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Public-private partnerships offer infrastructure production options

On Aug. 26, the Regional Transportation District broke ground on its \$1 billion East Corridor commuter rail line, the largest single rail project in the voter-approved FasTracks program. In addition to several firsts, one of the unique features of the East Corridor project is that it is a part of the FasTracks Eagle P3 project, an innovative public-private partnership between RTD as owner and Denver Transit Partners, a private concessionaire, pursuant to an agreement whereunder DTP will design, build, finance, and then operate and maintain the constructed rail corridors over a 30-plus-year period. In return, RTD will make service payments to DTP based upon its performance of the operation and maintenance of the project.

This article will explore the use of public-private partnerships as a method of constructing and operating large infrastructure projects.

The Public Private Partnership, or P3 as it has come to be referred to, is relatively new to the United States, having been a method of involving the private sector in large projects historically performed solely by the public sector, especially regarding infrastructure, in Europe, Australia and Canada. It is primarily used for infrastructure projects, such as roads, bridges or mass transit projects, but also can be used for social infrastructure such as hospitals, schools, or in the waste or criminal justice sectors.

The main attraction of P3s is the idea that resources, both economic and intellectual, can be shared between the public and private sector. P3s are used by governments for a variety of reasons, including cost-efficiency, earlier project delivery dates, gains from innovation, improved services, transfer of risk and the avoidance of increased debt.

For cost efficiency, P3s can offer a lower cost alternative than could be completed through public resources. The United Kingdom uses an approach that first calculates the cost of the project by using public resources (the public-sector comparator, or "PSC"), then compares the cost with the opportunities presented by potential P3s. Cost-efficiency can be achieved by possible lower operating cost and more efficient maintenance by a private entity than comparable public operation and maintenance.

A project delivery date may be accelerated by the reduction of capital needed for the construction of a project. Rather than attempting to fit a capital cost into an annual budget or issuing bonds to finance capital improvements, the private entity can provide the financing and can recoup its costs and profits through future revenues. Those revenues could come from user fees, such as tolls or fares for a train, or could come through future tax revenues.

Risk can be shared in P3s



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between the private and public sectors, or can be allocated to the private partner, such as the risks of *force majeure* or even the risk of increasing construction costs. A public entity also can shift investment risks to the private entity by deferring payment until facilities are operable for a certain period before payment.

One of the value-added benefits of P3s comes from the concept of "bundling." While a contractor who is brought in solely to perform the construction of a project may look for the most cost-effective ways to satisfy the contractual obligations, a contractor who is retained to construct and operate the project for a longer term will find ways to construct the project efficiently with a perspective of future maintenance costs. The Eagle P3 project, for example, is being delivered and operated through a concession agreement that RTD has entered into with DTP, the "concessionaire" that was selected through a competitive proposal process. According to RTD, DTP is a special purpose company owned by Fluor Enterprises, Uberior Investments and Laing Investments. Other leading firms involved in the team include Ames Construction, Balfour Beatty Rail, Hyundai-Rotem USA, Alternative Concepts Inc., Fluor Global Design Consultants, PBS&J, Parsons Brinckerhoff, Interfleet Technology, Systra, Wabtec and others. The bundling of the design and construction with the operating and maintenance team members provides a more "life-cycle" approach to the project that focuses on the long-term viability of the design and construction techniques, materials and methods.

Of the P3s that utilize private financing to undertake the project, the private partner can recover its investment and recognize a profit through a variety of financial vehicles. Some projects will include user fees, and those projects can be structured so that the private partner rather than the government collects and retains the user fees until the investment and return have been realized by the private partner. Good examples of projects that include such user fees would be toll roads or bridges, or a mass transit system that charges fares to the users. Projects with user fees also present a choice for the government on risk allocation. If the private partner is expected to recover its expenses and its return from toll or other user fees, and the government does not guarantee a certain rate of return, the risk of low traffic or financial losses is

shifted to the private partner. On the other hand, the government could assume these risks and guarantee a certain rate of return to the private partner, in which case, any shortfall from the user fees would be paid by the government through its annual budget or through additional taxes.

In projects that do not include a user end charge, the private partner may be repaid directly by the government. This repayment can occur through the existing tax structure, where the government allocates a portion of its future budgets to repay the private partner. This structure works well for the governments that do not wish to issue additional bonds, and cannot pay for major capital improvements through the current year's budget alone. If the payment to the private partner will not be made through the government's annual budgets, additional taxes may be raised to pay the private partner.

The legislative structure of P3s can vary from general requirements for all public projects to specific authorizations for particular projects. Legislation may require that all public projects that cross a certain threshold of expense consider a P3 alternative, or could merely authorize the use of P3s for government projects. Legislation also could be specific in authorizing the use of P3s for one particular project, such as the construction of a bridge, tunnel or railway.

In the United States as of 2009, Alabama, California, Colorado, Delaware, Georgia, Hawaii, Indiana, Louisiana, Maryland, Michigan, Missouri, Nevada, New Jersey, Oregon, Texas, Virginia and Washington all have passed or are passing legislation that relates to P3s. Some of these states have legislation that allows for partnerships only in the context of specific types of infrastructure, such as ferries or railways, while others are broader in allowing for partnerships in the delivery of transportation systems, projects or facilities.

The Municipal Act in British Columbia allows a local government to make agreements or contracts respecting the local government's activities, works or services, including agreements respecting the undertaking, provision and operation of its activities, works and services.

Another aspect of the implementation of P3s is the possibility of an independent entity through which the P3s would be organized and managed. An example of such an entity is Partnerships BC in Vancouver, which facilitates P3s between the government and the private sector. The entity is owned by the Province of B.C. and reports to the minister of finance. It serves to seek out and implement partnership solutions between the public and private sectors, usually in a role similar to an owner representative.

During the 2009 legislative ses-

sion, Colorado passed HB09-108, known as the FASTER bill, which is best known for its main thrust of increasing vehicle registration fees to produce revenues to try to catch up on our deteriorating roads and bridges. However, a part of this legislation also included the formation of the High-Performance Transportation Enterprise. HPTE's purpose is to aggressively pursue innovative means of efficiently financing important surface transportation projects, including P3s not unlike the FasTracks Eagle P3, which can accomplish large infrastructure projects, focused on highways, transit corridors and other means of transportation. The HPTE has been organized, its board is in place, a new executive director recently was hired, and it is pursuing a strategic plan that can, among other methods, utilize the P3 to address several of our state and local infrastructure projects of scope.

In British Columbia, nearly \$9 billion has been invested in P3s, with \$5 billion coming from private capital. Every publicly funded project over \$20 million must be considered as a possible P3. All P3 projects have been delivered on or ahead of schedule and on budget. Expected savings and benefits of current P3s to British Columbia taxpayers is more than \$240 million.

In Australia, P3s have been used for projects such as major toll roads – the Sydney Harbour Tunnel and the Melbourne City-Link – as well as for hospitals, prisons, schools, utilities and sporting facilities.

In Europe, the largest P3 in the UK is the Channel Tunnel Rail Link, which was valued at almost \$12 billion (U.S.). Other P3 projects in Europe include airports, water and wastewater treatment, major roadways, railways and stations, and sports stadiums.

In the United States, P3s have been used to construct major infrastructure projects such as New York Avenue Metro Station, I-PASS Public Private Partnerships for Illinois Tollway, Port of Galveston Cruise Terminal Development, Chicago Regional Environmental and Transportation Efficiency Project, Pocahontas Parkway, the International Terminal at JFK Airport, Grand Central Terminal in New York City, the Chicago Skyway, the Northwest Parkway in Colorado, and Union Station in Washington, D.C.

Colorado has seen the use of these P3s in two recent projects, the Northwest Parkway project and now the FasTracks Eagle P3. With the advent of HPTE and in the face of a continuing lack of federal funding to provide necessary capital, the P3 will continue to grow as an alternative means of efficiently producing and maintaining our infrastructure. Stay tuned...▲