

US AIRPORT P3S – READY TO TAKE OFF

THE US HAS TRADITIONALLY LAGGED BEHIND MUCH OF THE REST OF THE WORLD IN THE USE OF P3S TO DEVELOP VITAL PUBLIC INFRASTRUCTURE, INCLUDING IN THE AIRPORT SECTOR. THE LEVEL OF ACTIVITY IN THE US P3 AIRPORT SECTOR HAS INCREASED SIGNIFICANTLY, HOWEVER, IN THE PAST TWO YEARS, AND THERE ARE MANY MAJOR PROJECTS IN THE PIPELINE. BY **RODDY DEVLIN, BRUCE GABRIEL AND ALETHIA NANCOO, SQUIRE PATTON BOGGS (US) LLP.**

President Donald Trump has placed private investment at the heart of his infrastructure plan. While campaigning last year, candidate Trump stated that he would “harness market forces” in a “bold, visionary plan for a cost-effective system of roads, bridges, tunnels, airports, railroads, ports and waterways, and pipelines”. In May 2017, US Secretary of Transportation Elaine Chao again emphasised that public-private-partnerships (P3s) would form an important part of such an infrastructure plan.

US airport P3s – Taking flight

Many of the airport P3 projects have posed complex design, construction and scheduling issues, which the private sector is well equipped to address. In Table 1 there is a general description of active or pending airport P3 projects.

The Airport Privatization Pilot Program

The federal Airport Privatization Pilot Program (APPP) has contributed to the increased activity. The APPP is administered by the US Department of Transportation through the Federal Aviation Administration (FAA).

It was introduced in 1996 to facilitate greater access to private sector capital and expertise for airport improvement and development. It does so by exempting airport owners from certain federal requirements that made such private sector involvement impractical in the past.

Specifically, the airport owner or private operator may be exempted from (i) repaying past federal grants and (ii) returning property previously acquired with federal assistance. Further, the FAA also may waive the federal prohibition on using proceeds from the airport’s lease exclusively for airport purposes. State law may, in some circumstances, still restrict that use.

Post-concession, the airport owner will continue to be eligible for federal Airport Improvement Program (AIP) grants, but only to cover 70% of the cost of improvements, as opposed the normal 75%–90% for AIP projects at publicly operated airports. Use of the APPP still

requires, however, compliance with extensive regulatory conditions and obligations, including a requirement that 65% of air carriers serving the airport approve the private operator’s taking assumption of airport operating responsibility.

Before 2013, only one airport, Stewart International in Newburgh, New York, had successfully utilised the programme, with the UK-based National Express Group taking operational control of the airport in March 2000 under a 99-year lease. Ultimately, passenger census failed to meet projections, and the private operator negotiated a hand-back to the public owner in October 2007.

Subsequently, various airports came in and out of the APPP without reaching commercial close prior to 2013. In 2013, the Luis Muñoz Marín International Airport, in San Juan, Puerto Rico, was successfully transferred under the APPP to a private operator by a 40-year lease. The new operator made an upfront payment of US\$615m to the Puerto Rico Ports Authority, and will pay a further estimated US\$550m to that authority over the lease term. The operator also committed to a US\$1.2bn capital plan, including renovation of the terminals.

Currently, three other airports are active in the APPP, a historically high number. Westchester County issued a request for proposals (RFP) in April 2017 in connection with a P3 for Westchester County Airport in New York State. The FAA gave preliminary approval to the airport’s participation in the APPP in December 2016. Responses to the RFP are due in July 2017, with a commercial close expected by year-end. An earlier unsolicited proposal from Empire State Airport Holdings (an Oaktree Infrastructure Fund joint venture) failed to achieve the required political approval in 2016, resulting in the current competitive procurement process.

In April 2017, the FAA gave preliminary approval to the participation of St Louis Lambert International Airport, St Louis, Missouri, in the APPP. The City of St Louis is shortly expected to issue a request for qualifications (RFQ) to potential private sector bidders, with an RFP

TABLE 1 - PENDING US AIRPORT P3S

Project	Cost	Status	Procuring Authority
St Louis Lambert International Airport (Missouri)	Estimated to be in excess of US\$1bn	Preliminary application to participate in federal Airport Privatization Pilot Program (APPP) accepted by FAA in April 2017	City of St Louis
Kansas City International Airport – New Terminal (Missouri)	Estimated at US\$964m	In May 2017, the City of Kansas City issued an RFQ/P for the design, building and financing of a new terminal	City of Kansas
Westchester County Airport (New York)	Not yet known	In active procurement. Preliminary application to participate in APPP accepted by FAA	Westchester County
Denver International Airport Great Hall Project (Colorado)	Estimated at US\$650m to US\$775m	P3 Agreement currently under negotiation with winning bidder	City and County of Denver's Department of Aviation
Airglades Airport (Florida)	Estimated at US\$460m	P3 Agreement currently under negotiation with private operator. Preliminary application to participate in APPP has been accepted by FAA	Hendry County
South Suburban Airport P3 Project (Illinois)	Not yet known	Responses to the RFI received in April 2017	Illinois Department of Transportation
Sky Harbor International Airport P3 (Arizona)	Not yet known	RFI issued in May 2017	City of Phoenix Aviation Department
Los Angeles Intl Airport (LAX) Automated People Mover (APM) P3 (California)	US\$1.85bn to US\$2bn	In active procurement	Los Angeles World Airports
Los Angeles Intl Airport (LAX) Consolidated Rent-A-Car Center (CONRAC) (California)	US\$850m to US\$1bn	In active procurement	Los Angeles World Airports
New AirTrain connection from Willets Point, Queens to LaGuardia Airport (New York)	Not yet known	Pre-procurement; Technical advisor has been retained by public owner.	Port Authority of New York and New Jersey
San Diego International Airport – New Terminal Facilities (California)	US\$500m development plan	Pre-procurement	San Diego Regional Airport Authority

to follow later in the year. A 50-year lease is reportedly under consideration, with capital improvements estimated to be in excess of US\$1bn. The City will likely be expecting an upfront payment from the private operator, as well as periodic rental payments, possibly based in part on the airport's net profits, and the making by the private operator of the needed capital improvements.

Hendry County in Florida is currently negotiating a P3 agreement with a private operator for the Airglades Airport, located in Clewiston, 55 miles east of downtown Fort Myers. The FAA gave preliminary approval to the airport's participation in the APPP in October 2010. The cost of the related capital improvements are estimated at US\$460m. The improvements would significantly increase the airport's capacity to handle perishable goods (including flowers, seafood and vegetables) and other cargo from South America.

Other activity

- *Los Angeles International Airport (LAX)* – Los Angeles World Airports (LAWA) has proposed a multi-billion dollar, multi-project update to the ground transportation system at Los Angeles International Airport (LAX). The Landside Access Modernization Program includes a landside Automated People Mover (APM) and a Consolidated Rent-A-Car (CONRAC) facility, plus various intermodal transportation facilities and a network of roadway improvements.

LAX is the world's busiest origin and destination airport, handling more than 70m air passengers annually. This demand creates significant challenges for the airport's ground access systems, as over 50% of passengers travel to and from LAX by car, resulting in more than 6,000 vehicles per hour during peak times.

The proposed APM system includes approximately 2.25 miles of elevated light rail tracks, six stations, a maintenance and storage facility, traction power substations, central control and administrative offices, as well as pedestrian walkways and other related infrastructure. Three of stations will be located within the central terminal area. The off-airport stations will provide connections to local mass transit options. A draft RFP was issued to the shortlisted bidders in October 2016. Financial bids are due by year-end. The estimated cost of the project is up to US\$2.1bn.

The related CONRAC project will consolidate the current car rental and parking facilities into a central location adjacent to Interstate Route 405, with connections to LAX via the APM. The CONRAC has estimated costs of up to US\$1bn. LAWA shortlisted four bidding teams for the project in April 2017. It is contemplated that LAWA will make periodic availability payments to the winning team during the operating period.

- *Kansas City International Airport* – In May 2017, the City of Kansas City issued an RFQ/P for a new terminal at Kansas City International

Airport. The preferred bidder is to design, build and finance a new 750,000ft² terminal with 35 gates, and a 6,500-space parking garage and additional enclosed surface parking with 2,000 spaces. The new project will be built on the site of the existing Terminal A.

It is contemplated that the winning bidder will be repaid through airport usage fees. Proposals are due by June 20 2017. The existing Terminals A, B and C were designed in the late 1960s and completed in 1972. With more than 10,000 acres, the airport is one of the largest commercial passenger airports in the US. Construction costs for the new facilities are estimated at US\$964m. The Kansas City Aviation Department will operate and maintain the new facilities.

The City has already negotiated a memorandum of understanding with the airlines at the airport, setting forth the key business terms and conditions of the development, as a framework for the preparation of a definitive agreement between the City and the airlines.

• *Denver International Airport Great Hall Project* – The City of Denver is expected approve a 34-year P3 agreement for the Denver International Airport Great Hall Project in July 2017. A joint venture headed by Ferrovial Airports was selected as the winning bidder. The Great Hall is the central portion of the main terminal building at the airport and currently houses TSA operations, as well as various concessions and other facilities.

The required renovation includes moving the two primary security checkpoints from the main floor to north ends of the upper level, consolidating the ticketing counters, and tripling the terminal's concessions space. The capital costs, estimated at US\$650m to US\$775m, would be split by the Ferrovial joint venture and Denver. Denver will make annual payments to the Ferrovial joint venture to cover operation and maintenance, but will receive 80% of the terminal concession revenue. Construction is due to begin in the summer of 2018, with completion in the autumn of 2021.

• *San Diego International Airport* – The San Diego Regional Airport Authority confirmed in May 2017 that it is considering a possible P3 as part of its US\$500m development plan for San Diego International Airport. A procurement decision is expected later this year. The plan calls for the replacement of Terminal 1 (built in 1967), as well as the construction of a western extension, a parking plaza for Terminal 2, and other related facilities. The three-phase plan will increase the total gates by 10 to 61.

• *South Suburban Airport P3 Project* – In April 2017, the Illinois Department of Transportation (IDOT) received six responses to the RFI for its proposed South Suburban Airport P3 Project. The project calls for the construction of an entirely new airport near Peotone, south of Chicago. IDOT and certain local counties

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have been acquiring the land required for the development for many years.

IDOT is initially seeking to enter into a pre-development agreement, under which IDOT would perform certain preliminary environmental and airport master plan work, with the winning bidder performing other Phase 1 pre-development work, including a feasibility analysis and formulating a financing and business plan.

• *LaGuardia Airport Central Terminal* – Construction is currently under way on the redevelopment of LaGuardia Airport's Central Terminal building project. The project, sponsored by the Port Authority of New York & New Jersey (and partially funded by tax-exempt (AMT) and taxable bonds issued in 2016 by the New York Transportation Development Corporation), requires the replacement of Terminal B, which dates back to 1964, with a new state-of-the-art facility, as well as other key airport improvements. It is being undertaken by LaGuardia Gateway Partners (LGP), a consortium of Vantage Airport Group, Skanska ID and Meridiam.

Conclusion

Airports are a critical component of the US transportation network. They are the gateways for air travellers to their host cities. According to a March 2017 report by the Airports Council International-North America (ACI-NA), US airports need an estimated US\$75.7bn in infrastructure investment through to 2019 in order to accommodate growth in passenger and cargo activity, rehabilitate existing facilities, and support aircraft innovation. The P3 projects discussed above will address only a small portion of that need, they are significant in and of themselves and as an endorsement of the P3 model.

A host of historical factors have delayed the robust adoption of the P3 model in the US, but activity in the airport sector is taking off. While, for a variety of those historical factors, US airport P3s are not likely to reach the numbers seen in other countries, P3s can play an important role in addressing the pressing need for airport facility development in the US. Adoption by the Congress of an infrastructure plan that leverages federal funding and incentives with private investment, together with making federal permitting processes more efficient and less time consuming, could enable this market to soar. ■