$101.5	$94.2	$104.6	$16.8	$ 523.1
Interest Earnings	0.1	0.3	0.5	0.3	0.2	0.8	0.0	2.2
Total Revenues	$44.7	$60.0	$102.3	$101.8	$94.4	$105.4	$16.8	$ 525.3
Expenses:								
Operating Expenses	$4.0	$6.2	$8.4	$7.0	$6.2	$7.3	$1.8	$ 41.0
Depreciation Expense	2.4	3.9	6.0	4.5	4.2	5.8	0.6	27.4
Interest Expense	1.8	3.4	5.8	4.3	3.5	5.3	0.2	24.2
Total expenses	$8.2	$13.5	$20.2	$15.8	$13.9	$18.4	$2.6	$ 92.6
Earning Before Taxes	$36.5	$46.5	$82.1	$86.0	$80.5	$87.0	$14.2	$ 432.7
State Business Tax	$0.3	$0.4	$0.7	$0.7	$0.7	$0.7	$0.1	$ 3.7
Federal Income Tax	$12.6	$15.0	$27.1	$28.2	$26.5	$28.3	$4.9	$ 142.5
Net Income	$23.6	$31.1	$54.3	$57.1	$53.3	$58.0	$9.2	$ 286.5

[a] See Appendix 6, Figure 3 for location of road segments.

Source: Master Development Plan, Appendices 5 and 7.

It could take approximately 22 years for the TTC-35 near-term road segments to pay for themselves.

The Master Development Plan assumes that the first of the seven near-term TTC-35 segments could open in 2013. It could take until 2035, approximately halfway through the planned life of the segment agreements developed under the Comprehensive Development Agreement contract, for these seven segments to recover all $51.0 billion in costs associated with TTC-35 road segments. These costs include $7.6 billion in maintenance and operating expenses and, as shown in Table 6, include:

- $8.1 billion initial construction costs for the seven road segments.
- $7.0 billion in costs to expand these seven road segments.
- $24.8 billion in financing costs.
- $3.5 billion in concession payments to be paid to the Department.

TTC-35 toll rates are similar to urban tollway rates.

The TTC-35 Master Development Plan contains revenue estimates based on assumed toll rates (see Table 10 for additional details). These assumed toll rates for TTC-35 are more similar to urban tollway rates than cross-state tollway rates. The TTC-35 Master Development Plan used Houston and Dallas toll facilities as a model, which may overstate TTC-35's actual revenue potential.

The Houston and Dallas toll facilities run through urban areas, which may have economic conditions that differ from the economic conditions along TTC-35, which could cross rural areas. Using urban toll rates, which may be higher than practical, when not appropriate may cause overstatement of revenue in financial projections for TTC-35 facilities.

Table 10

Planned Tolls for TTC-35 Compared with the Seven Longest Toll Systems in the United States

Toll System	Year First Opened for Operation[a]	2005 Total Gross Revenue	Total Miles[b]	Maximum Car Toll	Car Toll per Mile	Maximum 5-axle Truck Toll	5-axle Truck Toll per Mile
New York Thruway	1954	$550,852,000	641 miles	$24.87	$0.04	$126.34	$0.20
Oklahoma Turnpike System	1953	$192,660,604	606 miles	$26.55	$0.04	$94.10	$0.16
Pennsylvania Turnpike	1940	$571,474,000	531 miles	$34.50	$0.07	$117.25	$0.22
Florida Turnpike	1957	$598,762,000	450 miles	$28.90	$0.06	$99.25	$0.22
Trans-Texas Corridor 35	**(not applicable)**	**(not applicable)**	**333 Miles**	**$41.63**	**$0.125**	**$159.84**	**$0.48**
Harris County Toll Road Authority	1982	$350,342,173	83 Miles	$15.75	$0.19	$64.00	$0.77
North Dallas Toll Authority	1968	$177,641,286	52.5 Miles	6.40	$0.12	$21.35	$0.41
San Joaquin Hills Toll Rd. (SH 73) (Orange Co. California)	1987	$100,189,000	15 Miles	$3.25	$0.22	$13.00	$0.87

[a] Several of these systems had subsequent sections open for tolling, some of these as recently as 2002.

[b] "Total miles" is the total number of miles in the system. In some cases, the total miles may differ from the number of miles used to calculate average toll rates due to data discrepancies in source material.

Sources: Web sites of listed toll systems and the TTC-35 Master Development Plan.

How the Master Development Plan States TTC-35 Could Be Built

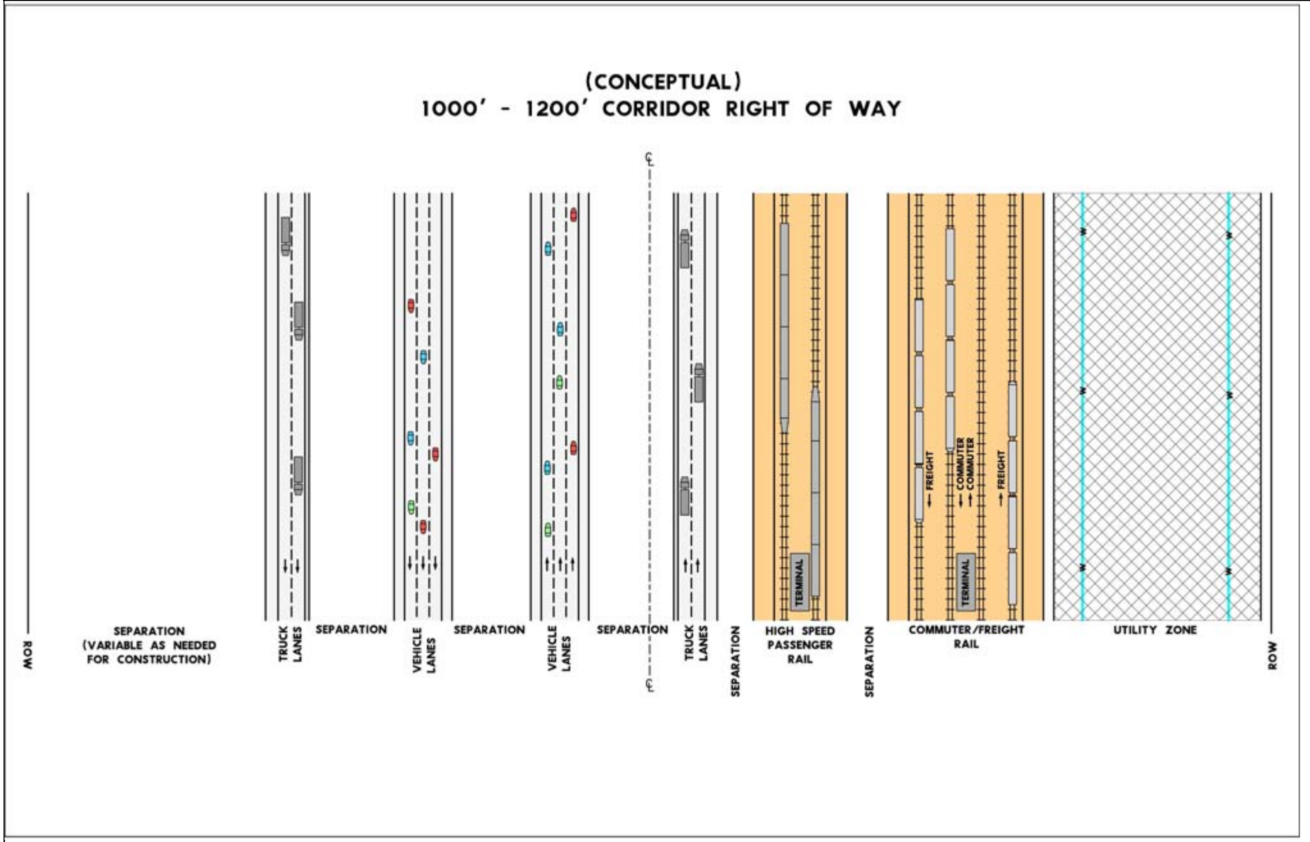
The Department of Transportation (Department) plans to build Trans-Texas Corridor roads wider than most of the existing limited access roads in Texas. The Department initially depicted Trans-Texas Corridor roads in its 2002 publication, *Crossroads of the Americas: Trans-Texas Corridor Plan,* as having:

- Six passenger vehicle lanes (three each way).
- Four separate truck lanes (two each way).
- Four freight rail lines.
- Two high-speed rail lines.
- Utility zone.

Figure 1 contains a conceptual Trans-Texas Corridor cross section from *Crossroads of the Americas: Trans-Texas Corridor Plan* that illustrates these features.

Figure 1

Trans-Texas Corridor Illustration



Source: *Crossroads of the Americas Trans-Texas Corridor Plan*, Department of Transportation, 2002.

However, the Master Development Plan for Trans-Texas Corridor 35 (TTC-35) specifies that TTC-35 may not initially be built in this manner, and little of TTC-35 may have this structure during the time covered by the Master Development Plan.

For example, the Master Development Plan for TTC-35 shows that all of the seven near-term facilities for TTC-35 could open with only four passenger vehicle lanes, two in each direction. With the exception of the two most rural facilities (P12 and P13), the Master Development Plan shows that each road segment could open with four passenger vehicle lanes. The two rural facilities could start with mixed use lanes, which all vehicles could use until inside lanes are built for passenger vehicles.

The Master Development Plan for TTC-35 also anticipates that the Department could arrange for the construction of 29 connecting roads, with a stated cost of $4.7 billion, as part of constructing TTC-35.

Background Information on Cintra Zachry, LP

The Department of Transportation (Department) signed a Comprehensive Development Agreement contract on March 11, 2005, with Cintra Zachry, LP to develop a long-range plan for the Trans-Texas Corridor 35 (TTC-35) (see Appendix 5). Cintra Zachry, LP comprises a team of firms led by Cintra Concesiones de Infraestructuras de Transporte, S.A. (Cintra) and Zachry Construction Corporation (Zachry).

General Information about Cintra and Zachry

The State Auditor's Office prepared the following information based on Department publications and information on corporate Web sites.

Cintra. Grupo Ferrovial (Ferrovial) created Cintra in 1998 to concentrate the infrastructure development business Ferrovial had operated for more than thirty years (see text box for additional details). Cintra is publicly owned, listed on the Madrid Stock Exchange, and headquartered in Madrid, Spain. Ferrovial is the majority owner of Cintra.

Cintra's Parent Company Grupo Ferrovial

Grupo Ferrovial (Ferrovial) was founded as a construction company in 1952. Ferrovial has 100,000 employees in 12 countries, including the United States, Canada, United Kingdom, Australia, Ireland, Poland, Portugal, Italy, and Chile. Ferrovial, also has investments in airports in the United Kingdom and Australia.

Ferrovial's subsidiary, Amey, is involved in the maintenance and management of the London Subway. Another subsidiary, Ferrovial Agroman, has completed construction projects in more than 40 countries. Together with Zachry, this subsidiary forms the construction arm of the development team for TTC-35.

Cintra currently manages 21 toll road concessions in Spain, Portugal, Ireland, Italy, Chile, Canada, and the United States. Net revenues from these toll roads totaled 576 million euros in 2005, which represented 83 percent of Cintra's total net revenues. In October 2004, Cintra signed a lease agreement with the City of Chicago to operate and maintain the Chicago Skyway, thereby creating the first privatized tollway in the United States. Cintra is also a partner in the consortium chosen as the preferred bidder for a 75-year, $3.8 billion concession to maintain and operate the Indiana Toll Road.

Zachry. Zachry is a privately held company founded in 1924 and headquartered in San Antonio, Texas. Zachry averaged 11,500 employees over the past four years and is listed by *Engineering News* as among the nation's top 20 transportation companies. Zachry has five business units and, according to *Engineering News*, had domestic contracts exceeding $357 million in 2005. Its business units include:

- Heavy construction.
- Building construction.
- Power.
- Industrial maintenance.

- Industrial process.

Zachry's roots are in the construction of major transportation projects, with particular focus in Texas.

Other Team Members. In addition to Cintra and Zachry, other key members of the Cintra Zachry, LP team include:

- Ferrovial-Agroman (headquartered in Madrid, Spain).
- Earth Tech, Incorporated (headquartered in California with offices in Texas).
- PricewaterhouseCoopers, LLP (headquartered in New York with offices in Texas).
- JP Morgan Securities, Inc. (headquartered in New York).
- Bracewell and Patterson (headquartered in Texas).
- Pate Engineers, Inc. (headquartered in Texas).
- Rodriguez Transportation Group (headquartered in Texas).

Sources of information regarding Cintra Zachry, LP can be found on the following Web sites:

- Cintra: http://www.cintra.es/
- Zachry: http://www.zachry.com/
- Cintra Zachry, LP Fact Sheet: http://www.keeptexasmoving.org/publications/files/fact%20sheet%20-%20Cintra-Zachry%20-%20031105%20FINAL.pdf

Excerpts from the March 2005 Comprehensive Development Agreement Contract

The Department of Transportation executed a Comprehensive Development Agreement contract with Cintra Zachry, LP on March 11, 2005. Excerpts from that agreement showing all signatories are presented on this page and the following page.

such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or part.

24.12 Headings

The captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

24.13 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

24.14 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the date first written above.

Developer

Cintra Zachry, LP,
a Texas limited partnership, acting by and through its sole general partner,
CZ GP, LLC,
a Texas limited liability company

By____________________
Name: Rafael del Pino y Calvo Sotelo
Title: Chairman

TxDOT

TEXAS DEPARTMENT OF TRANSPORTATION

By____________________
Name: Michael W. Behrens, P.E.
Title: Executive Director

TEXAS DEPARTMENT OF TRANSPORTATION
TTC-35 HIGH PRIORITY CORRIDOR
289215v22.DOC

97

CONFORMED FOR EXECUTION
COMPREHENSIVE DEVELOPMENT AGREEMENT
March 11, 2005

Zachry Construction Corporation

David S. Zachry

David Zachry

Appendix 6

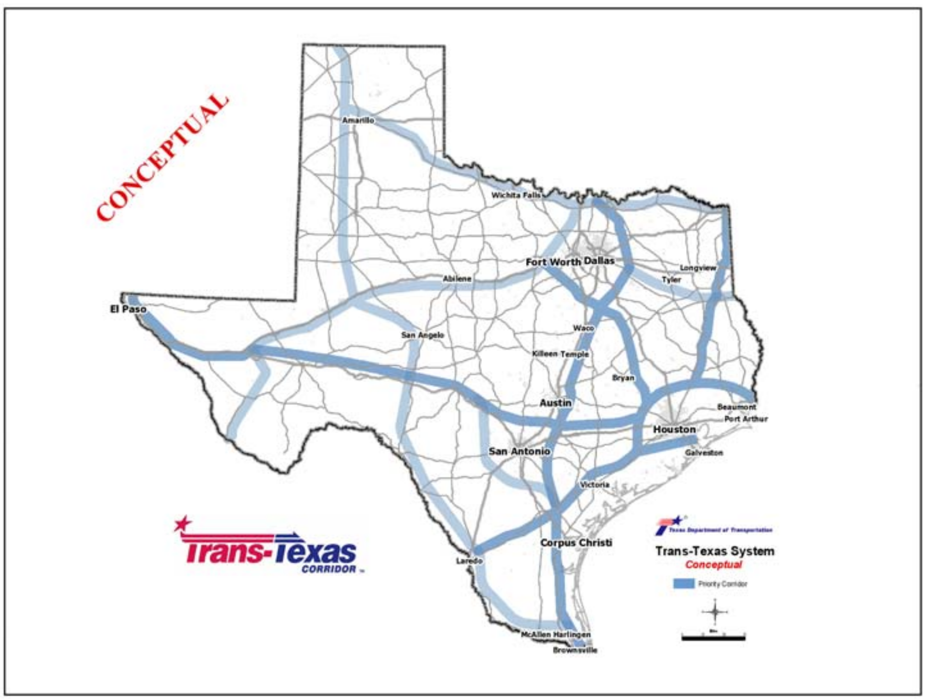
Maps of the Trans-Texas Corridor and TTC-35

None of the final routing of any of the Trans-Texas Corridor--including Trans-Texas Corridor 35 (TTC-35)--can be determined until the appropriate federally required environmental processes have been completed. However, the Department of Transportation (Department) has produced conceptual maps of the Trans-Texas Corridor and the planned facilities of TTC-35 to communicate planned routes to the public.

Figure 2 contains a conceptual map of the entire corridor from the Department's 2002 report, *Crossroads of Americas: Trans-Texas Corridor Plan.*

Figure 2

Conceptual Map of the Entire Trans-Texas Corridor

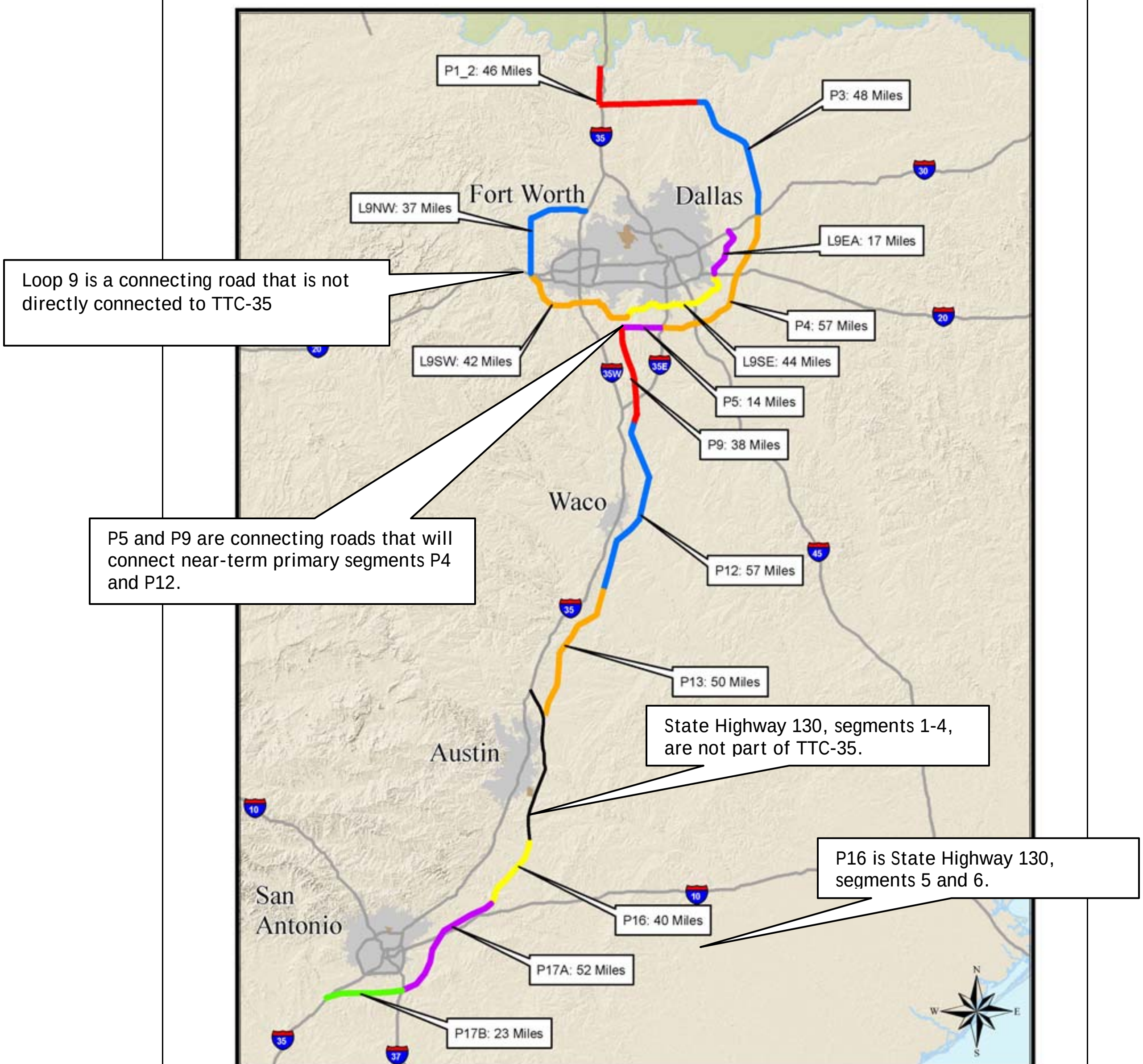


Source: *Crossroads of Americas: Trans-Texas Corridor Plan*, Department of Transportation, 2002.

The TTC-35 Master Development Plan contains conceptual maps of TTC-35 facilities that are more detailed. Figure 3 is a map of the near-term TTC-35 road segments.

Figure 3

Planned TTC-35 Near-term Facilities



Source: Master Development Plan for TTC-35.

Appendix 7

Recent State Auditor's Office Work

Recent SAO Work		
Number	**Product Name**	**Release Date**
07-007	The Audit of the Department of Transportation's Texas Mobility Fund Financial Statements for the Fiscal Year Ended August 31, 2006	December 2006
07-001	An Audit Report on Flight Services Provided by the Department of Transportation's Aviation Division Flight Services Section	September 2006
06-051	A Status Report on the Department of Transportation's Medical Transportation Program	August 2006
06-041	An Audit Report on the Department of Transportation's Purchase of the Camino Colombia Toll Road	June 2006
06-034	An Audit Report on Routine Maintenance Contracts at the Department of Transportation	April 2006
06-010	An Audit Report on the Texas Department of Transportation's Texas Mobility Fund Financial Statements from the Fund's Inception through August 31, 2005	December 2005
05-320	The Texas Department of Transportation's Katy Freeway Reconstruction Project	March 2005
05-007	An Audit Report on the Department of Transportation's Administration of Construction Contracts	October 2004

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Tom Craddick, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Warren Chisum, House Appropriations Committee
The Honorable Jim Keffer, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Department of Transportation

Members of the Texas Transportation Commission
- Mr. Richard 'Ric' F. Williamson, Chair
- Ms. Hope Andrade
- Mr. Ned Holmes
- Mr. Ted Houghton
- Mr. Fred Underwood

Mr. Michael W. Behrens, P.E., Executive Director