Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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February 28, 2014

SUMMARY OF SUBJECT MATTER

TO: Members, Panel on Public-Private Partnerships
FROM: Staff, Panel on Public-Private Partnerships
RE: Panel Hearing on "Overview of Public-Private Partnerships in Highway and Transit Projects"

PURPOSE

The Panel on Public-Private Partnerships is scheduled to meet on Wednesday, March 5, 2014, at 10:00 a.m., in 2167 Rayburn House Office Building to receive testimony on the role public-private partnerships play in the delivery of highway and transit projects. The Panel will hear testimony from Joseph Kile, Assistant Director for Microeconomic Studies, Congressional Budget Office; James M. Bass, Interim Director and Chief Financial Officer, Texas Department of Transportation; Phillip Washington, General Manager, Regional Transportation District; and Richard Fierce, Senior Vice President, Flour, on behalf of the Associated General Contractors of America.

BACKGROUND

The surface transportation system provides the physical platform to move people and goods, which facilitates economic growth and job creation, ensures global competitiveness, and supports national security. In addition, it affords Americans a good quality of life by enabling them to get to work, conduct business, and visit family and friends.

The vast majority of this system has been built via traditional delivery methods, whereby public entities, such as state departments of transportation, local governments, and public transit agencies are responsible for designing, engineering, constructing, maintaining, and operating surface transportation assets. The funding for highway and transit projects has been derived from various sources, including, but not limited to, federal funding, state funding, local funding, and proceeds from municipal bond markets. However, public entities have begun to utilize public-private partnerships to address their highway and transit needs.

Public-Private Partnerships

Public-Private Partnerships (P3s) are contractual agreements between public- and private-sector entities that allow for the procurement and delivery of a facility or service for public use. P3s vary widely in their structure, resulting in a range of involvement, scope of responsibility, and degree of risk assumed by the private sector in the project. The most common types of P3s include:

Design-Build-Operate-Maintain (DBOM): under this arrangement, the public entity releases one contract for engineering/architecture services, construction, operations, and maintenance of the project. This approach differs from the more traditional method of procuring such services via separate contracts to different entities. The project is financed wholly by the public sector, which also retains any revenue risk. The benefit of a DBOM arrangement is it combines four procurements into one contract with one private sector entity. This allows the entity to not only design and construct the asset, but also may create efficiencies by having the same entity develop a more specifically-tailored long-term operations and maintenance program.

Design-Build-Finance (DBF): under this scenario, the public sector owner awards one contract for the design, construction, and full or partial funding of the asset. This arrangement allows the public sector to realize the efficiencies of design-build, while also gaining private-sector funding contributions during the construction period. The benefit for the public sector under DBF is that it may be able to advance a project that would not be possible under public funding constraints. However, the project is likely to cost more than if it were pursued by traditional public funding. Once constructed, the public sector repays the design-build contractor over a set period of time. The repayments can be structured to incentivize the private contractor to accelerate the project delivery.

Design-Build-Finance-Operate-Maintain (DBFOM): this approach is the most commonly used arrangement for the largest and most complex P3 deals. DBFOM involves combining responsibilities from design to maintenance and transferring them to the private sector. DBFOM arrangements vary widely in the United States, especially the degree to which financial and revenue risk is transferred to the private sector. DBFOM project capital and construction costs are financed via debt that leverages revenue streams dedicated to the project. Toll revenue is the most common revenue source, though pledged tax revenue or availability payments have also been used as revenue sources. DBFOM contracts are often set for a period of 30 to 50 years, and the asset owner typically requires certain performance standards be met over that time period. The public sector generally retains ownership of the asset, and these procurements can shift revenue risk onto the private sector.

Concession Agreements for Existing Facilities: under this arrangement, the public asset owner holds a competitive process to lease an existing tolled facility to the private sector for a set period of time. Once awarded, the private-sector entity has the ability to set toll rates and the right to the toll revenue, and must operate and maintain the facility. Typically, as part of the transfer, the private sector will make an upfront payment to the public sector.

Typical Components of Highway and Transit P3 Projects

Utilizing P3s for the delivery of surface transportation projects in the United States is a fairly recent trend, and, therefore, the universe of projects is limited. However, there are several common components to P3 deals (especially the more complex DBFOM arrangements) that have been used for a variety of highway and transit projects.

TIFIA. Created under the Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178), the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program provides Federal credit assistance, in the form of a loan, a loan guarantee, or a line of credit, to eligible surface transportation projects. State governments, local governments, toll authorities, and public-private partnerships are eligible to apply for TIFIA credit assistance.

TIFIA is designed to leverage federal funding to attract private and non-federal investment in surface transportation projects by providing supplemental or subordinate debt. TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments.

The U.S. Department of Transportation (U.S. DOT) estimates that TIFIA's leverage ratio is more than 30:1, which means that every one dollar in TIFIA funding supports more than $30 in surface transportation infrastructure investment. TIFIA credit assistance must be repaid and repayment sources can include toll revenue, user fees, or other dedicated payments. In the event of a bankruptcy, TIFIA generally cannot be subordinated to other debtors.

Private Activity Bonds. Private Activity Bonds (PABs) are debt instruments issued by state or local governments whose proceeds are used to construct projects with significant private involvement. Surface transportation projects became eligible for PABs with passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, P.L. 109-59). PABs help encourage additional investment in transportation by lowering the cost of capital for the private sector through tax-exempt, low-interest borrowing. PABs for transportation projects are capped at $15 billion and subject to approval by the U.S. DOT.

Federal, State, and Local Funding. P3 projects in this country, particularly large projects, often include significant federal, state, and local funds. Federal funding sources can include Federal-aid Highway Program funds provided under Title 23, United States Code, and Federal transit funding provided under Chapter 53 of Title 49, United States Code. In addition, state and local governments' funding sources can include dedicated fuel taxes, sales taxes, toll revenue, and bond proceeds.

Private Equity Contributions. Private partners often contribute equity funds to the project. The amount of equity varies significantly across projects.

MAP-21

Congress most recently reauthorized federal surface transportation programs in the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), which was enacted on July 6, 2012. MAP-21 provided approximately $105 billion for fiscal years 2013 and 2014. MAP-21 increased funding for the TIFIA program from $122 million per year to $750 million in FY 2013 and $1 billion in FY 2014. It also made other substantive policy changes to the program, including increasing the allowable TIFIA loan amount from 33 percent to 49 percent of the project costs.

As of February 2014, TIFIA has approved 41 loans totaling over $15 billion in credit assistance to support over $59 billion in project costs.

EXAMPLES OF P3 AGREEMENTS INVOLVING TIFIA LOANS AND PRIVATE EQUITY						
Project	**State**	**Total Project Cost**	**TIFIA loan**	**Other Sources of Funding**	**Length of Concession**	**Delivery Method**
Presidio Parkway	CA	$852 million	$150 million	$700 million: ARRA grant, federal, state, local, bank loan, and private equity	30 years	DB and DBFOM (2 phases)
Eagle Project	CO	$2.0 billion	$280 million	$1.7 billion: FTA New Starts FFGA, federal grants, sales tax revenue, PABS, private equity, bond proceeds, and local funds	34 years	DBFOM
Port of Miami Tunnel	FL	$1.1 billion	$341 million	$731 million: FDOT funds, private equity, and senior bank debt	35 years	DBFOM
Northwest Corridor	GA	$834 million	$275 million	$559 million: state motor fuel taxes, developer financing, state and local funds	N/A	DBF
Goethals Bridge Replacement	NY	$1.4 billion	$474 million	$985 million: PABS, private equity, and port authority funding	40 years	DBFM
SH 130	TX	$1.3 billion	$430 million	$796 million: senior bank loans and private equity	50 years	DMFOM
IH 635 Managed Lanes	TX	$2.6 billion	$850 million	$1.8 billion: PABS, private equity, toll revenue, and public funds	52 years	DBFOM
North Tarrant Express Segments 1 and 2A	TX	$2.0 billion	$650 million	$1.4 billion: PABS, public funds, and private equity	52 years	DBFOM
North Tarrant Express Segments 3A and 3B	TX	$1.7 billion	$531 million	$1.1 bilion in PABS, public funds, private equity, bond proceeds, federal and state funds.	52 years	DBFOM & DBB (2 phases)
1-495 Capital Beltway	VA	$2.1 billion	$589 million	$1.5 billion: PABS, state funds, and private equity	85 years	DBFOM
Downtown Tunnel/Midtown Tunnel/MLK Extension	VA	$2.1 billion	$422 million	$1.6 billion: PABS, private equity, public funds, and toll revenue	58 years	DBFOM
I-95 HOV/HOT Lanes	VA	$923 million	$300 million	$616 million: PABS, state funds, and private equity	76 years	DBFOM

Notes:

Source - Information from DOT TIFIA project profiles on TIFIA website. For more Information, see http://www.fhwa.dot.gov/ipd/tifia/projects_project_profiles/

Total project cost represents TIFIA eligible project costs

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