

# Market Update: A Review of Recent Activity in the US Public Private Partnership (P3) Sector and the Outlook for the Year to Come

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**This Article discusses the state of the US public private partnership (P3) sector in 2015, including market and industry trends and notable federal and local legislative and regulatory developments. This Article also describes P3 projects currently in procurement or in the pipeline and the outlook for the US P3 sector in 2016.**

## 2015 OVERVIEW

2015 was a moribund year for the US public private partnership (P3) sector. Although a number of projects reached financial close, they were largely projects of long gestation. Further, a number of high profile cancellations, notably of the Indianapolis Consolidated Justice Facility and the Houston Justice Complex, left market participants feeling bruised after a relatively robust 2014.

On the positive side:

- Several innovative non-transportation projects moved forward in 2015, arguably a sign of a maturing market.
- A few projects with uncertain futures came back in 2015. For example, despite concerns that Maryland's Purple Line project might be cancelled, the new Governor continued with the project, although in a somewhat modified form.
- Institutional investors demonstrated increased interest in P3 projects by financing or acquiring P3 assets.
- P3-friendly legislation was passed (for example, the Fixing America's Surface Transportation (FAST) Act) which should facilitate more P3 projects in 2016 and beyond.

## DEVELOPMENTS AND TRENDS IN 2015

The US P3 sector saw increased diversification in 2015, expanding beyond transportation. For years, industry participants have sought to promote the use of P3s for non-transportation projects. While there have been some developments in this area with the adoption of P3 legislation that allows specified entities to procure a broader category of projects using the P3 model (for example, Florida and Pennsylvania) and the closing of the Long Beach Courthouse in California, progress in this area has been limited.

The P3 sector may have turned a corner in 2015 with the closing of several innovative non-transportation projects, including the Michigan freeway lighting P3 and the Kentucky Wired broadband P3 (see Kentucky Broadband P3 Project and Freeway Lighting P3). There are also many non-transportation projects in procurement. For example:

- Pennsylvania has a P3 procurement for up to 37 compressed natural gas (CNG) fueling stations (see Compressed Natural Gas Fueling Stations).
- Arizona is considering a similar CNG program, as well as a P3 procurement to build truck weighing stations state-wide (see Compressed Natural Gas (CNG) Facilities).

Universities also embraced the P3 model more widely in 2015:

- The Board of Regents of the University of California approved its Merced Campus Expansion (see University of California, Merced).
- The University of Kansas approved its Central District Development P3.
- Purdue University and the City of West Lafayette, Indiana moved forward with their procurement for the State Street Redevelopment P3 (see State Street Redevelopment P3).
- Texas State University issued a request for qualifications (RFQ) for a combined heat and power system P3.
- The Ohio State University issued a request for information (RFI) for its Comprehensive Energy Management Project (see Ohio State University Comprehensive Energy Management Project).

## Financing Developments

There were also some developments in how P3 projects are financed. Traditionally, state and local public infrastructure projects in the US have been financed with tax exempt "governmental use" municipal bonds, and P3 projects have been financed, in part, with a subset of tax exempt municipal bonds known as "private activity" bonds (PABs). PABs have, however, been limited to ports, water and sewer and transportation projects. This limited access to tax exempt bond financing has slowed the development of other types of P3 projects (notably social infrastructure), where tax exempt bond financing would be available if a non-P3 structure is used. However, the innovative the Kentucky Wired P3 project demonstrated that creative and complex structuring could, in certain cases, allow tax-exempt "governmental use" bonds to be accessed for social infrastructure P3s (see Kentucky Broadband P3 Project).



Institutional investors were also more active in new P3 financings in 2015. While these investors have long been active in the P3 sector, it was mainly to refinance P3 debt. They demonstrated greater appetite for P3 debt and assets in 2015. For example:

- The Michigan freeway lighting P3 project is being financed with private placement debt, the first in the US to reach initial financial close with this type of financing. Other P3 projects that have used private placement debt did so to refinance bank debt (see Freeway Lighting P3).
- Institutional investors agreed to acquire the Chicago Skyway Concession for \$2.8 billion.
- The \$1.05 billion purchase of the Indiana Toll Road was financed by institutional investors.

If it had not been cancelled, the Indianapolis Consolidated Justice Facility was expected to use institutional private placement financing.

#### NOTABLE P3 CLOSINGS IN 2015

Several significant P3 projects reached financial close in 2015, including:

- **Pennsylvania's Rapid Bridges Project.** This groundbreaking project reached financial close in March 2015. The Plenary/Walsh Group consortium will construct, reconstruct or replace 558 bridges over a three-year period and then maintain them for 25 years. This was the first US project to "bundle" multiple projects into a single P3.
- **Kentucky Broadband P3.** This project gained significant attention when it closed in September 2015. Macquarie's consortium will develop an approximately 3,200-mile high-speed broadband internet network, connecting all of Kentucky's 120 counties. An innovative structure allowed for the use of tax-exempt bonds to provide a substantial portion of the financing, a first in the social infrastructure P3 sector.
- **Michigan Freeway Lighting P3.** Financial close was reached on the first US freeway lighting P3 on August 24, 2015. The winning Star America consortium will replace the existing lights with energy-efficient LEDs within two years, and then maintain the system for 13 years.
- **I-77 HOT Lanes P3.** This \$655 million North Carolina project reached financial close in May 2015. The Cintra consortium will add 26 miles of variably priced managed lanes along I-77 and I-277 in Charlotte, including High Occupancy Toll (HOT) facilities.
- **Route 823 Portsmouth Bypass Project.** The winning consortium (ACS, InfraRed and Star America) reached financial close on this Ohio project in April. It involves the development and long-term maintenance of a new 16-mile, four-lane bypass and other related improvements.

#### OTHER KEY PROCUREMENT ACTIVITY IN 2015

As discussed in more detail below, there were several significant projects at varying stages of procurement in 2015, including:

- Maryland's Purple Line Rail Project: this project was cast in doubt with the election of new Governor Larry Hogan in November 2014, but it moved ahead in 2015, albeit in a modified form.
- New York's LaGuardia Airport Central Terminal Building Replacement Project: in May 2015, the Meridiam, Skanska and

Vantage Airport consortium was selected by the Port Authority of New York and New Jersey as the preferred proposer on this project.

- Virginia's I-66 project: on December 8, 2015, Virginia confirmed it would proceed with a P3 structure for this project, which is now in active procurement.
- Georgia's I-285 & SR-400 Reconstruction project: Georgia selected the preferred bidder in December 2015 and financial close is expected in April 2016.

#### FEDERAL LEGISLATIVE DEVELOPMENTS

There were several federal developments that should facilitate the growth of P3 projects in 2016 and beyond.

##### Fixing America's Surface Transportation (FAST) Act

The FAST Act (enacted in December 2015) reauthorizes surface transportation programs for five years, providing \$305 billion over federal fiscal years 2016 to 2020, including \$225.2 billion for highways and \$48.7 billion for transit. It continues nearly all of the highway and transit formula programs of the Moving Ahead for Progress in the 21st Century Act (MAP-21), and focuses much of the increase in highway funding on two new freight programs, one formula-based and one discretionary.

The FAST Act includes several provisions and programs that provide opportunities for P3 projects and private sector investment in transportation infrastructure, including:

- **Transportation Infrastructure Finance and Innovation Act (TIFIA) (Section 2001).** The FAST Act reauthorizes the TIFIA credit assistance program at levels significantly below MAP-21: \$275 million for each of fiscal year 2016 and fiscal year 2017, \$285 million for fiscal year 2018, and \$300 million for each of fiscal year 2019 and fiscal year 2020. However, these new funding levels would allow TIFIA loans to continue to be made in amounts sufficient to meet historic levels of demand. To ensure sufficient funding for the pipeline of anticipated projects under these new authorization levels, the Act also repeals the redistribution of unused funds to other programs. Additionally, states may use their NHPP and STP apportionments to pay the subsidy and administrative costs for projects receiving TIFIA assistance.
- **Nationally Significant Freight and Highway Projects (NSFHP) (Section 1105).** The FAST Act establishes a competitive discretionary grant program for large projects on the National Highway Freight Network, highway or bridge projects on the National Highway System, intermodal projects on the National Multimodal Freight Network, or rail-highway grade crossing and separation projects. The Act provides \$800 million in fiscal year 2016, increasing \$50 million each year to \$1 billion in fiscal year 2020.
- **Fixed Guideway Capital Investment Grants (Section 3005).** The FAST Act reauthorizes the Capital Investment Grants program (with only minor changes in project eligibility criteria) and establishes a pilot program to incentivize private funding.
- **Expedited Project Delivery Pilot Program.** The Secretary of Transportation may enter into as many as eight Full Funding Grant Agreements (FFGAs) to expedite the delivery of new fixed guideway, Small Starts, or Core Capacity public transportation projects undertaken as P3s. The federal share of project costs under this pilot program is limited to 25%.

- **National Surface Transportation and Innovative Finance Bureau (Section 9001).** The FAST Act establishes a Finance Bureau that will administer TIFIA, RRIF, and the new NSFHP discretionary grant program for freight projects. The Finance Bureau was a House Transportation and Infrastructure Committee P3 Panel recommendation, and is intended to integrate the TIFIA and RRIF programs and create a more seamless innovative financing process. The Finance Bureau will also make highway and surface freight transfer facility private activity bond allocations, but the Act does not increase the \$15 billion cap on such bonds. The Bureau is directed to:
    - Work with the USDOT's modal administrations, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and P3s, including: (1) best practices with respect to standardized state P3 authorities and practices, including those related to accurate and reliable assumptions for analyzing P3 procurements, procedures for the handling of unsolicited bids, policies with respect to noncompete clauses, and other significant terms; (2) standard contracts for the most common types of P3s for transportation facilities; and (3) analytical tools and other techniques to aid eligible entities in determining the appropriate project delivery model, including a value for money analysis.
    - Ensure transparency of P3 projects receiving credit assistance under the programs it administers by: (1) requiring the sponsor to undergo a value for money analysis or comparable analysis prior to deciding to advance the project as a P3; (2) requiring the value for money analysis and other key terms of the P3 agreement to be made publicly available by the project sponsor at an appropriate time; (3) requiring the sponsor to conduct a review regarding whether the private partner is meeting the terms of the P3 agreement within three years of completion of the project; and (4) providing a publicly available summary of the total level of federal assistance in such project.
    - Develop procurement benchmarks, including: (1) establishing maximum thresholds for acceptable project cost increases and delays in project delivery; (2) establishing uniform methods for states to measure cost and delivery changes over the life cycle of a project; and (3) tailor benchmarks, as necessary, to various types of project procurements, including design-bid-build, design-build, and P3s.
    - Within one year, submit a report: (1) evaluating the application processes for the programs the Bureau administers; (2) identifying administrative and legislative actions that would improve the efficiency of the application processes without diminishing federal oversight; and (3) describing how the Executive Director will implement the administrative actions identified that do not require legislation.
  - **Surface Transportation Block Grant Program (STBGP) (Section 1109).** The FAST Act changes the Surface Transportation Program into a block grant program. It is not completely clear, however, how changing the program into a block grant to states will impact the program's administration, as it will likely be different in each state. The FAST Act adds the following as eligible uses for STBGP funds:
    - A state's creation and operation of a P3 office to assist in the design, implementation, and oversight of P3s eligible to receive federal funding under title 23 and chapter 53 of title 49.
    - The payment of a stipend to unsuccessful private bidders to offset their proposal development costs, if necessary to encourage robust competition in P3 procurements. While stipends to unsuccessful bidders are currently eligible under US DOT guidance, the FAST Act clarifies that eligibility in statute.
  - **Regional Infrastructure Accelerator Demonstration Program (Section 1441):** The FAST Act creates a new Regional Infrastructure Accelerator program, modeled on the West Coast Infrastructure Exchange, that authorized \$12 million in General Funds for the Secretary to establish one or more regional entities to develop financing strategies and otherwise promote and accelerate the development of projects eligible for TIFIA assistance.
  - **Railroad Infrastructure Financing Improvement Act (RIFIA) (Sections 11601-11611):** The FAST Act makes changes to increase access to the RRIF loan program. RRIF financing is under consideration for the proposed New York/New Jersey Gateway Tunnel Project (see Gateway Tunnel Project) and the high speed rail link between California and Nevada (see Las Vegas / Southern California High Speed Rail Link). The FAST Act:
    - expands RRIF eligibility to include a joint venture with any RRIF-eligible applicant (such as a state, local government, or railroad).
    - allows states, localities, and special-purpose entities to pay credit risk premiums for RRIF loans, though the appropriations bill continues the perennial prohibition on using federal funds to pay credit risk premiums.
    - allows applicants to use the net present value of a future stream of state or local subsidy income or other dedicated revenues to secure a loan or loan guarantee.
- Water Infrastructure Finance and Innovation Act (WIFIA)**
- The FAST Act amended the existing WIFIA legislation to strike the provision that prohibited the funding of water infrastructure projects with a combination of WIFIA assistance and tax-exempt debt.
- Under current law, as modified by the FAST Act, project sponsors will be able to apply for a low-interest loan in an amount up to 49% of project costs with the remaining 51% coming from other sources. Tax-exempt bonds are expected to be the most cost-effective source for the required non-WIFIA share of project costs. Permitting project sponsors to use tax-exempt debt in combination with WIFIA assistance increases the likelihood that the WIFIA program will reduce project costs and accelerate investment in much-needed major infrastructure improvements.
  - Funding has been appropriated by the US Congress for the administrative costs of starting-up EPA's WIFIA office. Appropriations necessary to support WIFIA loans to project sponsors are expected to be available in federal fiscal year 2017, which commences on October 1, 2016.

## OUTLOOK FOR 2016

Although the 2016 P3 pipeline is not robust, we will likely see a number of new P3s procurements progressing this year. These include Los Angeles International Airport's (LAX) automated people mover project, part of the larger LAX Landside Access Modernization

Program. New projects are also possible from Los Angeles County Metropolitan Transportation Authority. Miami-Dade County may also make progress on its proposed courthouse and water projects. The Florida Department of Transportation is already in the early stages of its procurement of the I-395 Reconstruction DBF project.

Moody's Investors Services and others have noted that US has the potential to becoming the largest P3 market in the world, given the size of its infrastructure needs. Key global equity investors and sponsors are of a similar view, with many increasing their investments and personnel in the US. Federal initiatives, including WIFIA and those set forth in the FAST Act, could help encourage activity in what is still a developing market.

Although the outlook for the P3 sector is stable for 2016, the start of 2016 saw an unexpected development. In early March 2016, SH 130 Concession Company, LLC, the operator of the State Highway 130 toll road (between Austin and San Antonio in Texas) filed for bankruptcy, citing lower than expected revenues. This project, which reached financial close in 2008, was subject to toll revenue risk. However, these revenues were about 60% below projections.

Bankruptcy filings in the US P3 sector are rare (it is only the second in recent years, after the Indiana Toll Road (ITR) operating company's bankruptcy in 2015). Similar to the ITR bankruptcy, the SH 130 bankruptcy filing should have no impact on users of the road, which will remain fully operational. There are likely to be a number of operators interested in acquiring the SH 130 concession, if it goes to a sale.

The remainder of this article discusses notable projects in the P3 pipeline on a state-by-state basis.

## ALABAMA

Under applicable Alabama law:

- The Alabama Department of Transportation (ALADOT) as well as the state's counties are authorized to license a private authority to establish or operate toll roads, toll bridges, ferries, or causeways and to authorize the licensee to establish and fix toll rates (Ala. Code 1975 § 23-1-812). However, this is not P3 legislation. While several bills have been introduced to authorize ALADOT to enter into P3s but none have passed (see Senate Bill 178 introduced on March 10, 2015 and House Bill 415 introduced on April 2, 2015).
- The Alabama Toll Road, Bridge and Tunnel Authority, subject to ALADOT's approval, is authorized to enter into P3 agreements with a private sector party to develop a toll road, bridge, causeway, tunnel, or other transportation facility established and constructed or to be constructed by or on behalf of the authority (Ala. Code 1975 § 23-2-140 to § 23-2-163). A project undertaken under this legislation may be procured as a:
  - Design-build (DB).
  - Design-build-operate (DBO).
  - Design-build-own-operate (DBOO).
  - Design-build-own-operate-maintain (DBFOM).
  - Concession.

For more information on these structures, see Practice Note, Public Private Partnerships: Issues and Considerations (<http://us.practicallaw.com/w-001-1570>).

## I-10 BRIDGE AND BAYWAY WIDENING PROJECT

ALADOT is considering a P3 option for the I-10 Bridge and Bayway Widening project, which has an estimated price tag of \$850 million. Although ALADOT is considering a P3, P3 legislation would first have to be passed before the P3 option could be pursued.

This project entails the construction of a new bridge over the Mobile River, to alleviate congestion in the existing Wallace Tunnel. The Bayway would also be widened by two lanes in each direction. Thompson Engineering has been selected to design the project if the funding for the project is secured. In the meantime, it is assisting ALADOT to complete the final environmental impact statement (EIS). The Federal Highway Administration (FHWA) approved the draft EIS in July 2014.

## DECATUR TOLL BRIDGE

This project would have involved the development of a toll bridge over the Tennessee River and additional lanes, open access through lanes, and interchanges along SR-20 at Decatur, Alabama. Although ALADOT considered a DBFOM structure with tolls, it concluded in early 2015 that the project was not financially feasible.

## ARIZONA

Arizona enacted P3 legislation in 2009, but it is limited to surface transportation projects (Ariz. Rev. Stat. §§ 28-7701 to 7710). This legislation authorizes the Arizona Department of Transportation (ADOT) to enter into agreements with private entities to design, build, finance, maintain, operate, manage and/or lease transportation facilities, or for any other project delivery method that ADOT determines will serve the public interest. The initial legislation did not, however, include the toll enforcement mechanisms required for a successful tolled P3 project. This was addressed in a 2012 amendment (see 2012 Ariz. Legis. Serv. Ch. 210 (H.B. 2491)).

For more information on Arizona's P3 legislation including bidding procedures and the rights of the parties, see State Q&A, Public Private Partnership Legislation: Arizona (<http://us.practicallaw.com/w-000-2878>).

ADOT has several P3 projects under consideration but only one in active development, the Loop 202 South Mountain Freeway project.

## LOOP 202 SOUTH MOUNTAIN FREEWAY

In December 2015, ADOT selected Connect 202 Partners as the preferred bidder for the Loop 202 South Mountain Freeway, ADOT's first P3 project and the largest-ever highway project in the state. The \$1.9 billion project, which is structured as a design-build-maintain (DBM) (with no private financing), entails a 22-mile, eight lane freeway (four lanes in each direction), including two HOV lanes, in the southwest quadrant of the Phoenix metropolitan area. It is the last major piece of the Loop 202 system and a critical direct link between the West Valley and East Valley.

The Connect 202 Partners team includes Fluor Enterprises Inc., Granite Construction Co. and Ames Construction Inc., with Parsons Brinckerhoff Inc. as the lead designer. After an unsolicited P3 proposal was submitted in 2013, ADOT sought competing proposals. From the five initial proposals submitted, three finalists were selected. ADOT is expected to finalize the P3 agreement with Connect 202 Partners by mid-February of 2016. Construction is scheduled to begin in summer 2016 and is expected to take up to four years to complete.



### TRUCK WEIGHING STATIONS AT PORTS OF ENTRY

ADOT issued a Request for Information (RFI) on August 21, 2015 regarding a prospective future solicitation to design, supply, install, finance, operate, and maintain a mainline truck electronic screening system that can be custom deployed at the six major ports of entry (POE). The project would entail the deployment of a standardized mainline electronic screening solution at each POE. The ultimate solicitation may include the equipment, technology, construction and installation, technology implementation, and maintenance of the system and, potentially, financing. ADOT received four responses to this RFI. No schedule has been set regarding next steps.

### FREEWAY LIGHTING UPGRADE

ADOT is considering a P3 to replace all of the high pressure sodium lights on the freeway network of the Phoenix Maintenance District (PMD) with LED lighting, installing a system to monitor and control the lights, and then operating and maintaining the freeway lighting system. Lighting in the Deck Park Tunnel is also included. The objectives of this project include:

- Providing and maintaining illumination coverage and uniformity required to meet applicable safety requirements and standards.
- Reducing the amount of energy consumed for illumination.
- Minimizing overall project costs by optimizing costs for initial capital improvements, lifecycle equipment replacements, operations, and maintenance.

The method of payment to the private party is still under consideration and no procurement timetable has been set.

### PHOENIX STORMWATER PUMP REHABILITATION

The pump stations in the Phoenix Maintenance District (PMD) are an integral part of the area's freeway drainage system, removing storm water from the roadways to prevent flooding. The current system of pump stations was constructed incrementally from 1964 to 2009, resulting in a system that lacks uniformity, standardization, and a long-term maintenance or replacement plan. This has led to maintenance issues that have compounded over time and now exceed ADOT's ability to adequately fund repairs and replacements.

ADOT is considering a multi-year P3 to plan, design and supply all labor and material to replace or overhaul stormwater system pumps, motors, engines and other equipment that are reaching the end of their useful lives and to operate and maintain the new system for the term of the agreement. Payments under a P3 agreement may include up-front payments during construction for completing certain elements of the scope and then the right to collect revenue produced by the project and periodic availability payments during the operations and maintenance period. No procurement schedule has been set.

### COMPRESSED NATURAL GAS (CNG) FACILITIES

ADOT is considering a DBFOM P3 with a private entity to provide CNG fueling facilities in exchange for the right to sell CNG to public users and, potentially, private users. There are approximately thirteen CNG fueling facilities in Arizona. Given the City of Phoenix's current plans to transition its bus fleet to CNG, other local transit agencies' existing and planned CNG fleets, as well as the rising use of CNG fuels in other transit systems, including freight, heavy-duty trucking, and rail industries,

ADOT proposes to consider the development of an overall Arizona CNG fueling facility program. No procurement schedule has been set.

### PORTS OF ENTRY (POE)

ADOT has identified two Ports of Entry (POE) on the US-Mexico border that may present P3 opportunities:

- **San Luis:** The commercial POE is under-utilized and the passenger/pedestrian POE is extremely congested. A possible solution might be to offer passenger vehicles a faster and more reliable crossing by having them use the commercial POE for a small fee. In order to accommodate passenger vehicles, there would need to be some upgrades, which could be undertaken as a P3. No P3 procurement schedule has been set.
- **Douglas:** Due to a landlocked situation and the inability of the Douglas commercial POE to expand on either side of the border, the current location will continue to be congested. The capacity limitations impact the competitiveness of the POE and limits development opportunities in the Douglas/Agua Prieta area. The City of Douglas is interested in developing a work plan to evaluate the business case for a proposed new commercial POE on land that is available about 4 - 6 miles to the west of the current POE. No P3 procurement schedule has been set.

### NORTH-SOUTH CORRIDOR

Expected growth in Pinal County may require a new transportation route. ADOT and the FHWA are studying the area between U.S. Route 60 in Apache Junction and Interstate 10 near Eloy and Picacho to identify and evaluate a possible route to provide a connection between these two areas. The study is currently looking at a range of possible route alternatives, including the effects of taking no action on any improvements (also known as a no-build option). No funding has been identified for this corridor.

### I-11 TRANSPORTATION CORRIDOR

The I-11 and Intermountain West Corridor project remains on the list of P3 under active consideration by ADOT. In October 2014, ADOT and the Nevada Department of Transportation released their joint I-11 and Intermountain West Corridor Study. The Study is part of a decades-long effort by Arizona, Nevada and other western states to develop a transportation corridor between the Rocky Mountains and the Cascade Range/Sierra Nevada Mountains. It includes detailed corridor planning of a possible high-capacity transportation link connecting Phoenix and Las Vegas, and high-level visioning for extending the corridor north of Las Vegas to Canada and south of Phoenix to Mexico. The corridor would include upgraded highway facilities, but could also incorporate rail and other major infrastructure components (such as energy and telecommunications).

The corridor has the potential to be over 530 miles long between the southern Arizona border and the Las Vegas Metropolitan Area, and double that length if extended to the northern Nevada border. The Study contemplates a phased implementation over many years. For some segments, existing facilities could be upgraded or replaced. Other portions will be greenfield construction. The Study notes that a number of segments could be procured as P3s. No timeline has been set for the project, the costs of which are estimated to be in the billions.

**SR 189 (NOGALES)**

ADOT is also considering a P3 as an option for a new or expanded SR 189 in Nogales near the US-Mexico border. SR 189 is used as a bypass route for commercial truck traffic to and from Mexico. Although the road is short (at approximately three miles), ADOT contemplates that the project could be relatively expensive given the terrain and the high population density in the area. Costs are estimated at between \$70 million and \$215 million, depending on the approach adopted. ADOT is working with the city of Nogales and other shareholders to identify the most feasible road corridor and traffic interchange ramp. The federally required environment impact study is expected to be finalized in 2016. No P3 procurement schedule has been set.

**LAKE HAVASU CITY WASTEWATER SYSTEM**

Lake Havasu City continues to consider options to reduce the tax burden on its residents tied to its wastewater system, which consists of three treatment facilities. A P3, lease or privatization each is being considered. The city completed a Wastewater System Expansion Program in 2011, at a cost of approximately \$340 million. The current financing for these improvements has scheduled annual debt service in excess of \$20 million for the next 10 years, which the city feels will impose "unsustainably high wastewater charges on the City's ratepayers." As a result, Lake Havasu City issued a Request for Information (RFI) seeking ideas, approaches, or solutions to mitigate these user charges. It received 11 responses.

**ARKANSAS**

Arkansas currently does not have any general P3 legislation. House Bill 1251, introduced in the Arkansas legislature during the 2013 Regular Session, would have clarified the way in which public entities may interact with private enterprise on public infrastructure projects in Arkansas, but the bill died in the Arkansas senate.

However, certain public entities can pursue P3s under the state's "home rule" powers. In addition, the state's Highway Commission is authorized to enter into agreements with private entities for the DB of transportation projects (A.C.A. § 27-65-107). In March 2015, the Arkansas General Assembly authorized the state's Highway Commission to pursue the design build finance procurement model (see A.C.A. § 27-67-206(j)). Under this model (also referred to as gap financing), the private sector party is responsible for providing the portion of the project's costs that the state cannot cover. This amount will be repaid by the state over time once construction of the project is completed.

**I-30 HIGHWAY PROJECT**

The state's Highway Commission directed the Arkansas State Highway and Transportation Department (AHTD) to consider using a design-build-gap financing model for the I-30 Corridor Improvement project in June 2015. It will be the first project in the state to use this procurement method.

The I-30 highway project entails the rebuilding of the corridor, which runs through Little Rock and North Little Rock and includes the replacement of the Arkansas River Bridge. The costs have been estimated at \$600 million. The winning consortium will be expected to provide gap financing to cover a portion of the costs. Review under the National Environmental Policy Act (NEPA) is underway.

However, the prospects for use of a P3 option were not bolstered by the Governor's Working Group on Highway Funding, which delivered its Short Term Recommendation Report on December 15, 2015. The Working Group was created by Executive Order 15-08 on April 23, 2015 and serves as an investigative and advisory body of the Governor. Its mandate is to "provide recommendations to the Governor for the state to create a more reliable, modern, and effective system of highway funding ...." The Working Group's short term recommendations did not include a recommendation that the state consider using the P3 model. By the same token, it did not recommend against P3 usage.

**ARKANSAS STATE UNIVERSITY P3S**

On February 26, 2016, the Arkansas State University (ASU) announced that it will develop two apartment-style residence halls and a hotel complex using P3s. Zimmer Development Company will build and maintain two housing facilities under a 35-year lease, with accommodation for 515 students. Zimmer will pay \$305,000 to ASU annually from the rental payments it collects for the first several years of the lease terms. Thereafter, payments to ASU will be tied to index escalators. ASU will manage and market the accommodations. Construction is expected to be completed by the fall of 2017.

ASU also agree to a 50-year lease with Jonesboro Hotel Partners, which will build, operate and maintain a 205-bed hotel, 40,000-square-foot convention center and restaurant on the campus. The developer will be liable for all costs associated with construction, operation and maintenance of the property. Construction is expected to be completed in 2018.

**CALIFORNIA**

California has been a leader in the P3 sector with some of the most innovative US projects, including the Long Beach Court House, the Presidio Parkway, the Carlsbad Seawater Desalination Plant and the Rialto Water System P3.

California's P3 statutes authorize:

- The California Department of Transportation (Caltrans) and regional transportation agencies to enter into P3 agreements (Cal. Str. & Hwy. Code §143).
- Local government agencies to use private sector capital to develop specified projects if certain conditions are met (Cal. Gov't Code §§ 5956 to 5956.10)
- The state judiciary to plan, construct, acquire, and operate its court facilities through the use of P3s ((Cal. Gov't Code §§ 70391 to 70394).

However, the streets and highway P3 statute expires on December 31, 2016. A bill was introduced in February 2015 that would extend this legislation (AB 1265) indefinitely, but no meaningful action has been taken. Unless definitive steps are taken to renew this authority in the near future, the potential expiration could have a chilling effect on private sector interest in P3 projects coming to market in California.

For more information, see State Q&A: Public Private Partnership Legislation: California (<http://us.practicallaw.com/9-554-3318>).

**LONG BEACH CIVIC CENTER**

The P3 procurement for the new Long Beach Civic Center continues to move ahead. It entails the design, construction, financing, operation and maintenance of a new city hall and main library for

the City of Long Beach, and enhancements to Lincoln Park. The City Council approved the procurement on December 15, 2015 having previously selected the Plenary Edgemoor Civic Partners consortium as the preferred bidder. The consortium includes Plenary Group, Edgemoor Infrastructure and Clark Construction.

Generally, under applicable California law, local government agencies cannot enter into leases for use of an infrastructure facility for a period longer than 35 years (Cal. Gov. Code § 5956.6(a)). However, on August 11, 2015 Governor Jerry Brown signed legislation allowing for a 50-year P3 concession for this project (Cal. Gov. Code § 5977(b)).

This project is structured as a hybrid DBFOM/lease-leaseback, with availability payments. The costs of the project have been estimated at \$298 million. It is expected to be financed in large part by a private placement that is expected to close shortly.

### UNIVERSITY OF CALIFORNIA, MERCED

On November 19, 2015, the Board of Regents of the University of California-Merced approved its proposed campus expansion. This project (to be located on 219 acres, including the current 104-acre campus) entails up to 1.85 million square feet of new facilities that will support projected growth in student numbers from 6,200 to 10,000 by 2020. These will include academic, administrative, research, recreational, student residence and student services buildings, utilities and infrastructure, outdoor recreation and open space areas, as well as associated roadways and parking.

A draft Request for Proposals (RFP) was issued for the project in May 2015. Three bidding teams were shortlisted in January 2015:

- Edgemoor Plenary EdR Partners: Edgemoor Infrastructure & Real Estate, Plenary Group, Education Realty Trust and Clark Construction Group.
- E3 2020: Balfour Beatty Investments and Balfour Beatty Construction.
- Merced Campus Collaborative: Lend Lease (US) Investments, Macquarie Capital Group, American Campus Communities (ACC), McCarthy Building Companies and Lend Lease (US) Construction.

The project, which is structured as a DBFOM, has an estimated cost of \$1 billion. The final RFP is expected to be issued shortly.

### CALIFORNIA POLYTECHNIC STATE UNIVERSITY HOUSING P3S

The California Polytechnic State University is in the early stages of considering up to four housing P3 projects, including an employee and open market housing complex and three student housing projects. A DBFOM structure is a possible option. A timetable has not been set for a decision, but no procurement activity is expected before fall 2016 at the earliest.

### CALIFORNIA STATE UNIVERSITY CHANNEL ISLANDS P3S

California State University Channel Islands (CSUCI) is also considering procuring several accommodation P3 projects. It is also looking at alternative procurement and delivery approaches for up to 1,000 new parking spaces, expanded dining facilities and new science laboratory facilities. A wellness center and a recreation/events facility are also possibilities. Jones Lang LaSalle, AECOM and SCB Architects have been assisting CSUCI with its project analysis and due diligence. No procurement schedule has been set.

### LOS ANGELES P3 PROJECTS

Los Angeles is actively procuring, or considering procuring several projects as P3s. The Los Angeles County Metropolitan Transportation Authority (LA Metro) is authorized under California's Streets and Highway Code to procure projects as P3s, but this legislation has proven cumbersome and at times a hindrance to project development. Legislation was introduced in August 2015 (ABX 1-12) to make procuring projects under this statute easier, but no meaningful action has been taken. If enacted, the bill would authorize LA Metro to:

- Use P3s for a broader category of projects.
- Pursue projects without seeking the prior approval of the California Transportation Commission.
- Impose tolls and user fees for use of those projects.
- Issue bonds to finance any costs necessary to implement a project and to finance any expenditures.

On February 11, 2016, over 400 private sector parties attended LA Metro's industry forum, at which its P3 plans were discussed.

#### Los Angeles Streetcar Project

The City of Los Angeles is seeking a financial advisor in connection with its proposed Streetcar Project. A P3 is one of the project delivery mechanisms under consideration for the project. The project is currently under environmental review with a NEPA review to follow.

The project entails a 3.8 mile fixed rail streetcar system serving downtown Los Angeles. It will connect several subway lines, as well as local and regional and local bus lines. The costs of the project have been estimated at up to \$282 million. Federal funding under the Federal Transit Administration (FTA) Small Starts program is one source of financing under consideration.

Los Angeles Streetcar, Inc. (LASI) is also engaged on this project. LASI is a 501(c)(3) non-profit corporation, modeled on successful public-private/non-profit streetcar partnerships in Portland and Seattle. It was founded by private sector stakeholders in January 2009 to promote the project, with the support of key elected officials. LASI has, with the approval of the City of Los Angeles Council, issued an RFQ seeking an engineering firm/team to develop an initial engineering design for the proposed project. Submissions were due on September 23, 2015. An environmental review is currently ongoing, with a NEPA review to follow.

#### Los Angeles Convention Center P3

Since 2012, the City of Los Angeles has undertaken various efforts to advance the expansion and modernization of the Los Angeles Convention Center (LACC), including the development of a new hotel at the site. On December 15, 2015, the City Council adopted recommendations consistent with a traditional approach, namely financing the capital improvements via the issuance of approximately \$470 million in debt. This would bring the City closer to exceeding its non-voter approved debt capacity. The City's Administrative Officer (CAO) was thus instructed to report back on alternative funding options, including a possible P3.

The CAO delivered its report on December 23, 2015. The report draws heavily on a December study by Arup Advisory Inc. on alternative LACC delivery and financing methods. The CAO report considered five possible options, ranging from a traditional bond financed approach to a full DBFOM P3.

The CAO concluded that a DBFOM P3 best satisfied the objectives of the City. The CAO report included several recommended next steps to move the project forward, including:

- Completing a detailed business case for the DBFOM P3 option (i) defining the transaction structure and key business terms that satisfy the City's objectives and (ii) including stakeholder outreach, a market sounding with relevant P3 industry participants, and an independent cost review to assess the construction, operations, and lifecycle maintenance costs. This business case would provide the foundation for development of the RFQ and RFP documents, and the framework for the procurement process.
- Engaging an architecture and engineering consulting team to work with the City's financial advisor in developing, among other things, an outline of the performance requirements and the minimum program, functionality, and quality requirements of the LACC.
- Starting the Environmental Impact Report study process.

On February 4, 2016, the Los Angeles City Council's Economic Development Committee approved a plan to evaluate traditional and P3 procurement methods for the project. A decision on whether or not to pursue a P3 option could be reached in June 2016.

#### **Los Angeles International Airport (LAX) Modernization Project**

On November 19, 2015, the Los Angeles Board of Airport Commissioners announced plans to procure part of its Los Angeles International Airport (LAX) modernization project as a P3.

The LAX Landside Access Modernization Program (LAMP) has several components, including a train/automated people mover (APM) and a Consolidated Rent-A-Car Center (CONRAC). These will both be procured through separate DBFOM P3s. The airport operator, Los Angeles World Airports (LAWA) is expected to release an RFQ for the APM by the second quarter of 2016, with an RFQ for the CONRAC to follow.

The AMP will include an elevated guideway of approximately 2.25 miles, with 6 stations connecting the airline terminals, new rental car facilities, airport parking and eventually the LA Metro, enhanced by moving walkways. The CONRAC will relocate existing rental car facilities into one central location adjacent to Interstate 405, with direct connections to the airport via the APM. The estimated capital costs of this DBFOM availability payment project range from \$1.85 to \$2.1 billion. The expected lease term is 30 to 35 years.

LAWA has started the environmental review and clearance process for the project. Construction on both the APM and CONRAC is scheduled to start in the third quarter of 2017. Los Angeles Mayor Eric Garcetti hopes to bring the 2024 Summer Olympics to the City, necessitating a 2023 completion date.

See also, the Highway Desert Corridor.

#### **HIGHWAY 156 WEST CORRIDOR PROJECT**

The Transportation Agency for Monterey County (TAMC) in central California formed a five member SR 156 Ad Hoc Committee to provide input and guidance for the SR 156 West Corridor project environmental review process, and to bring information from the development process back to the community. The project entails replacing the existing two lane road with a four lane highway and the rebuilding of the US Route 101/SR 156 interchange in Monterey County, at an estimated

cost of approximately \$270 million. Ernst & Young Infrastructure Advisors are assisting TAMC in connection with a P3 option.

TAMC and Caltrans previously announced a two-step procurement, with an initial pre-development agreement being followed by a full DBFOM P3 agreement. Such a two-step procurement is unusual in the US, although it was successfully used on the North Tarrant Expressway Project in Texas.

On June 24, 2015, the SR 156 Ad Hoc Committee made a presentation to the Transportation Agency Board and was directed to return with a scope of work and an RFP for proposals to prepare a Level 2 Traffic and Revenue Study, prior to requesting State approval of a P3 approach. The study is expected to be completed by the end of 2016 at the latest. Legislative approval from the California Transportation Commission (CTC) would be required before the project could proceed as a P3. A Supplemental Environmental Impact Report (EIS) will also be required in order to approve tolling.

#### **CALIFORNIA HIGH-SPEED RAIL**

The California High-Speed Rail Authority (CHSRA) has selected Parsons Brinckerhoff to provide integration, program delivery and program management services for the proposed Los Angeles basin to San Francisco high speed rail network. The CHSRA has also issued an RFQ for financial advisors for the project and plans to make a selection by March 14, 2016.

When completed, the trip between these two cities is expected to take under 3 hours. Future expansions of the system to Sacramento and San Diego, and potentially Las Vegas, are possible. The network would be procured in segments over a multi-year period. The P3 model is under consideration for certain segments. In 2013, voters approved an \$8.6 billion bond issuance to partially fund the project, the full cost of which has been estimated at \$68 billion.

In December 2014, the Dragados/Flatiron/Shimmick JV's proposal was selected as the Apparent Best Value for the First Construction Segment (FCS) of the network, through the Central Valley. The FCS, which is being procured as a design-build and not a P3, will ultimately serve as the backbone of the statewide system. In April 2015 CHSRA shortlisted 5 teams to bid on Construction Package 4, the next 22-mile mile phase of the network, running through the counties of Tulare and Kern and the cities of Wasco and Shafter. This too will be a design-build procurement and not a P3.

In September 2015, CHSRA received 35 responses to its June request for expressions of interest (REOI) seeking input from private teams regarding the procurement strategy for two initial operating segments (IOS). IOS one would have two starting points from San Jose and Merced (both near San Francisco) to Bakersfield. IOS two would extend from Merced to the San Fernando Valley. The successful private team could be responsible for maintenance of the whole system, including those portions already procured under a design-build structure.

#### **HIGH DESERT CORRIDOR**

Caltrans and the LA Metro are considering a P3 option for the proposed High Desert Corridor project. This greenfield project entails the construction of a 63-mile multi-modal link from SR-14 in Los Angeles County to SR-18 in San Bernardino, including possible "green energy" components. It would connect some of the fastest growing residential, commercial and industrial areas in Southern California.



The draft environmental impact report/environmental impact statement (EIR/EIS) was released in October 2014. The report considers many possible permutations of the project, some including a tolled road facility and some a high speed rail feeder service. P3s are also under consideration. The estimated cost of the roadway component is approximately \$3.6 billion. The estimated cost of the rail component is between \$2.63 billion and \$4.53 billion, depending on which of the various options is pursued. The project faces an unusually complex and potentially time-consuming permitting and approval process, involving up to six separate federal agencies and at least five state authorities.

The parties are also considering Alternatives Analysis (AA) to evaluate alternatives that could address the region's recent population and economic growth, and improve transportation infrastructure to facilitate goods movement. Metro and Caltrans studied five functional alternatives, and four physical variations, and identified the Preferred Alternative (PA) in July 2015. The PA is a multipurpose alternative that includes Freeway/Tollway with High Speed Rail in the Median along with the Green Energy Corridor and the Bikeway.

In July 2015, the PA was finalized and adopted by Caltrans and the Metro Board of Directors, advancing the alternative for further study in the Final EIS/EIR. The study is expected to be completed in Spring 2016.

#### **HIGHWAY 37 IMPROVEMENTS**

Marin, Napa, Solano and Sonoma counties are in the early stages of considering a P3 for certain improvements to Highway 37. A memorandum of understanding (MOU) has been drafted. Existing restrictions on tolling would need to be addressed before a P3 could be pursued. The scope of the project has yet to be defined.

#### **HUNTINGTON BEACH DESALINATION PLANT**

The long gestating Huntington Beach desalination plant P3 continues to move forward. The Orange County Water District (OCWD) has approved a Water Reliability Agreement term sheet with Poseidon Resources. The term sheet proposes a 50-year water purchase period, with Poseidon assuming the responsibility for financing, constructing and operating the desalination plant.

The plant will be located adjacent to the AES Huntington Beach Power Station and is scheduled to be operational by 2018. It will be capable of producing 50 million gallons per day. It includes pre-treatment facilities, a reverse osmosis seawater desalination facility, post-treatment facilities, product water storage, electrical substation and booster pump stations, as well as water transmission facilities in Huntington Beach and Costa Mesa.

The costs of the project have been estimated at \$852 million to \$899 million, with annual operation and maintenance costs of \$49 million to \$54 million. When completed, the plant is projected to provide approximately 10% of OCWD's water requirements.

On August 17, 2015, the Independent Scientific Technical Advisory Panel (ISTAP) which is charged with assessing the feasibility of alternative subsurface seawater technologies delivered its report. ISTAP was established by the California Coastal Commission (CCC) and Poseidon, in response to concerns expressed by CCC in 2013 regarding possible marine life damage. ISTAP concluded that Poseidon's proposed seawater intake system is the environmentally sensitive and economically viable option. On September 1, 2015, Poseidon resubmitted its application to CCC to begin construction.

#### **SANTA CLARA COUNTY EXPEDITED PURIFIED WATER PROGRAM**

The Santa Clara Valley Water District (SCVWD), which manages the integrated water resources system for Santa Clara County's 1.8 million residents, is considering a P3 for its Expedited Purified Water Program (EPWP).

The EPWP is part of the SCVWD's strategy to respond to the current drought and to expand the county's water supply. As currently conceived, the EPWP could provide up to 45,000 acre-feet per year (AFY) of purified water for indirect and/or direct potable reuse to supplement groundwater recharge from other existing sources such as imported and locally-stored water supply. The EPWP will also mitigate the risk of land subsidence and salt water intrusion, which could significantly impact the infrastructure and economy of the county. The capital costs of the entire multi-segment EPWP have been estimated at \$800 million to \$950 million.

In July 2015 Clean Energy Capital Securities delivered a Preliminary Evaluation of Program Delivery Methods for the EPWP. This report concluded that a P3 delivery method has the potential to deliver time and cost savings to SCVWD when compared to traditional design-bid-build (DBB) and design-build (DB) methods, and to mitigate certain SCVWD risks. SCVWD issued two parallel Requests for Qualifications (RFQs) (dated January 15, 2016) for both a progressive design-build approach and a P3 delivery method. Up to three proposer teams will be shortlisted under each RFQ in March, with separate RFPs being issued in April. A preferred bid for each approach will be announced in October or November 2016, with the SCVWD making a final decision as between the progressive design build or P3 approach in December 2016. This unusual dual-track procurement could dampen private sector interest.

#### **SAN DIEGO REGIONAL AIRPORT CARGO FACILITIES**

On December 4, 2015, the San Diego Regional Airport Authority (SDRAA) issued an RFQ for the design, construction, financing and operation of cargo facilities at San Diego International Airport (SDIA). The private party would design, construct, finance, operate, and sublease approximately 100,000 square feet of cargo processing warehouse/office space and associated aircraft infrastructure, including an aircraft apron accommodating ten aircraft parking positions and adjacent taxiways/taxi lanes and connectors.

SDIA is the busiest single runway commercial airport in the US. There are no permanent air cargo buildings at the airport at present: all air cargo operations are currently "through the fence" operations. SDRAA hosted an informational conference on January 13, 2016. RFQ responses are due on February 17, 2016.

#### **COLORADO**

Colorado has adopted P3 legislation authorizing the Colorado Department of Transportation (CDOT)'s High Performance Transportation Enterprise (HPTE) to pursue any available means of financing for a surface transportation infrastructure project that allows the efficient completion of the project (Colo. Rev. Stat. Ann. §§ 43-4-801 to 813). In early 2014, the governor vetoed an amendment to the P3 legislation, citing a possible chilling effect on the ability of the state to consummate projects.

The HPTE was created in 2009 to facilitate P3s at the state level and to provide P3 guidance to local and regional entities. While the P3 legislation has been in place for several years, it has not been used extensively. CDOT signed its first P3 agreement in February 2014 (US 36). Other Colorado agencies are also authorized to enter into P3s but under different authority. For example, regional transportation districts (RTDs) are authorized to enter into DBFOM agreements under the Regional Transportation District Act (Colo. Rev. Stat. Ann. §§ 32-9-101 to 164.) and the RTD has used this authority successfully to partner with the private sector in the development of the Eagle P3 rail link to Denver International Airport.

For more information on Colorado's P3 legislation, see State Q&A: Public Private Legislation: Colorado (<http://us.practicallaw.com/0-578-8008>)

### I-70 EAST PROJECT

CDOT is moving ahead with its procurement of the I-70 East Project, which covers a 12.5 mile section of I-70 East in the Denver metro area. CDOT's preferred design entails adding lanes (including two express lanes in each direction) and removing a viaduct and calls for a portion of the highway to be reconstructed below grade and to be partially covered with a park or other public amenity. Approximately 150,000 vehicles per day currently use the corridor, with the number projected to increase to 250,000 per day.

The four shortlisted bidding teams are:

- 280 Connectors: Plenary Group, Skanska, Transfield, HDR and Transfield.
- Kiewit/Meridiam Partners: Meridiam Infrastructure, Kiewit, Parsons Brinckerhoff and Jacobs,
- Front Range Mobility Group: Hochtief, ACS, AECOM, John Laing, Flatiron, Dragados, URS and CH2M Hill.
- I-70 Mile High Partners: Cintra, Bechtel, Ferrovial and Sema Construction.

The initial procurement schedule has been pushed back by five months to accommodate the timing of the federal environmental impact Record of Decision (ROD). The ROD is now expected to be delivered in late summer 2016. The Draft RFP was issued on September 15, 2015. The preferred bidder is now expected to be selected in Spring 2017, with financial close in the summer of 2017.

During construction, there will be a series of payments upon the completion of specified milestones set out in the P3 project agreement, including substantial completion. During the operations period, monthly availability payments will be made, comprising:

- A capital payment to cover the private developer's debt payments and to provide a return on equity.
- An OMR payment to fund the developer's operations, maintenance and rehabilitations responsibilities under the P3 project agreement.

The costs of the project have been estimated to be up to \$1.5 billion. Colorado Bridge Enterprise (CBE) has committed \$850 million to the project. The Denver Regional Council of Governments has committed \$50 million, with an additional \$185 million expected to be contributed from the state's General Fund. Post construction, the OMR payments would be funded by the City and County of Denver, CDOT and HPTE. The funding provided by CBE and HPTE would not be subject to annual appropriation by the Colorado General Assembly.

### DENVER INTERNATIONAL AIRPORT GREAT HALL PROJECT

The Department of Aviation for the City and County of Denver is seeking a private sector team to redevelop the Great Hall at Denver International Airport (DIA) terminal. A P3 option is under consideration for the project, which is expected to cost in excess of \$450 million. The Great Hall is the central portion of the main terminal building at the Airport, and currently houses TSA operations as well as concessionaire and other facilities. KPMG is the public sponsor's financial advisor.

The project RFQ sought qualified private parties to participate in the planning, design, financing, project delivery, and potentially the on-going operations and maintenance of portions of the interior of the Terminal. In particular, private parties were invited to propose "an efficient use of private sector capital and risk transfer to generate value to the city." Four bidding teams have been shortlisted:

- Great Hall Experience Partners: Vantage Airport Group, Vancouver International Airport, Stantec, HOK and The Design Solution.
- DEN Transformation Team (DT2): Manchester Airport Group, Plenary Group USA, PCL Construction Services, Jacobs Engineering Group, Pascall & Watson.
- Ferrovial Airports: Ferrovial Airports, Ferrovial Agroman, Saunders Engineering, Luis Vidal, Harrison Kornberg Architects and Anderson Mason Dale.
- Westfield: Westfield, Gensler, Mortenson Construction and HNTB.

The draft RFP was released in late February. Responses are due in May 2016.

In addition to the Great Hall project, Denver is contemplating significant new real estate development opportunities at DIA. In November 2015, city officials approved a new memorandum of agreement with Adams County that is expected to stimulate substantial commercial development on airport property. Plans for the redevelopment are in the early stages but indications are that the airport is looking to partner with the private sector on a number of commercial developments within the airport property.

### DENVER NATIONAL WESTERN STOCK SHOW PROJECT

The City and County of Denver is in the preliminary stages of its plans to redevelop a complex in the northern portion of the City that has been the home of the National Western Stock Show for several decades. The Stock Show has long been viewed as an important cultural and economic asset of the City, and Denver is looking to undertake a major redevelopment of the site in partnership with the private sector. The facility is owned by the City and is the subject of a lease arrangement with the National Western Stock Show, the nonprofit corporation that organizes the annual 16-day Stock Show and Rodeo each January.

The total cost of the redevelopment effort has not been finally determined but is expected to approach \$1 billion. Major funding for the effort is expected to come from a voter-approved extension of lodging and car rental taxes within the City that is expected to support City financial commitments exceeding \$450 million. The National Western Stock Show expects to raise \$50 million as a contribution to the effort. Colorado State University plans to raise \$16.2 million to equip a horse hospital in the equestrian center. Other funding sources may include tax increment financing, proceeds from the sale of city assets, other city funding and funding provided by other private sector participants.

The development plan contemplates equestrian and livestock centers, along with relocated stockyards that would also serve as a "festival park" capable of hosting outdoor events. Those structures are expected to be the biggest magnets for more than 100 new events each year, attracting nearly a million new tourists and visitors.

The funding plan also includes new streets and bridges to reconnect Globeville to Elyria-Swansea across the stock show site. Along the South Platte River, the city would tackle a tangle of railroad tracks and twin above-ground sewer pipes, revitalizing the riverfront and opening access for residents.

The city's plan covers 240 acres, including the 95-acre stock show site, the 30-acre coliseum and roughly 100 acres of private property the city seeks to buy. Preliminary indications are that the City may look to create a public authority to coordinate the efforts of the City, the stock show and Colorado State University which is expected to play a significant role in the redevelopment effort

## DISTRICT OF COLUMBIA

In December 2014, the City Council passed the Public-Private Partnership Act of 2014 to allow for P3s in the District of Columbia. The legislation, which took effect as of March 11, 2015, authorizes city agencies to develop social and transportation projects using P3s. The legislation also established the Office of Public-Private Partnerships. While the District has undertaken P3s in the past, they were done under special authorizing legislation.

On November 24, 2015, Mayor Muriel Bowser officially launched the District's Office of Public-Private Partnerships (OP3). The OP3 is housed within the Office of the City Administrator and will work closely with District Government Leadership and agencies including the Deputy Mayor for Planning and Economic Development and the District Department of Transportation.

For more information on the District's P3 legislation including bidding procedures and the projects that can be procured using this project delivery mechanism, see State Q&A: Public Private Partnership: District of Columbia (<http://us.practicallaw.com/w-000-3346>).

## DC STREETCAR PROGRAM AND THE INTEGRATED PREMIUM TRANSIT (IPT) SYSTEM

In October 2014, the District shortlisted three teams for a scaled down version of its streetcar project. The streetcar component of this project, which was originally conceived as a 22-mile streetcar system and a bus service within the District, has been reduced to about 8 miles following budget cuts. The project is structured as a DBOM. The city is expected to issue a request for proposals (RFP) to shortlisted teams shortly.

## WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY P3

In September 2015 the Washington Metropolitan Area Transit Authority (WMATA) announced that it is considering a P3 to develop a system to allow passengers to add money to their fare cards before they board, reducing travel delays caused by on-board transactions. The project would involve installing 260 solar powered street-side kiosks. As part of the P3 agreement, WMATA would make annual payments to the developer, based on projections of ridership performance, revenue generation, and operating cost savings. WMATA is a tri-jurisdictional government agency involving the District, Maryland and Virginia.

## CONNECTICUT

Connecticut's P3 authorizing stature came into effect in October 2011 (Conn. Gen. Stat. Ann. §§ 4-255 to 4-263). It authorized P3 for transportation projects (including ports and railroads) as well as educational facilities, housing and early childcare facilities. However, the legislation contained several limitations, including, that state funding for a P3 cannot exceed 25% of the total costs of a P3 project. In addition, the legislation required the Governor to approve any P3s under the legislation by January 1, 2015. But did not do so. Although bills were introduced in 2015 to extend the program, there were not passed and the program has thus expired.

For more information, see State Q&A: Public Private Partnership Legislation: Connecticut (<http://us.practicallaw.com/w-000-3345>).

The state still has in place, however, specific legislation that facilitates P3 projects, including to develop:

- Hydroelectric facilities on the upper and lower Collinsville dams ([Connecticut September 2009 Special Session Public Act 09-7, Section 172]).
- Waste/recycling projects overseen by Materials Innovation and Recycling Authority (MIRA) (Conn. Gen. Stat. §22a-268g (2015)).

In March 2015, Governor Daniel Malloy created a Transportation Finance Panel (TFP) to advise him on funding options for his \$100 billion, 30 year statewide transportation infrastructure "Let's Go CT!" plan. The TFP undertook more than nine months of discussion and meetings that included presentations by the Connecticut Department of Transportation (CTDOT), the Office of Policy and Management (OPM), members of the General Assembly, and subject matter experts. The TFP's recently released final report heavily favors a P3 solution, noting that greater use of P3s within the State's proposed transportation investment program offers the promise of faster delivery of projects and improved operational management post-construction. The TFP further recommended that the state enact new and more expansive P3 legislation.

## CONNECTICUT STATE COLLEGES & UNIVERSITIES SOLAR PROJECT

On December 15, 2015, the Connecticut State Colleges & Universities (CSCU) issued an RFP for a private developer to finance, design, install, operate, and maintain solar photovoltaic systems on building roofs and/or ground mount locations at two campuses. The developer will sell the output to the campuses under a power purchase agreement with a term of up to 20-years. Proposer may submit for either or both projects. Proposals were due on 15 January. CSCU plans to begin contract negotiations with the preferred proposer or proposers in early February 2016.

## CONNECTICUT SOLID WASTE SYSTEM RESOURCE RECOVERY FACILITY

On November 6, 2015, the Connecticut Department of Energy and Environmental Protection (DEEP) issued an RFP for the DBFOM for development of a solid waste management project, as well as the marketing of recoverable materials, products and/or energy recovered therefrom.

The current Connecticut Solid Waste System Resource Recovery Facility has operated since 1988, with a permitted capacity to process 888,888 tons of Municipal Solid Waste (MSW) per year. The Facility

is approaching the end of its service life. The RFP calls for it to be upgraded or replaced. The Facility is at the hub of a "hub and spoke" system of six assets, namely:

- Connecticut Solid Waste System Resource Recovery Facility (CSWS RRF) in Hartford.
- CSWS Recycling Facility in Hartford (operated by the Materials Innovation and Recycling Authority (MIRA)).
- Four transfer stations in other towns.

One of the key goals of the new project is to maximize materials recovery, with remaining waste managed through efficient conversion to compost, renewable energy, fuel, chemicals, and/or other usable products. The State has a goal of 60% diversion from landfill and combustion by the year 2024. The RFP contemplates that the selected project will make use of existing Facility sites to the greatest extent possible and will be coordinated by MIRA.

Under the two stage RFP process, initial proposals are due on March 15, 2016, with a shortlist of up three proposers being announced by May 30. The second RFP will be issued within 60 thereafter, with final proposals being due on November 1, 2016.

#### **HYDROELECTRIC FACILITY AT UPPER COLLINSVILLE DAM**

In September 2015, Canton Hydro (a consortium of Maier, Moehrl & Scully Group) was selected to enter a letter of intent with the city of Town of Canton for a Design-Build-Finance-Operate hydroelectric project at the Upper Collinsville Dam. Canton had issued an RFP for the project on May 5, 2015. Canton has started coordinating with State officials the drafting of a long term lease for the dam facility. The site's potential for hydroelectric development is approximately 700 KW -950 KW.

The Upper Collinsville Dam is one of two existing dams located on the Farmington River. Since the 1960's the dams and hydroelectric facilities have been operated by the State of Connecticut. A 2009 State Law requires the Commissioner of the Department of Energy and Environmental Protection (CTDEEP) to enter into an agreement with the Town of Canton, among others, to provide for the utilization of the Upper Collinsville dam for the production of hydroelectric energy. In 2014, the US Congress passed the Collinsville Renewable Energy Act, which outlines the process for Canton to have licenses issued previously for the dams reinstated upon the Town's application to the Federal Energy Regulatory Commission (FERC). In 2009, FERC issued a preliminary permit to Canton for the assessment and potential development of the dam.

Canton contemplates entering into a Site Lease and Development Agreement with the winning team, as well as a Project Operation and Maintenance Agreement and a Power Supply or Power Purchase Agreement.

#### **FLORIDA**

Florida has been a leader in the transportation P3 sector, with some of the most significant P3 transactions in the US, including the I-4 Ultimate, the Port of Miami Tunnel and the I-595 Corridor projects.

Florida's initial P3 legislation was limited to transportation projects. But on May 3, 2013, the Florida legislature passed House Bill 85 (HB85) which expanded the statute to allow P3s to be used in other

sectors. The new law, which took effect effective July 1, 2013, allows any responsible public entity (including counties, municipalities, school boards, regional entities, and other state subdivisions) to use the P3 structure to develop any project that serves a public purpose. As a result, public agencies in Florida can develop social infrastructure projects (for example, hospitals, schools and public buildings).

The new law also created the Public-Private Partnership Guidelines Task Force to establish uniform procedures for implementing P3s. For more information on Florida's P3 legislation, including bidding procedures, see State Q&A: Public Private Partnership: Florida (<http://us.practicallaw.com/w-000-2449>).

Pending Senate Bill 756 has been criticized by some in the private sector. The bill would create the nonprofit FDOT Financing Corporation, to be used by FDOT in financing P3s, among other projects. The Corporation would issue bonds and other forms of indebtedness secured by payments from FDOT. Such bond issuances would require the approval of the State Bond Directors, who is viewed by some in the private sector as being unsupportive of P3s. If enacted, the bill would come into force on July 1.

In addition to state-wide legislation, local government entities have also adopted policies to facilitate P3s in their jurisdiction. For example, Miami-Dade County approved legislation (Resolution Creating Miami-Dade P3 Task Force File No: 150173) creating the 15-member Miami-Dade County Public-Private Partnership Task Force. The members were approved by the Miami-Dade Board of Commissioners on October 6, 2015. Among other things, the Miami-Dade Task Force will make recommendations to the Miami-Dade Board of Commissioners on changes in the county's ordinances, resolutions, regulations, implementing orders and administrative practices that will advance P3s.

In an August 12, 2015 memo to the Board of Commissioners, Miami-Dade County's Mayor Carlos Giménez identified 51 possible projects, with a value in excess of \$9 billion. The potential procuring bodies include the Water and Sewer Department (MDWASD), the Miami-Dade Aviation Department, the Public Works and Waste Management Department, the Department of Corrections and Rehabilitation, the Transit Department, the Office of the State Attorney, Port Miami and the Department of Cultural Affairs. Miami-Dade is actively seeking counsel to advise it on its P3 projects, with a selection expected very shortly.

In addition to the projects described below, FDOT is also considering an extension to the I-4 Ultimate Project (as a new DBFOM procurement) and a possible P3 for the Tampa Bay Express toll lanes.

#### **MIAMI-DADE WATER AND SEWER DEPARTMENT (MDWASD) P3 PROGRAM**

MDWASD is the largest water and sewer utility in the southeastern United States, serving nearly 2.3 million residents and providing direct service to more than 440,000 customers. In 2013 MDWASD entered into a federally mandated Consent Decree with the United States Environmental Protection Agency and the Florida Department of Environmental Protection, under which MDWASD has committed to make improvements to the wastewater collection and treatment system totaling \$1.6 billion.



MDWASD's multi-billion dollar comprehensive Capital Improvement Plan (CIP) covers numerous water and wastewater infrastructure projects, many of which are under consideration as possible P3s. These include:

- **South Miami Heights Water Treatment Plant:** new raw water plant to improve reliability in water service and quality and allow for the decommissioning of certain satellite plants, some of which have been in service for over 40 years. In March 2015 MDWASD received 17 responses to its draft RFQ for the project. MDWASD also released a draft RFP for industry comment.
- **South District Biosolids Processing Facility:** new facility to treat biosolids at the South District wastewater Treatment Plant. A DBFOM is under consideration. A draft consultation RFQ was issued in April 2015. The project costs have been estimated at up to \$200 million.
- **Northwest Wellfield Water Treatment Plant:** a new 50 MGD water treatment plant to serve the Miami-Dade Northwest area and replace the Hialeah Water Treatment plant. The project costs have been estimated at up to \$450 million.
- **West District Wastewater Treatment Plant:** a new wastewater treatment plant to process future flows and provide reuse in accordance with the MDWASD Ocean Outfall Legislation Compliance Plan. The project will also consist of a bio-solids project, with the system to dispose of effluent into the Floridian Aquifer to meet reuse requirements. The project costs have been estimated at up to \$2.1 billion.
- **South Dade Wastewater Treatment Plant:** Biosolids Processing Facility at MDWASD's South District Wastewater Treatment Plant, and potentially another biosolids processing facility at its Central District Wastewater Treatment Plant. The project costs have been estimated at up to \$200 million.
- **Automatic Meter Reading (AMR) System:** P3 to implement the AMR System, allowing for meter readings to be made remotely via wireless radio transmitters, coupled with a monthly billing system. The project costs have been estimated at up to \$150 million.

No official P3 procurement timetables have been announced for any of these projects, but private sector interest is intense and some procurement activity is expected in the near future.

#### MIAMI-DADE CONSOLIDATED JUSTICE FACILITY

In November 2014, voters in Miami-Dade rejected a ballot measure that would have raised taxes to pay for a new \$390 million consolidated justice project, covering new civil, criminal and jail facilities. Since then there has been growing support for a P3 solution, notably from Mayor Carlos Gimenez and County Commissioner Juan Zapata. It remains unclear if the project will be a consolidated facility, or two or more separate facilities. The location or locations have still to be definitively chosen, although the likely locations have been identified.

#### FT. LAUDERDALE FEDERAL COURTHOUSE

Broward County and the City of Fort Lauderdale, with the assistance of KPMG, are considering a possible P3 for a new federal courthouse in Fort Lauderdale, with the Fort Lauderdale Downtown Development Authority taking a central role in assessing the viability of the project. A P3 has the potential to significantly reduce the time required to complete the project. Discussions are underway with the Federal General Services Administration (GSA). No procurement schedule has been set.

#### ALL ABOARD FLORIDA RAIL LINK ("BRIGHTLINE")

All Aboard Florida (AAF) has commenced preliminary construction work on a privately-funded passenger rail line connecting Orlando and Miami. AAF is a private consortium owned by Florida East Coast Industries (a subsidiary of Fortress Investment Group). Construction has started on stations in the downtowns of Miami, Fort Lauderdale and West Palm Beach. On May 26, 2015, AAF released an RFQ seeking a construction management partner for the station at Orlando International Airport. AAF also recently hired Archer Western to upgrade 66 miles of track connecting Miami and West Palm Beach.

AAF predicts that the line would eventually attract 7 million riders a year, generating \$400 million in revenue. The project is projected to initially have about 1 million riders a year, climbing to 5.3 million a year by 2020 and 7 million a year by 2030, according to the report. The report, prepared by the Louis Berger Group, projected revenues of \$293 million a year in 2020, rising to \$400 million by 2030. The initial leg of the line is scheduled to start service in 2017. The service will use 195 miles of the existing Florida East Coast Railway Corridor (between Miami and Cocoa). 40 miles of new rail infrastructure will also be constructed adjacent to SR 528 (between Cocoa and Orlando International Airport). The entire 235 mile trip is expected to take under three hours.

The total cost of the project are estimated at \$3.5 billion. USDOT has allocated \$1.75 billion in tax exempt private activity bonds (PABs) volume cap for the project. The Florida Development Finance Corp. is the anticipated conduit PABs issuer. AAF planned to sell the PABs to qualified institutional buyers and accredited investors in 2015, but has asked USDOT for a second extension of the authority to issue the bonds.

#### ORLANDO INTERNATIONAL AIRPORT TO ORANGE COUNTY CONVENTION CENTER RAIL LINK

Since May 2014, the Florida Department of Transportation (FDOT) has been in negotiations with a private consortium for the lease of rights-of-way and other property required to build a "fixed-guideway" magnetic levitation (maglev) rail system in Orlando. The 15-mile system would run between Orlando International Airport and the Orange County Convention Center.

The consortium, which includes American Maglev Technology (AMT), was the only respondent to an RFP issued by FDOT. The RFP was in response to an unsolicited proposal from AMT to build the project. AMT has proposed to privately finance the project. The required right-of-way is owned by FDOT, the Orlando Orange County Expressway Authority and other public entities. A more conventional passenger rail link is also a possibility. The construction schedule has not yet been announced.

#### SR 836/I-395 PROJECT

FDOT held an industry forum in Miami-Dade County on February 2, 2016 on the SR 836/I-395 Project, followed by one-on-one meetings with interested bidding teams. Over 300 participants attended the forum. The project entails the rebuilding of the Interstate 395 (I-395) corridor, from west of the I-95/Midtown Interchange (I-95/State Road 836/I-395) to its corridor end at the West Channel Bridges of US 41/MacArthur Causeway. The 1.4 mile project has an estimated cost of up to \$600 million. FDOT is contemplating a DBF structure.

### CITY OF MIAMI BEACH STREETCAR PROJECT

The City of Miami Beach has received an unsolicited proposal for a passenger streetcar project from Greater Miami Translink Partners, a consortium composed of InfraRed Capital Partners, Alstom Transport, Archer Western, Jacobs Engineering, Serco and Walsh Investors. In response, the City issued a request for alternative proposals in accordance with the state's P3 statute. Alternative proposals are due by May 10, 2016. Eventually, the project could form part of a larger "BayLink" project, connecting Miami Beach and Miami.

### PASCO COUNTY JUDICIAL CENTER AND DETENTION CENTER P3

Pasco County received 12 responses to its January RFI in connection with its possible Central Pasco Judicial Center and Detention Center P3 Project. A DBFOM structure with availability payments is under consideration. The project consists of two new buildings to be located on County owned property. One building will be a twelve courtroom facility and the other will be a 1,000 bed detention center. Other support infrastructure and services are also required to be provided by the winning team. No procurement schedule has been set.

## GEORGIA

Georgia passed limited P3 legislation in 2009, empowering the Georgia Department of Transportation (GDOT) to undertake P3s (Ga. Code Ann. §32-2-41(b)(6)). Under this legislation, GDOT is authorized to solicit and accept proposals for projects that are funded or financed in part or in whole by private sources (Ga. Code Ann. §§32-2-78 to 80). Georgia has only consummated one P3 to date, the Northwest Corridor design-build-finance (DBF) P3 which reached financial close in 2013.

To expand the use of P3s in the state, on May 5, 2015, Governor Nathan Deal signed the Partnership for Public Facilities and Infrastructure Act, which among other things, empowers any county, municipality, consolidated government, or board of education to undertake a P3 for a qualifying project (Ga. Code Ann., § 36-91-110 to § 36-91-119). A qualifying project is any project selected in response to a request from a local government or submitted by a private entity as an unsolicited proposal (but only between May 1 and June 30 of any year) and subsequently reviewed and approved by a local government.

The Act also established the 10-person Partnership for Public Facilities and Infrastructure Act Guidelines Committee, to prepare model guidelines for local governments in the implementation of P3s.

### I-285/SR 400 IMPROVEMENTS PROJECT

On February 8, 2016, a consortium led by Ferrovial Agroman reached commercial close on the I-285 and SR 400 Improvement Project. The consortium was selected as the preferred bidder for the design, construction and partial financing of the project on December 10, 2015. The project entails rebuilding the I-285/SR 400 Interchange, a collector-distribution system north of SR 400 to Spalding Drive, and modifications of the existing north-facing ramps and Hammond Drive and reconstruction of the Abernathy Road interchange.

The Ferrovial consortium bid price was \$460 million, far less than the original public sector estimate of \$1.1 billion. Financial close is expected in April. The State Road and Tollway Authority (SRTA) will make payments to the consortium post-construction (with funds made available by GDOT).

### ATLANTA WASTE FACILITY P3

On November 16, 2015, the City of Atlanta received 20 responses to its RFI for a waste reduction facility Atlanta is considering a DBFO P3 for facilities to convert non-recyclable municipal solid waste organics and bio solids, recover recyclable materials from feedstock and produce solid, liquid, or gaseous fuel, steam, and/or power. In 2014, Atlanta collected approximately 107,000 tons of municipal solid waste, 16,000 tons of single stream recycling and 27,000 tons of yard trimmings.

### MULTIMODAL PASSENGER TERMINAL (MMPT)

The Atlanta Region Commission (ARC) long-range transportation plan, approved by its board on February 24, 2016, included the long gestating Multimodal Passenger Terminal (MMPT) P3 project. ARC is the regional planning and intergovernmental coordination agency for the City of Atlanta and the ten counties in the metropolitan area. The MMPT would consolidate various bus and rail transit services in a centralized downtown Atlanta location, adjacent to the Five Points MARTA rail station. GDOT had previously funded pre-development planning for the project. The costs of the project have been estimated at up to \$1.1 billion. No schedule for a possible procurement has been set.

### I-75 NORTH MANAGED LANES

Governor Nathan Deal's 10-year transportation investment plan included a proposal for dedicated truck lanes from Macon into Atlanta, on I-75 North, to relieve traffic congestion. If undertaken by GDOT, a P3 option would likely be considered. The project has an estimated cost of approximately \$2 billion.

## ILLINOIS

Illinois has P3 enabling legislation in place (605 Ill Comp. Stat. 5/5 to 605 Ill Comp. Stat. 5/90). However, many of the P3 projects that have been completed in the state to date were consummated under:

- Special legislation. For example, the proposed Illiana P3 project was authorized under the Public Private Agreements for the Illiana Expressway Act (see 605 Ill. Comp. Stat. 130/1 to 605 Ill. Comp. Stat. 130/135).
- Home rule authority.

Despite its long history in this sector, P3 projects in Illinois have faced significant criticism and difficulties over the years:

- In 2009, the City of Chicago entered into a 75-year concession agreement with a private consortium under which it leased the city's 36,000 parking meters for \$1.2 billion. This agreement has been criticized by some for undervaluing the concession and increasing parking fees.
- The City of Chicago has also brought the Midway Airport P3 to the market twice but failed to consummate the transaction.
- The long gestating Illiana Expressway (a project with Indiana) was suspended in June 2015 because of budgetary constraints.

On the brighter side, in November 2015 a consortium comprised of CPPIB, OTPP and OMERS agreed to acquire the Skyway Concession Company for \$2.84 billion, demonstrating significant confidence in this Chicago P3. The 7.8 mile toll road connects downtown Chicago to its southeastern suburbs. A Cintra /Macquarie consortium had originally acquired the Skyway concession in January 2005 for \$1.8 billion. The new consortium will manage, operate and maintain the facility for the remaining 89-year term.

For more information on Illinois's P3 legislation, see State Q&A: Public Private Partnership: Illinois (<http://us.practicallaw.com/w-000-2886>).

### CHICAGO STREET LIGHTING P3

On September 15, 2015, the Chicago Infrastructure Trust (CIT) issued an RFI for the Chicago Smart Lighting Project. CIT's primary goal is to replace the City's and Parks' existing street lighting system (with approximately 348,500 lights) with Light Emitting Diode (LED) equivalents, to achieve improved performance and cost savings. Services, such as wireless internet, are also under consideration. CIT received 40 responses to its RFI in November 2015.

### INTERSTATE 55 MANAGED LANE PROJECT

The Illinois Department of Transportation (IDOT), in cooperation with the Federal Highway Administration (FHWA), has started a study to evaluate options for improving traffic flow by adding an additional managed lane in each travel direction along the I-55 corridor (from the Veterans Memorial Tollway (I-355) to the Dan Ryan Expressway (I-90/I-94) in DuPage and Cook Counties). Various options are under consideration, including High-Occupancy Vehicle (HOV) approach, a High-Occupancy Toll (HOT) system and an Express Toll Lane (ETL) option.

### RED AND PURPLE MODERNIZATION PROGRAM (RPM)

The Chicago Transit Administration (CTA) is considering a P3 option for the Red and Purple Modernization Program (RPM), the largest capital improvement project in CTA's history. The project entails rebuilding the nearly century old North Red Line from Belmont to Howard and the Purple Line from Belmont to Linden in Wilmette. Much needed capacity would be added to this growing residential corridor, to accommodate current and future riders. The project is expected to be completed in phases. CTA and Federal Transit Administration (FTA) have initiated the environmental review process for this project. No schedule has yet been set.

## INDIANA

Indiana has in place broad P3 legislation that authorizes:

- The Indiana Finance Authority (IFA) to enter into P3 agreements with private entities (see Ind. Code Ann. §§ 8-15.5-1-1 to 8-15.5-13-8). Under this legislation, the IFA can enter into agreements with a private sector party to, among other things, plan, design, acquire, construct, improve, expand, lease, operate, repair, manage, maintain or finance toll road projects.
- The Indiana Department of Transportation (IDOT) is also authorized to enter into P3 agreements to develop, finance or operate transportation projects, including toll ways, roads, bridges and some rail projects (see Ind. Code Ann. §§ 8-15.7-1-1 to 8-15.7-16-8).
- Cities and other local jurisdictions are also allowed to enter into P3 agreements (see Ind. Code Ann. § 5-23-1-3).

While Indiana's first P3 project, the Indiana Toll Road Project, raised significant revenues for the state when it issued the concession, the project has faced financial troubles since the project reached financial close. Traffic on the project has been lower than projected, resulting in considerably less revenues than expected. As a result, ITR Concession Company Holdings, the parent of the private concession company, filed for Chapter 11 protection on September 22, 2014. IFM

Global Infrastructure Fund acquired the project in March 2015 for approximately \$5.75 billion, demonstrating significant confidence in the project going forward.

The Indianapolis City-County Council cancelled the procurement of the Indianapolis Consolidated Justice Facility in June 2015, even though the procurement was very far advanced.

### STATE STREET REDEVELOPMENT P3

The City of West Lafayette, Indiana and the Purdue University Joint Board have selected a Plenary-led consortium to develop their State Street Redevelopment P3 project. The project calls for the redevelopment of State Street, the road that leads through downtown West Lafayette and Purdue University, with a focus on residential, business and student needs. The private consortium will receive availability payments over a 20 to 30-year term. It includes tax increment financing (TIF), allowing the winning consortium to receive a revenue stream related to the enhanced value of the property surrounding the project.

### INDIANAPOLIS INTERNATIONAL AIRPORT WATER P3

The Indianapolis Airport Authority (IAA) has shortlisted three proposers for a wastewater and stormwater P3 at Indianapolis International Airport. IAA owns and operates nearly 7,700 acres of land, in addition to 2,000 acres of protected habitat land for the federally endangered Indiana bat. It serves more than 7 million travelers annually, and is the nation's eighth-largest cargo facility. Bidders were invited to offer creative solutions to handle and treat wastewater and stormwater, including the disposal of chemicals related to de-icing, and support IAA's desire to expand its infrastructure to serve future expansion needs on airport property and to nearby facilities. The current procurement schedule is not clear.

## KENTUCKY

The Kentucky General Assembly passed P3 legislation in 2014, but it was vetoed by former Governor Steve Beshear because it banned the use of tolls on the Brent Spence Bridge project (see H.B. 407, 222nd Gen. Assemb., 14 Reg. Sess. (Ky. 2014)).

The future of this project is in doubt. The state's new Governor, Matt Bevin has expressed his opposition to the use of tolls to pay for the state's share of the project's costs. Given this opposition, it is possible that if the new P3 legislation is reintroduced it may be signed by the governor even if it includes a ban on the use of tolls.

### KENTUCKY BROADBAND P3 PROJECT

A consortium headed by Macquarie Capital (with First Solutions and Ledcor) reached financial close on Kentucky's "Next Generation Kentucky Information Highway" project on September 3, 2015. The private consortium will lay over 3,000 miles of fiber optic cable to dramatically improve Kentucky's internet and cell phone services. The consortium will also operate the network for 30 years.

The P3 will allow the project to be consummated on an accelerated timescale. Stage one of the project will begin in Eastern Kentucky and entails laying the main broadband fiber lines. Once completed, internet service providers, cities and others will be allowed to connect the "last mile" lines to individual businesses and homes. Where

available, the project will build upon existing infrastructure. Cell phone companies will also be allowed to use the network to broaden coverage and add capacity for areas that have traditionally had poor cell phone coverage. The project is scheduled to be complete by the end of 2016, with all end point users being connected by mid-2018.

An innovative structure (involving a public not-for-profit corporation as the P3 party) allowed for the use of tax-exempt bonds to partially finance the project.

## MARYLAND

On April 9, 2013, Maryland Governor Martin O'Malley signed House Bill 560 which extensively revised Maryland's P3 statute. As revised, the statute:

- Streamlines the process of establishing P3s.
- Creates a mechanism for submitting solicited and unsolicited proposals.
- Establishes a review process and associated reporting requirements for oversight of P3s.

(Md. Code Ann., State Fin. & Proc. §§ 10A-101 to 10A-403.)

For more information, see State Q&A, Public Private Partnership Legislation: Maryland (<http://us.practicallaw.com/1-544-8565>).

## STORMWATER P3

In November 2014, Prince George's County approved a P3 agreement with Corvias Solutions for a 30-year, stormwater management project. Corvias will undertake the design, construction and long-term maintenance of stormwater management systems, covering up to 4,000 acres.

## PURPLE LINE RAIL PROJECT

After an unusual delay, Governor Larry Hogan announced on March 2, 2016 that Purple Line Transit Partners consortium has been selected by the Maryland Department of Transportation (MDOT) as preferred bidder for the Purple Line Light Rail Transit P3. The consortium is comprised of Meridiam, Fluor and Star America.

The four consortiums shortlisted for the project submitted their financial proposals on December 8, 2015, having previously submitted their technical proposals on November 17.

The project is a 16-mile passenger rail link between Bethesda in Montgomery County and New Carrollton in Prince George's County, in the Maryland suburbs of Washington, DC. It will connect to Metrorail, the MARC Train, Amtrak and local bus routes. Post-construction, the MDOT will make availability payments to the winning consortium over the term of the DBFOM P3 agreement. The total capital costs of the project have been estimated at up to \$2.3 billion. The financing could include a TIFIA loan and PABs.

The future of this project was in doubt following the election of new Governor Larry Hogan in November 2014. However, Governor Hogan subsequently approved the project following costs reductions and a larger contribution from local counties. Commercial close is expected shortly, with financial close to follow in the second quarter.

## PRINCE GEORGE'S COUNTY WASTE-TO-ENERGY PROJECT

Prince George's County is expected to shortlist bidding teams for its waste processing and alternative energy facility P3 shortly, with an RFP to follow in April 2016. A DBFOM or a DBOM P3 agreement are being considered as possible options. The initial term of the project agreement will not exceed 20 years, with two optional five year extensions. Due to Maryland's new goals on waste diversion and recycling, the County's existing Brown Station Road Sanitary Landfill is scheduled to close in 2020. The proposed waste-to-energy project would partially replace this landfill.

## MICHIGAN

Michigan currently has no authorizing P3 legislation. However, certain public entities are authorized to pursue P3s under the state's "home rule" powers. For more information, see State Q&A: Public Private Partnership Legislation: Michigan (<http://us.practicallaw.com/w-001-4925>).

On December 1, 2015, Michigan Senator Mike Kowall introduced legislation (the Michigan Alternative Project Delivery Act (SB 627) that would authorize P3s for a wide range of projects, including transportation, energy, water, waste, health care, educational and justice facilities. If enacted, the bill would allow state agencies, regional or local government entities, joint powers authorities, political subdivisions, and public subdivisions to pursue P3s. P3 agreements would be capped at fifty years, except in some special circumstances. Unsolicited proposals would also be permitted. SB627 was referred to the Commerce Committee on December 1, 2015 but no further action has been taken.

A previous bill that would have permitted the Michigan Department of Transportation (MIDOT) to enter into P3 agreements was introduced in 2014 but did not advance past the House's Transportation and Infrastructure Committee.

## FREEWAY LIGHTING P3

On August 24, 2015, MIDOT reached financial close on the first freeway lighting P3 in the US. This was also the first P3 by MIDOT and the first US P3 to reach initial financial close using private placement debt. The winning Star America consortium will replace the existing lights with energy-efficient LEDs. The 15-year term is divided into a two-year construction period and a 13-year operational period. MIDOT will make two milestone payments post-construction, followed by quarterly availability payments during the operational period.

## ROADWAY PUMP STATION REPLACEMENT/REHABILITATION P3

MIDOT issued a Request for Letters of Interest (RFLOI) for a Pump Station Replacement/Rehabilitation project on October 21, 2015. Pump stations are located on low-lying highways and remove excess water to an outlet. MIDOT is considering alternative scope options for the replacement and rehabilitation of the state's pump stations and supporting infrastructure. The proposed project is also expected to include a maintenance and operation period for the associated infrastructure.

The alternatives for the project, based on geographical locations are as follows:

- **Alternative 1:** includes all pump stations within the state, which is currently estimated by MDOT at 165 stations.



- **Alternative 2:** is focused on pump stations in the Metro Region, which includes the counties of Wayne, Oakland, and Macomb. This area represents 139 pump stations, or approximately 84% of the system.

Responses to the RFLOI were due on November 24. The respondents have not yet been announced.

### **GORDIE HOWE INTERNATIONAL BRIDGE**

Michigan and the Windsor-Detroit Bridge Authority (WDBA) are in early pre-procurement stage with respect to the proposed Gordie Howe International Bridge. The project entails the development of border crossing facilities linking the US and Canada, including a new bridge over the Detroit River, US and Canadian customs and inspection facilities and related road infrastructure improvements. The project is contemplated to be a 50-year DBFOM P3, with tolling. The WDBA is a Canadian Crown Corporation, overseen by the International Authority (which includes three members appointed by each of Canada and Michigan).

The project was first introduced in 2006 and has strong support from the Canadian government, which views it as a potential key trade corridor with the US. In June 2012, Canada agreed to finance Michigan's \$550 million share of the costs, although it was unclear how the US customs and inspection facility would be funded.

The following three teams were shortlisted for the project:

- Grupo ACS, Fluor Corporation, AECOM Concessions, AECOM, and Dragados.
- EllisDon Capital, Bechtel, Fengate Capital, BBGI, Traylor Brothers, Egis, Arup, HMM, ED Civil, and ED Services.
- John Laing, SNC-Lavalin, Vinci Concessions, American Bridge, and HDR.

An RFP is expected shortly.

### **DETROIT TO PONTIAC RAPID BUS PROJECT**

On September 14, 2015, the USDOT's Federal Transit Administration (FTA) awarded the Southeast Michigan Council of Governments \$250,000 in federal funding to support the development of a Bus Rapid Transit project along Woodward Avenue from downtown Detroit to Pontiac.

The funds are made available through FTA's Transit-Oriented Development Planning Pilot Program for communities that are developing new or improved mass transit systems. The funds will be used to create a plan for communities to guide development around transit facilities, formulating strategies for economic growth, assessing development opportunities in the corridor and evaluating the use of mixed income housing and P3s in relation to the project.

### **NEVADA**

Nevada enacted P3 enabling legislation in 2011 (Nev. Rev. Stat. §§ 338.161 to 338.168). The legislation allows certain public sector agencies to enter into an agreement with a private sector party to develop, construct, improve, finance, maintain or operate transportation facilities excluding toll road construction.

Nevada has not completed any P3 projects under this legislation. Its first highway transportation project procured under the state's P3 law, Project Neon, was cancelled in August 2014. This project will now be financed using public funds.

### **LAS VEGAS / SOUTHERN CALIFORNIA HIGH SPEED RAIL LINK**

On November 18, 2015, the Nevada High-Speed Rail Authority (NHSRA) selected XpressWest as preferred proposers for a high-speed rail system connecting Las Vegas with Southern California, under a DBFOM model. NHSRA is a state entity specifically created in 2015 to select a private developer for the project. It has received five proposals.

The approximately 185 mile rail link will be built primarily within or adjacent to the I-15 freeway. XpressWest has teamed with China Railway International for the project. XpressWest will use electric train rolling stock capable of speeds in excess of 150 MPH. The trip is expected to take approximately 80 minutes, with round trip tickets costing under \$100. The project will connect to existing rail links. The costs of the project have been estimated at \$6.9 billion to \$8 billion. XpressWest hopes to access funds under the federal Railroad Rehabilitation and Improvement Financing program to finance a portion of the project costs.

### **NEW YORK**

New York has not yet adopted P3 enabling legislation, although P3 bills have been proposed. Beginning in 2012, certain state entities were permitted to develop projects using a DB structure under the Infrastructure Investment Act (2011 N.Y. Laws ch. 56, part F). This authorization expired in December 2014 but it was renewed for an additional two years in April 2015. The Act authorizes several state agencies and public authorities to enter into design-build contracts.

In addition, the Port Authority of New York and New Jersey (PANYNJ), a bi-state entity, is empowered to use P3s (Ch. 77, 42 Stat. 174 (1921)).

### **LAGUARDIA AIRPORT CENTRAL TERMINAL BUILDING REPLACEMENT PROJECT**

In May 2015, the Meridiam, Skanska and Vantage Airport consortium was selected by the PANYNJ as the preferred proposer on the LaGuardia Airport Central Terminal Building Replacement Project. The consortium will work with PANYNJ and other interested parties to replace the existing Central Terminal, as well as performing related construction, and thereafter operate and maintain the new terminal for 35 years.

Unlike the Luís Muñoz Marín International Airport P3 in Puerto Rico which reached financial close in February 2013, the LaGuardia project is not being consummated under the Federal Aviation Administration's Airport Privatization Pilot Program. The project will be the PANYNJ's second airport P3, following the Terminal 4 Project at John F. Kennedy airport (which was designed, built, and is being operated by a Schiphol-led consortium).

### **GATEWAY TUNNEL PROJECT**

On December 10, 2015, PANYNJ'S Board of Commissioners agreed to create a development corporation to oversee construction of the Gateway Tunnel Project, a new trans-Hudson rail link to improve passenger rail service between New Jersey and New York. The project will be undertaken in coordination with USDOT, Amtrak and key regional agencies, including the New Jersey Transit Authority.

The project entails the design and construction of a new Hudson River rail tunnel serving Penn Station in New York City, and the rehabilitation and modernization of the existing Hudson River Tunnel into Penn Station, which is more than 100 years old. The existing two

tube-two track tunnel incurred serious and ongoing damage during Super Storm Sandy. It is used by 450 trains and 200,000 Amtrak and New Jersey Transit riders every weekday. It could be nonfunctional in as few as seven years.

Taking one of its two tubes out of service for repairs would reduce total capacity for Amtrak and New Jersey Transit from 24 trains per hour to roughly 6 trains per hour in the peak direction. If the whole tunnel was taken out of service for one day, it is estimated that the cost would be \$100 million in related impacts and productivity losses. Constructing the new tunnel first would enable the existing tunnel to be taken out of service while it is being renovated, minimizing disruption to commuters.

When the project is complete, there will be four tracks from New Jersey into Manhattan. The tunnel project is a portion of the larger Gateway Program for improvements along Amtrak's Northeast Corridor from Newark Penn Station in New Jersey to Penn Station in Manhattan.

The long gestating Gateway Tunnel Project was jumpstarted in November 2015 by Governors Cuomo and Christie, US Senators Schumer and Booker when they reached an agreement under which the federal government would fund 50% of the project costs. The states of New York and New Jersey will provide the remainder of the funding. The cost of the project has been estimated from \$14 billion to over \$20 billion, depending on scope, with a possible construction term of up to 10 years. The procurement structure and timetable have not yet been set, but a P3 is a possibility.

PANYNJ has also indicated that a P3 is a possibility for the partial replacement/rehabilitation of New York City's Port Authority Bus Terminal which opened in 1950. That project has an estimated price tag of \$8 billion to \$11 billion.

### **PENN STATION P3**

On January 7, 2016, Governor Andrew Cuomo announced that New York will pursue a P3 for the substantial redevelopment of Pennsylvania Station, in coordination with Amtrak and other stakeholders. The estimated \$3 billion project has a target completion date of 3 years.

### **NORTH CAROLINA**

In August 2013, North Carolina's procurement legislation was amended to authorize state agencies and local municipalities to develop projects using P3s (N.C. Gen. Stat. §143-128). The North Carolina Department of Transportation (NCDOT) is also authorized to enter into P3 contracts to develop transportation infrastructure projects using the DBFOM structure, and to finance these projects through tolls and other financing methods authorized by law (N.C. Gen. Stat. §136-18(39)).

To date North Carolina has closed only one P3 project, but NCDOT has indicated that P3s will play a key role in the development of new infrastructure in the state. NCDOT is considering P3 procurement for the \$1 billion I-40 Project connecting the cities of Raleigh and Chapel Hill. The project is on North Carolina's draft 10-year State Transportation Improvement Program (STIP) funding plan, but has not yet received any environmental approvals. Several ports may also be candidates for a P3.

### **I-77 HOT LANES P3**

Financial close on the 27 mile I-77 Hot Lanes Project occurred on May 20, 2015. This was North Carolina's first DBFOM P3. Commercial close was reached in June 2014.

The winning consortium is comprised of Cintra Infraestructuras, Aberdeen Global Infrastructure Partners II, English Construction Company, Ferrovial and the Louis Berger Group. The \$655 million project was partially funded by \$100 million of PABs and a TIFIA loan of \$189 million, with total equity contributions of \$250 million. John Laing acquired a 10% equity stake post-closing.

The project is divided into three portions:

- Southern Section (I-3311-C), requiring two HOT lanes in each direction.
- The Central Section (I-5405), requiring the conversion of the existing High Occupancy Vehicle (HOV) lanes to HOT lanes, providing two HOT lanes in each direction.
- Northern Section (I-4750AA), requiring one HOT lane in each direction.

The project will increase capacity and improve road safety. It will not remove any existing general purpose lanes. The consortium will develop, design, build, finance, operate, and maintain the project under a 50-year P3 agreement.

The road will have variable toll pricing and the private consortium will take traffic revenue risk. However, NCDOT will provide a contingent funding "Developer Ratio Adjustment Mechanism," under which payments may be made to the consortium to cover shortfalls in operating costs and/or to make debt service payments if toll revenues are not sufficient to cover such liabilities. These payments are capped at \$75 million in aggregate and at \$12 million in any one year. If, however, toll receipts exceed an agreed amount, NCDOT is entitled to share in the excess.

### **MID-CURRITUCK BRIDGE PROJECT**

NCDOT has indicated that a DBFOM P3 is under consideration for the Mid-Currituck Bridge Project. The project entails constructing a new seven mile, two-lane bridge across the Currituck Sound, between US 158 and NC 12. The bridge will provide improved connectivity for the Outer Banks to the Hampton Roads region in Virginia. It has an estimated cost of at least \$450 million. In December 2014, the project was added to North Carolina's 10-year STIP funding plan. The procurement could commence in spring 2016.

An earlier attempt to consummate this project with the Currituck Development Group (comprised of ACS Infrastructure Development, Iridium and Dragados) was shelved when Governor Pat McCrory signed House Bill 817 into law in 2013. The law introduced a new methodology for funding transportation projects, including a prioritization process in order to determine the amount of state funding.

### **OHIO**

Ohio has a P3 statute that gives broad authority to the Ohio Department of Transportation (ODOT) to undertake a P3 procurement to develop, finance, maintain or operate transportation facilities (Ohio Rev. Code Ann. §§ 5501.71(A) and 5501.83). For more on this statute, see State Q&A Public Private Partnership Legislation: Ohio (<http://us.practicallaw.com/8-519-1948>).

To date ODOT has reached financial close on one P3, the Route 823 Portsmouth Bypass Project.

#### **ROUTE 823 PORTSMOUTH BYPASS PROJECT (ROUTE 823)**

ODOT and the Portsmouth Gateway Group reached financial close on the 30-year DBFOM Portsmouth Bypass project in April 2015. The winning team included ACS Infrastructure, InfraRed Infrastructure, Star America Fund and Dragados.

The project involves the development and long-term maintenance of an approximately 16-mile, four-lane limited access highway (to be designated State Route 823) around the City of Portsmouth in southern Ohio, bypassing approximately 26 miles of US 52 and US 23. It includes construction of 5 new interchanges and other related improvements. ODOT will make availability payments post-construction.

The project costs are \$557 million, making it one of ODOT's largest construction projects to date, and its first P3. It was partially financed via a \$209 million TIFIA loan, \$227.36 million in PABs and \$48.85 million of equity.

#### **OHIO STATE UNIVERSITY COMPREHENSIVE ENERGY MANAGEMENT PROJECT**

In December 2015, The Ohio State University (OSU) announced that it had received 10 responses to an RFI for its comprehensive energy management project. In an unusual process, the RFI followed an earlier RFQ, under which 40 consortiums or firms were qualified to move to the next procurement stage.

OSU is seeking a private sector partner to bring operational, technical and financial expertise to the maintenance of the system's electric, gas, steam, heating, and cooling systems and associated assets. The private partner is also expected to make a capital investment under a concession that could extend 50 years. Energy conservation measures will also be part of the project.

Three advisory groups, including faculty members with expertise in energy management and sustainability, will consult with OSU RFI evaluation team. An RFP is expected in early 2016. Any P3 will require the approval of OSU's Board of Trustees.

#### **KENT STATE UNIVERSITY FACILITIES P3**

On August 26, 2015, Kent State University issued an RFQ in connection with the development of student housing and a location for its Offices of Global Education. The residence hall and office combination is intended to create a cross-cultural living and learning community for students.

RFQ responses were due by September 11. The announcement of the shortlisted teams was tentatively set for September 14, 2015 but did not occur. The university has set August 1, 2017 as the construction completion date.

#### **THE BRENT SPENCE BRIDGE IMPROVEMENT PROJECT**

The State of Ohio and the Commonwealth of Kentucky are jointly moving ahead with their plans for the Brent Spence Bridge project, which calls for improvements to a 7.8-mile corridor of I-75. In addition to a major rehabilitation of the existing Brent Spence Bridge, the project contemplates the construction of a new Ohio River crossing adjacent to the existing structure. The total cost of the project is estimated at \$3.56 billion. Ohio and Kentucky are considering a

DBFOM P3 approach, with availability payments. The states are operating under a bi-state agreement, which establishes their respective roles and responsibilities and contemplates a Bi-State Management Team (BSMT) to jointly oversee the project.

Ohio Governor John Kasich signed legislation in June 2014 that would allow tolling on the proposed bridge, a key requirement to progress with the P3 project. However, in April 2015, Kentucky Governor Steve Beshear vetoed P3 legislation that would have prevented tolling on the bridge. Governor Beshear has been replaced by Governor Matt Bevin, who has not yet articulated an approach for moving the project forward although he has expressed opposition to the use of tolls (see Kentucky).

#### **PENNSYLVANIA**

Pennsylvania adopted broad P3 legislation in 2012 (see Act 88 of 2012) (74 Pa. Stat. Ann. §§ 9101 to 9124). The State's implementation manual was approved on January 9, 2013. For more information, see State Q&A: Public Private Partnership Legislation: Pennsylvania (<http://us.practicallaw.com/0-539-8127>).

The Pennsylvania Department of Transportation (PennDOT) successfully closed its first P3 in 2015, the groundbreaking Rapid Bridge Replacement Project, and is considering a number of other possible projects. The Pennsylvania Turnpike Commission is also exploring a P3 procurement for a portion of the Mon-Fayette Expressway. However, PennDOT canceled a P3 procurement in the fall of 2015 for an 11-rail station improvement project along the Keystone Corridor rail line between Philadelphia and Pittsburgh.

#### **RAPID BRIDGE REPLACEMENT PROJECT**

PennDOT and Plenary Walsh Keystone Partners (PWKP) reached financial close on the Rapid Bridge Replacement P3 Project in March 2015. The PWKP team includes Plenary, Walsh Group, Granite Construction and HDR Engineering.

The RFP noted that approximately 4,500 (or 18%) of the Commonwealth's bridges were structurally deficient and the average age of the Commonwealth's bridges was more than 50 years. PWKP is responsible for the design, construction, reconstruction or replacement, financing and maintenance of the bridges, and will receive availability payments from PennDOT. A subset of the dilapidated bridges is required to be replaced on an expedited basis.

PWKP will construct, reconstruct or replace the 558 bridges at an average cost of \$1.6 million per bridge. PennDOT's pre-bid estimate was more than \$2 million per bridge, under traditional procurement methods. PennDOT will pay an average of \$65 million annually during 28-year term. Construction began in June 2015, with all bridges to be replaced within 36 months. PWKP will maintain each bridge for 25 years after construction. The project is being financed partly by \$721.5 million in PABs and \$71.33 million of equity.

#### **COMPRESSED NATURAL GAS FUELING STATIONS**

Pennsylvania has shortlisted 3 teams for its \$200 million compressed natural gas (CNG) fueling stations project. The project entails a DBFOM P3 for CNG filling stations at up to 37 transit facilities. PennDOT would also enter into a CNG supply contract with the winning team. The stations would service both public transit agency and private vehicles. The preferred bidder is due to be announced in the first quarter of 2016.

### SOUTHPORT COMPLEX IN SOUTH PHILADELPHIA

In January 2016, the Philadelphia Regional Port Authority (PRPA) announced its shortlist of six bidding teams for its three Southport waterfront sites, collectively known as the Southport Complex, on the Delaware River in South Philadelphia. The three sites are the 119 acre Southport Marine Terminal (Site 1), the 75 acre Southport West Terminal (Site 2) and a 1,132 foot long pier (Pier 124 North Berth) (Site 3). Bidders were permitted to select which of the Sites to make a proposal for, but were required to include at least Site 1 or Site 2. The RFQ for the project was issued in September 2015 and PRPA received seven responses.

The PRPA has performed pre-development work at all three locations. Southport has substantial rail, and water access, as well as a newly-built four lane road connecting the sites to Interstate highways I-76 and I-95. The REIO asked for development concepts for the DBFOM of three sites. The shortlisted teams have proposed a variety of different development projects. Issuance of the RFP is expected shortly.

### MIDDLETOWN TRAIN STATION DEVELOPMENT

On November 24, 2015, Pennsylvania's Public Private Partnership Board approved PennDOT's proposed DBFOM procurement for the development of PennDOT-owned parcels near the Middletown train station. The private party will design, build, finance, operate and maintain the station, as well as maintaining, and possibly expanding, the existing parking facilities.

### NORTHAMPTON COUNTY BRIDGES PROJECT

On November 24, 2015, Pennsylvania's Public Private Partnership Board also approved Northampton County's request to use a P3 procurement to replace 28 bridges and repair 6 other bridges. The County was responding to an unsolicited proposal it received in October. The County is now considering whether to move forward with the project. No schedule has been announced for a decision. PennDOT is expected to assist the County in an advisory capacity if the project proceeds.

### SCRANTON ASSET MONETIZATION

American Water was selected as the winning bidder for the Scranton Sewer Authority (SSA) on December 8, 2015, with a \$195 million bid. The City of Scranton was advised to sell the SSA by its financial advisor, in order to improve the city's financial condition. The sale proceeds will be applied to defease SSA's approximately \$65 million of bond debt, with the balance being split between the city and the Borough of Dunmore.

On the advice of its financial advisor, Scranton is also considering monetization of the Scranton Parking Authority.

### TEXAS

Texas has in place P3 legislation, the Texas Public Private Infrastructure Act (V.T.C.A., Government Code T. 10, Subt. F, Ch. 2267.001 to 2267.452). Texas was one of the earliest and has been one of the most frequent users of P3s for transportation infrastructure in the US, having generated more than \$8 billion in projects over the last decade. The Texas Department of Transportation (TxDOT) does not have the authority to undertake availability payment projects and thus tolling projects have been the primary focus.

On September 1, 2015, new legislation took effect establishing a "center for alternative finance and procurement," which will assist government entities in selecting P3 projects for many type of public infrastructure. The center will consult with government entities regarding best practices for procurement and financing of qualifying projects. It will also assist government entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and project management. The center is housed within the Texas Facilities Commission.

Texas has implemented several P3 projects, including the North Tarrant Express Segments 3A & 3B Project which reached financial close in September 2013. Texas has, however, had challenges with the use of P3s, including:

- Several canceled P3 procurements such as the late stage cancellation of the Houston Justice Complex P3 procurement in March 2015.
- Several anti-tolling bills having been introduced in 2015 (reflecting a growing anti-toll sentiment in the state). But no significant anti-tolling bill was enacted.

After suffering a prolonged period of financial underperformance, the SH 130 Concession Company, LLC, which had taken revenue risk on the State Highway 130 toll road (between Austin and San Antonio) filed for bankruptcy on March 2, 2016. According to the LLC, toll revenues were up to 60% below projections, due to the ongoing impact of the recession, which reduced traffic volumes during the project's early years and delayed development along the largely rural corridor. The company's outstanding debt as of the bankruptcy filing date was \$1.272 billion, including \$551 million of TIFIA debt.

In a surprising move, TxDOT in the fall of 2015 eliminated the gap-financing component of its US 181 Harbor Bridge Replacement project.

Nevertheless, Texas remains active in the space with several projects in the pipeline.

### SH 288 TOLL CONCESSION

Financial close is expected shortly on the SH 288 DBFOM P3 project. In February 2015 TxDOT awarded the comprehensive development agreement for the project to the Bluemountain Transportation Group (BTG) team led by ACS, InfraRed Capital Partners and Shikun & Binui Concessions.

The project is divided into two phases:

- Phase 1 includes the construction of four tolled lanes within the median of SH 288, the construction, of up to eight direct connectors at Beltway 8 and the maintenance and operation of the general purpose lanes and associated facilities along the 10.3 mile section of SH 288.
- Phase 2 includes the addition of one general purpose lane in each direction from Interstate Highway 610 to BW 8 and improvements to the IH 610 interchange.

BTG also proposed adding additional interchange improvements at I-610. The capital costs of the project have been estimated at \$820 million. Project debt is projected to be \$670 million, with both TIFIA and PAB financing, as well as equity from BTG. BTG bears tolling and revenue risk for the project and will make an upfront payment to TxDOT. The concession length is expected to be 52 years.



### 181 HARBOR BRIDGE REPLACEMENT PROJECT

Following a competitive procurement process, on September 28, 2015 TxDOT entered into a comprehensive agreement (with a consortium headed by Dragados and Flatiron) for the US 181 Corpus Christi Bridge Project.

The current Corpus Christi Bridge, which opened in 1959, is 2.25 miles long and averages 45,000 to 50,000 vehicles per day. It suffers from a number of deficiencies, including safety concerns, lack of capacity to develop additional lanes and issues regarding connectivity to local roadways. The existing bridge also has very high maintenance costs and restricts navigation.

Under the comprehensive agreement, the consortium will design, construct, and potentially maintain the new bridge. Unexpectedly, the final agreement does not require any private sector gap financing, as was contemplated in the RFP. The costs of the project have been estimated at \$845 million.

### HOUSTON TO DALLAS-FORT WORTH CORE EXPRESS PASSENGER RAIL SERVICE

A private consortium, Texas Central Partners (TCP) has proposed a High-Speed Rail project connecting Houston and Dallas/Fort Worth. The approximately 240-mile rail line is projected to have travel time of less than 90 minutes, with departures every 30 minutes during peak periods, and hourly off-peak periods. The train is expected to be capable of traveling at speeds up to 205 mph.

TCP is considering using the N700-I Bullet system, a version of the Tokaido Shinkansen total system currently operating between Tokyo and Osaka, Japan. Central Japan Railway Company (JRC) of Japan is expected to provide the technology.

On August 10, 2015, the Federal Railroad Administration (FRA) released its Corridor Alternatives Analysis Technical Report in connection with the project. The Report examined potential corridor alternatives. It identified the "Utility Corridor" as a feasible end-to-end corridor, based on operational, technological and environmental constraints. FRA will now identify and evaluate potential alignment alternatives within the Utility Corridor as a preparatory step to identify the route to be evaluated in the federal Environmental Impact Statement (EIS).

On October 20, 2015, TCP announced that it had engaged Dallas to Houston Constructors (DHC), a joint venture between Archer Western Construction and Ferrovial Agroman, to provide engineering, cost estimation and pre-construction related services.

### TEXAS-OKLAHOMA PASSENGER RAIL SERVICE

TxDOT commissioned the Texas-Oklahoma Passenger Rail Study which is expected to be finalized shortly. This study examines how passenger rail could play a role alleviating congestion on the 850 mile IH-35 corridor between Oklahoma and South Texas. The study will look at the corridor as a whole, as well as three discrete portions of the corridor:

- Northern: Oklahoma City to Dallas/Fort Worth.
- Central: Dallas/Fort Worth to San Antonio.
- Southern: San Antonio to Rio Grande Valley/Corpus Christi/Laredo.

It will also consider different levels of rail service, namely conventional, higher speed, and high speed. Funding for the study is being provided by the FRA.

### LONE STAR REGIONAL RAIL PROJECT

Lone Star Rail District (LSRD) is expected to issue an RFQ in the first quarter of 2016 seeking a P3 owner's representative for its Lone Star Regional Rail Project. LSRD is an independent public agency based in San Marcos. Its Board includes members from cities, counties, transit agencies, metropolitan planning organizations and business and community leaders.

The project would provide regional passenger rail service connecting communities along the IH-35 corridor between the metropolitan areas of Austin and San Antonio, plus a separate freight line. As currently contemplated, the project would extend approximately 120 miles across Williamson, Travis, Bastrop, Hays, Caldwell, Comal, Guadalupe, and Bexar counties. It would provide 75-minute express service from downtown Austin to downtown San Antonio, with stops in San Marcos and New Braunfels. Up to 24 new stations would be constructed, with related parking facilities and connections to local transit.

LSRD intends to pursue a DBFOM P3 option. It is currently conducting an environmental impact review. The project costs have been estimated at up to \$2.5 billion. No definitive P3 procurement schedule has been set.

### UNIVERSITY OF TEXAS AT DALLAS P3

In April 2015, the University of Texas at Dallas signed a P3 agreement for the delivery of on-campus mixed-use housing and retail properties. The Balfour Beatty Campus Solutions consortium will design, build, finance and operate the campus facilities, along with Dallas-based residential and commercial developer Wynne/Jackson.

The \$54 million project entails mid-rise apartments and townhomes, adding 600 beds plus shops, restaurants and entertainment venues for over 30,000 students, faculty, staff and young professionals on the site. It will be financed through a land lease, whereby the university will lease the land to the developer which will build, own, and operate the building for a specific period. Building work is scheduled to be completed by August 2016, in time for the 2016/17 academic year.

### SOUTH CENTRAL TEXAS DESALINATION PLANT PROJECT

The Guadalupe-Blanco River Authority (GBRA), which serves South Central Texas, is continuing to study the feasibility of building an ocean water desalination plant as a regional water supply. A key component of the study is to determine the optimal financial configuration with some level of project finance similar to the recent desalination P3 in Carlsbad, California.

On December 2, 2015, the Texas Water Development Board (TWDB) made a \$2 million loan, from the State Water Implementation Fund for Texas (SWIFT) program, to GBRA to fund a feasibility study for the project. The study will identify a site and transmission and delivery options for a possible Integrated Water and Power Project, as well as examining the feasibility of diverting and treating seawater from the Gulf of Mexico and conveying it to areas in the central and Gulf coastal regions of South Texas.

The project could yield up to 250 million gallons per day (mgd) of desalinated water to serve the region. The quantity of 250 mgd is the equivalent of 280,000 acre-feet of water annually, or enough to supply about 350,000 households per year.

## VIRGINIA

Virginia is a leader in the US P3 sector and has completed some of the most significant P3 projects in recent years, including the Midtown Tunnel Project. Virginia has broad P3 legislation in place:

- The Public-Private Transportation Act of 1995 (PPTA), which applies to transportation facilities (Va. Code Ann. §§ 33.2-1800 to 33.2-1824).
- The Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), which applies to various non-transportation assets, including public buildings and telecommunications infrastructure (Va. Code Ann. §§ 56-575.1 to 56-575.18).

Following the controversy that surrounded the Midtown Tunnel project, Virginia has taken steps to increase procurement transparency and public oversight. In March 2015, the legislature adopted House Bill 1886 (2015 Virginia Laws Ch. 612) which amends and enacts §§ 33.2-1803 and 33.2-1820 to require a finding of public interest before a procurement is initiated. The legislation also:

- Establishes the Transportation Public-Private Partnership Advisory Committee to determine by a majority vote whether the Virginia Department of Transportation (VDOT) or Department of Rail and Public Transportation project meets the finding of public interest and to report such determination to the General Assembly;
- Requires certification of the finding prior to the execution of a comprehensive agreement and requires the public-private partnership guidelines to incorporate the finding; and
- Requires VDOT to establish a process for identifying high-risk projects and procurement processes and guidelines for such projects to ensure that the public interest is protected.

On November 12, 2014, the Commonwealth Transportation Board (CTB) approved new P3 guidelines, the 2014 Virginia PPTA Implementation Manual and Guidelines, to increase transparency and competition and to better evaluate the public's risk for P3 transportation projects. The new guidelines were issued following a six-month public outreach program by CTB.

P3 projects in Virginia are managed and advanced by the Virginia Office of Public-Private Partnerships (VAP3). The VAP3 released its final 2015 Virginia P3 Project Pipeline Report on January 4, 2016 which listed seven potential candidates for development as P3s, namely:

- Hampton Roads Crossing Improvements (including the Third Crossing and the Hampton Roads Bridge Tunnel projects).
- Route 460/58/13 Project.
- Interstate Lighting P3 (LED lights).
- Advertising/Sponsorship Opportunities regarding state-owned assets.
- New Customer Service Facilities for Department of Motor Vehicles.
- Monetization of Toll Credits.

For more information on Virginia's P3 legislation, see State Q&A: Public Private Partnership: Virginia (<http://us.practicallaw.com/w-000-6320>).

## TRANSFORM 66 P3 PROJECT

VDOT issued its draft RFP for its Transform 66 P3 Project on December 17, 2015. VDOT had previously released an RFQ regarding three alternative delivery methods for the project:

- A design-build- finance-operate and maintain.
- A design-build-operate and maintain.
- A design-build with the inclusion of Alternative Technical Concepts (ATCs).

Following its evaluation of the RFQ responses and Conceptual Financial Proposals, Virginia determined to advance the procurement as a DBFOM P3.

The project entails high occupancy/toll lanes (Express Lanes) and associated facilities along an approximately 25-mile stretch of the I-66 corridor between U.S. Route 15 in Prince William County and Interstate 495 (I-495) in Fairfax County and certain related improvements. The project costs have been estimated at up to \$2.1 billion.

Three bidding teams have been shortlisted:

- Express Partners: Skanska, Transurban and Archer Western.
- I-66 Express Mobility Partners: Cintra, Meridiam, Ferrovial Agroman and Allan Myers.
- Transformative Solutions Partners: InfraRed, Isolux, Fluor Corporation, Fluor, Granite and Lane.

Technical proposals are due by July 26, 2016, followed by financial proposals on August 23, 2016. Selection of the preferred proposer is scheduled for September 13, 2016, with financial close in April 2017.

## AIR RIGHTS DEVELOPMENT

VAP3, in conjunction with VDOT, continue to explore a P3 option for the potential development of air rights above I-66 at the East Falls Church Metro Station and at the Rosslyn Metro Station areas in Arlington County. The projects focus on the potential development of mixed use facilities above I-66 to generate additional revenues for transportation improvements. The Request for Information (RFI) was issued in July 2013. This project was listed as being "under development" in VAP3's draft 2015 Virginia P3 Project Pipeline Report of October 26, 2015. No procurement schedule has been set.

## SOLAR ENERGY DEVELOPMENTS

The VAP3 and VDOT, in cooperation with the Virginia Department of Mines, Minerals, and Energy, are exploring a possible P3 Solar Energy Development P3 project. Various state-owned properties would be made available for solar energy exploitation, including, potentially, rooftop solar systems, ground mounted solar systems, solar canopies over park and ride lots and solar sound barrier walls.

The VAP3 issued an RFI on January 15, 2015 to determine private sector interest in the project. The VAP3's Detail-Level Screening Report was completed by VAP3 and accepted by VDOT on June 1, 2015. This project was listed as being "under development" in VAP3's draft 2015 Virginia P3 Project Pipeline Report of October 26, 2015. No procurement schedule has been set.

## WEST VIRGINIA

West Virginia's P3 legislation, the Public-Private Transportation Facilities Act (*W.Va. Code §17-27*) (P3 Act) is broad and authorizes the West Virginia Department of Transportation to use public private partnerships (PPPs or P3s) for transportation facilities, which include any public inland waterway port facility, road, bridge, tunnel, overpass or existing airport used for the transportation of persons or goods, and the structures, equipment, facilities or improvements necessary or incident thereto (*W.Va. Code §17-27-2(13)*).

This legislation expires on June 30, 2017 (*W.Va. Code §17-27-9(g)*).

In addition to the projects discussed below, the West Virginia Department of Transportation (WVDOT) has indicated that it is considering a P3 for the proposed Wellsburg Bridge over the Ohio River near the cities of Wellsburg, West Virginia and Brilliant, Ohio. The federal environmental review process for this project is underway.

### US 35 COMPLETION P3

On June 2, 2015, Bizzack Construction was selected as the winning bidder on the US 35 completion P3 Project. Bizzack will complete the remaining 14.6 mile grade and drainage project, at a cost of approximately \$174 million, making it the largest contract the West Virginia Division of Highways has ever awarded. Bizzack will provide gap financing. The major grade and drain work is scheduled to begin in the spring of 2016. Upon completion of the project in October 2018, the entire length of US 35 in West Virginia, from Point Pleasant to the I-64 Interchange at Crooked Creek, will be a four-lane facility.

### CORRIDOR H PROJECT

On November 25, 2015, the West Virginia Department of Transportation (WVDOT) selected a consortium headed by Kokosing Construction and El Robinson Engineering to design, build and finance a portion of the Corridor H Project.

The project entails the design, construction and gap financing of a four-lane section of US Route 48, from Kerens in Randolph County to the US 219 Connector in Tucker County, as a partially-controlled access facility. The project will run approximately 7.54 miles and includes a connector of approximately 0.9 miles. Construction on the approximately \$210 million project is expected to commence in spring 2016. The consortium will provide gap financing, with WVDOT making monthly payments through December 2019 or early 2020.

### HIGHWAY MAINTENANCE FACILITIES P3

Responses were submitted on June 12, 2015 to WVDOT's request for expressions of interest regarding Quality Assurance Management (QAM) services and related duties for the design and construction of 9 highway maintenance facilities across the state using a P3 procurement. The facilities are:

- Mason County Headquarters, Mason County.
- Wetzel County Headquarters, Wetzel County.
- Webster County Headquarters, Webster County.
- Hanover Substation, Wyoming County.

- Harmon Substation, Randolph County.
- Lincoln County Headquarters, Lincoln County.
- Roane County Headquarters, Roane County.
- Logan County Headquarters, Logan County.
- Grant County Headquarters, Grant County.

WVDOT subsequently selected three advisors to provide such services but has not yet commenced the procurement for the P3 project itself.

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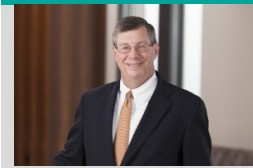
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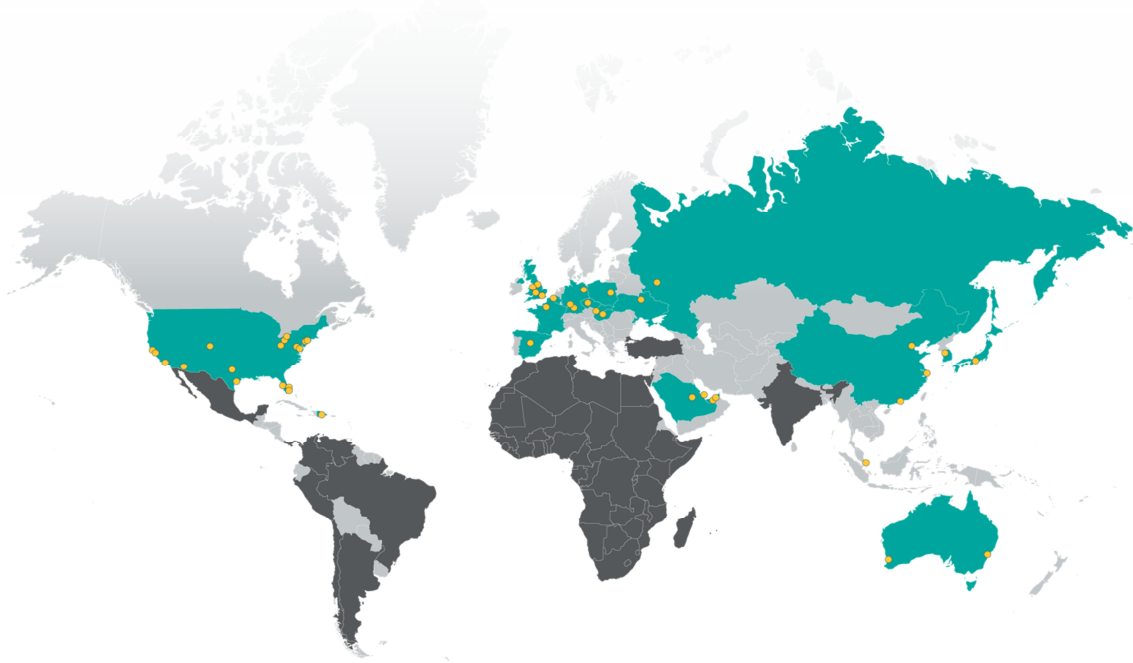
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