



**CORRECTED
PLANNING AND PROGRAMMING COMMITTEE
JUNE 18, 2008**

SUBJECT: PUBLIC-PRIVATE PARTNERSHIP PROGRAM

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

- A.** Receive and file the white paper (Attachment A), analyzing the Public-Private Partnership (PPP) process as it applies to our projects, discussing the use of PPPs by other transit and transportation agencies nationally and internationally, and identifying some of the “lessons learned” from PPP experts; and
- B.** Adopt the Framework (Attachment B) outlining the criteria and process to evaluate the potential use of PPP as a means for delivering specific projects listed in the Priority 1 Strategic Unfunded category of the Long Range Transportation Plan (LRTP) and identifying when projects should be included in the Constrained portion of the LRTP.

ISSUE

In November 2007, we were directed to investigate opportunities to attract and incorporate the concept of PPP into the LRTP. Additionally, in January 2008, we were directed to develop standards for acceptable partnership funding commitments, and when those partnerships were secure enough to include the projects in the Constrained portion of the LRTP. In April 2008, we were directed to issue a Request for Information (RFI) for concepts and proposals, using a PPP model, to build one or more of the unfunded transit and/or highway projects listed in the Draft 2008 LRTP and/or to operate and maintain our existing fixed guideway system.

This report responds to the November 2007 and January 2008 motions. We have conducted interviews with transportation agencies, financial institutions and legal consultants who have experience in the PPP process and have incorporated information regarding this process into a PPP Framework for the Board’s consideration and inclusion in the LRTP.

POLICY IMPLICATIONS

PPP is a procurement process which provides an opportunity for private investors to partner with us to provide alternative project delivery methods to operate and upgrade some of our existing system and/or for some of the projects identified as “strategic” priorities in our LRTP. We have already utilized this procurement tool to upgrade various Operations facilities. Applying this method to highway and transit projects will require future policy decisions relating to legislative remedies, fares, tolls, long term leasing of our facilities, private operators of our system and possibly other issues. These policy decisions will likely be requested on a project specific basis, when the need is identified. Attachment B outlines a proposed Framework for implementing PPPs, including the necessity of eventually adding the selected project(s) to the Constrained portion of the LRTP to commit our identified funding sources to the project.

OPTIONS

The Board could elect to make modifications to the proposed PPP Framework or to not continue pursuing this project delivery process. However, we do not recommend these options. The recommendations will enable us to proceed with further evaluation of the PPP concept as a viable means of advancing strategic projects.

FINANCIAL IMPACT

Funding for in-house planning resources to continue work on the PPP Framework has been included in the FY 09 budget in Cost Center 4370, Project 405510, Task 06.02, General Planning. However, should consultant services be needed to conduct an in-depth financial and risk assessment, the Chief Planning Officer will return to the Board to discuss the financial impact and determine the options for funding any additional expenses.

BACKGROUND

It is becoming increasingly difficult to provide transportation projects by traditional strategies relying primarily on scarce public funding sources. Transportation agencies are seeking new ways to manage costs while continuing to deliver infrastructure improvements. One of the more successful methods used both nationally and internationally is PPPs.

Australia, the United Kingdom and Europe have employed this contracting method for 20-25 years and continue to favor this approach. In the United States, Florida and Texas have been using PPPs to build highways for the last 10 years, and Colorado is implementing significant elements of its Long Range Plan through PPP agreements.

In California, the San Diego Association of Governments (SANDAG) and Caltrans entered into a PPP agreement to design, build and now operate and maintain a toll road, and the Bay Area Rapid Transit District (BART) and the Port of Oakland are planning on PPPs to construct a rail line and port facilities, respectively.

In each of these cases, at least one of four common benefits of PPPs were realized or expected to occur:

- Project costs were reduced;
- Project duration was shortened;
- Project quality was maintained or enhanced; and/or
- Public agencies' funding sources were leveraged or enhanced.

PPPs have, however, experienced difficulties. A proposed Mississippi River Bridge project could not move forward when it was determined that, while Missouri Department of Transportation (MoDOT) would charge tolls to fund their half of the project in partnership with Illinois Department of Transportation (IDOT), the tolls would disproportionately impact Illinois residents due to economic development patterns in the area. London Underground privatized the infrastructure of their system in 2003, but one of the consortiums went bankrupt due to mismanagement of their upgrade program. Some of these Underground operations are being transferred back to the public sector.

DISCUSSION

Information we've obtained from interviews with other agencies indicates the most important factors for success in Public-Private Partnerships are:

- Strategy outlining basic measures to be undertaken by the public agency which demonstrate a comprehensive appreciation of the requirements necessary to secure viable proposals in a successful PPP solicitation, including a demonstrated public sector commitment to the project;
- Considerable time and effort expended by public partner to ready the project for contract solicitation, including completing environmental clearance and conceptual engineering, resulting in a clearly defined project, expectations and standards in solicitation documents;
- Clear understanding by all project partners of respective roles, responsibilities, risks and rewards;
- Assumption of project definition risk by public partner; assumption of most financial risk by private partner;
- A transparent solicitation process and a procurement staff experienced in the PPP process; and
- Due diligence in tracking performance, during both construction and subsequent operation.

Further, we have been advised that to attract private investment, a project needs to be fairly well defined, so the public agency at least must be at a stage where the draft environmental clearance work is done.

PPP Roles

A significant feature of the PPP approach is the allocation of risk to the partner most able to manage that risk. The real benefit of this is the fact that one party does not need to bear all the risk, as in a strict public project. The public agency is in the best position to assume the project definition risk, and should be responsible for components such as environmental clearance and conceptual engineering, right of way acquisition, political commitment and necessary legislation.

The private partner is reluctant to assume unanticipated issues that cannot be resolved financially. However, the private partner will more readily bear most of the project financial risk, if allowed to manage the design and construction process, especially by incorporating schedule incentives, alternate technical concepts and technological innovations.

PPP Models

A few different PPP models have been developed, utilizing different revenue generation methods for the private partner and meeting different goals for the public agency. Each project agreement is unique, inasmuch as the terms are subject to negotiation. Most all agreements require a sufficient length of term to allow the private partner to recover its investment and realize a return. This typically would take a minimum of 25 years.

The commonly used models are described in Attachment A. Our preliminary analysis suggests that a likely successful model for us would be the Availability Payment structure. Under this agreement, the private partner finances, builds and operates a facility, and once in revenue service, payments from the public agency are based on the performance of the facility per the pre-set public agency criteria. Failure to meet the performance standards results in penalties. We expect our industry outreach will suggest that other models could be effectively utilized, as well.

Several of our interviewees have strongly recommended that we have a specific group of staff dedicated to manage the PPP process. Consulting costs will be incurred as we will need PPP experienced legal, technical and financial advisors. Procurements are usually multi-phased and could be lengthy and costly. In most cases, it takes about two years to complete the PPP agreement negotiations from the time a Request for Expressions of Interest (RFEI) or a Request for Information (RFI) is issued.

Funding Commitment and LRTP Status

PPPs always involve negotiated contracts and, as such, are usually not binding on participants until the necessary contractual agreements are signed. However, most solicitations require proposers to provide letters of funding commitment from the financial partners, as well as other evidence of securities. In instances where the PPP will involve future operation and/or maintenance, performance bonds are often also posted.

A private partner requires a reasonable economic return on the up-front capital investment. Potential funding and/or revenue sources to provide for that economic return must be identified for any project which ultimately reaches the stage of formal PPP negotiations. The revenue could be generated from future sources such as operations revenues (tolls, container fees, fares), development rights, sales taxes, or tax increment financing.

The final step identified in the attached PPP Framework, exercised at the conclusion of successful negotiations, is to request the Board to approve the use of the proposed funding source and authorize the execution of a PPP agreement. To commit our funding, the Board would also be asked to amend the LRTP to include the PPP project in the Constrained Plan. In addition, if we were to also consider the project a Transportation Control Measure (TCM), the SCAG Regional Transportation Plan must also be amended to include the selected project.

Legislation

While we are not legislatively restricted from entering into PPPs for transit projects, we lack appropriate enabling legislation to charge tolls on State highways. Most legislative proposals have been related to area-specific highways, and more recent efforts have been targeted at HOT lane systems and limited public agency tolling. The State legislature approved AB 680 in the late 1980s, which resulted in the SR 91 and SR 125 projects. AB 1010 later permitted Orange County Transportation Authority (OCTA) to acquire the SR 91 franchise, and by pending SB 1316, OCTA plans to relinquish the Riverside County portion of SR 91 to the Riverside County Transportation Commission (RCTC).

AB 2660 passed in 1996 granted PPP authority to public agencies for various projects including rail transit, but specifically excluded tolled state highway projects. AB 1467 provided authority for 4 truck lane/HOT lane projects, and pending AB 1954 moves forward with I-15 as one of the 4 eligible projects. The Senate Transportation Committee has imposed many elements of a possible future framework into pending SB 1316, and expects this to be a blueprint for any future bills of this type. Finally, AB 2600 is the Governor's Performance Based Infrastructure (PBI) initiative, but the Governor's office is struggling with labor organization objections.

In addition, with certain few exceptions, California law requires that public infrastructure be advanced by lowest responsible bidder procurements, which seriously limits the ability to structure innovative procurement packages. It will be necessary for enabling legislation to be enacted which will give more flexible authority to the public sector so that viable PPPs can be utilized.

NEXT STEPS

Upon Board approval, the PPP Framework will be included in the LRTP. In September, we will return to the Board with a work plan and assessment of needed resources to evaluate potential PPP candidates, following the recommended Framework. Next steps will include, at a minimum:

- Evaluation of projects in the Tier 1 lists to identify those most likely to be successful PPP candidates;
- Preliminary risk assessment and financial feasibility analyses; and
- Hosting an industry forum specifically focusing on the identified projects, to learn of recommended approaches to PPPs for these projects and to gain knowledge and insight of the process from the industry players.

In response to the April 2008 Board directive, we have issued a Request for Information (RFI) to solicit concepts and proposals to build new unfunded projects contained in the Draft 2008 LRTP and/or operate and maintain our existing fixed guideway system. A pre-response workshop was held on May 29, 2008. RFI responses are due in July and we will report back to the Board in September for further direction.

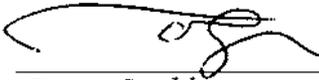
ATTACHMENTS

- A. White Paper
- B. Public Private Partnership Framework

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WHITE PAPER

PUBLIC-PRIVATE PARTNERSHIPS

June 18, 2008

Introduction

It is becoming increasingly difficult to build new or maintain existing transportation projects by traditional strategies relying primarily on limited, and shrinking, public funding sources. Transportation agencies are seeking new ways to manage costs while continuing to deliver infrastructure improvements. One of the more successful methods used both nationally and internationally is Public-Private Partnerships (PPPs).

Successful PPPs around the World

PPP is a procurement process and a funding method which provides an opportunity for private investors to partner with public agencies to provide alternative project delivery methods for some of the strategic transportation projects identified as institutional infrastructure priorities. The PPP investor receives public guarantees of a return on private investment in a public infrastructure over a defined period of time. Australia, the United Kingdom (UK) and Europe have employed this contracting method for 20-25 years and continue to pursue this approach. In 2007, the largest transportation highway infrastructure PPP deals were for projects in Greece (at \$3 billion) and Hungary (at \$1.5 billion). Italy and Belgium also closed transit PPP deals.

The UK is investing about 15% of its infrastructure expenditures in PPPs, on more than 700 projects. France has entered into long term contracts (to 2032) to private concessionaires for management of nearly $\frac{3}{4}$ of the country's roadways; Spain is the world leader in privately managed toll roads. Abu Dhabi and Dubai, both principalities within the United Arab Emirates, have entered into PPPs to build, own and operate power and desalination plants. China is building much of its infrastructure by shareholder agreements with regional governments and private interests. Australia has long relied heavily on pension funds for long term infrastructure investments, and the Canadian government has established a federal agency to encourage and support PPPs.

In the United States, Florida and Texas have been using PPPs to build highways for the last 10 years, Virginia is planning to construct toll lanes, and Colorado is implementing significant transit and highway elements of its Long Range Plan through PPP agreements. In California, the San Diego Association of Governments (SANDAG) and Caltrans entered into a PPP agreement to design, build and now operate and maintain a toll road, and the Bay Area Rapid Transit District (BART) and the Port of Oakland are planning on using PPP structures to construct a rail line and port facilities, respectively.

The New Jersey Riverline was expanded using all state funds, and the procurement was for the private sector to construct and operate the entire system, including vehicles. Sweden recently procured a contract for construction and operation of their Arlanda Airport Rail Link. The winning bid included underground stations and 5 miles of tunnels; the losing bid was all at grade. Meeting the financing objectives, 60% of the project was financed by private debt and equity, 22% by subordinate government loans and only 18% by government grants.

In each of these cases, at least one of four common benefits of PPPs were realized or expected to occur:

- Project costs were reduced;
- Project duration was shortened;
- Project quality was maintained or enhanced;
- Public agencies' funding sources were leveraged or enhanced.

Unsuccessful PPP Efforts

PPPs have, however, experienced difficulties. A proposed Mississippi River Bridge project could not move forward when it was determined that, while Missouri Department of Transportation (MoDOT) would charge tolls to fund their half of the project in partnership with Illinois Department of Transportation (IDOT), the tolls would disproportionately impact Illinois residents due to economic development patterns in the area. Illinois officials, including the governor, publicly opposed tolls, and the PPP idea was abandoned. Conducting a competitive solicitation, the Texas Department of Transportation selected a private international consortium to construct and operate a toll road. However, public opposition prompted state authorities to instead award a non-competitive contract to the North Texas Tollway Authority, a state agency operating revenue-generating highway facilities.

On the international scene, Mexico has privatized roads for many years, however, lack of transparency has undermined the success of these project. Plans proceed, however, to convert more Mexican freeways and build new roads as toll facilities. London Underground privatized the infrastructure of their system in 2003, but one of the consortiums went bankrupt due to mismanagement of their station upgrade program. Some of the Underground operations are being transferred back to the public sector and/or being refinanced. Critics of France's long term private concessions now say the government gave away too much.

Some basic lessons to be learned from these experiences include:

- The necessity to obtain stakeholder and public support for the PPP project;
- The significance of a transparent procurement process to develop confidence in the private partner's motives and public agency's abilities;

- The importance of contracts which set forth clear benefits for standards compliance and penalties for non-performance; and
- The requirement for a well-thought out policy with which all policymakers are in agreement, so the rules don't keep changing.

Definition of PPP

The term “public-private partnership” generally refers to a contractual arrangement wherein the public sector and the private sector collaborate to implement a project. The U.S. Department of Transportation defines it as “a contractual agreement formed between public- and private-sector partners, which allows more private-sector participation than is traditional” under standard procurement methods. It is being used as a tool for the public sector to meet the increasing demands for more travel capacity and service while faced with limited, and shrinking, infrastructure funding opportunities.

The contractual arrangement can be in the form of an innovative contracting method and/or an innovative financing structure.

PPP Contracts

Various project delivery methods are employed in PPP contracts, depending on the scope of the project and the level of responsibility and risk which the public sector desires to shift to the private partner. The more common delivery methods include design/build, design/build/operate/maintain (DBOM) or the full service design/build/finance/operate/maintain (DBFOM); these components are used in various combinations.

The design/build method can successfully deliver a project at a faster rate than the traditional design-bid-build model, due to the elimination of a second procurement phase and the inherent flexibility of task sequencing. Requiring the private sector to also bear responsibility for operation and maintenance provides incentive for the delivery of a quality project to minimize future maintenance expenses. Further, by incorporating innovations and specialized technology, the private sector can conceivably operate and maintain the facility in a more cost effective manner than the public sector.

New Jersey Transit entered into a DBOM contract with a consortium to develop the Hudson-Bergen light rail system.

PPP Financing

Several financing models have been developed as transaction structures for transportation infrastructure projects within the PPP program.

The commonly used models are as follows:

- Toll concession

Typical Approach:

- Private partner designs, finances, constructs, operates and maintains a toll-generating facility. Partner retains revenues remaining after operating and debt service expenses as reasonable return on investment. Private partner makes money by collecting tolls from facility users.

- Availability payment

Typical Approach:

- Private partner designs, finances, constructs and operates a facility. Public partner provides mobilization fee and then makes annual payments when project is accepted by public partner and ready for revenue service.
- Private party makes money by receiving payments from owner once project is ready for revenue service based on the pro-rata performance of the facility over an extended period of time (25-30 years). Payments are subject to sub-performance deductions. Performance standards are set by public partner.

- Predevelopment agreement

Typical Approach:

- Private partner assists in developing project and gets first right of negotiation if project advances to proposal stage. Partner assists in project development and scoping, but not work required for environmental clearance.
- Private partner receives fee for services, as in typical professional services contract. Private partner betting on greater chance of securing PPP contract.

- Asset securitization

Typical Approach:

- Existing asset with an existing revenue stream is offered for a very long term lease to a private partner operator. In return for long term revenue stream, private partner pays public partner owner the Net Present Value (NPV) of that revenue stream as an up front payment.
- Private partner makes money from asset operating profits (tolls) remaining after operating and debt service expenses as reasonable return on investment.

- Privatization

Privatization is the transfer of ownership of, rather than a long term leasehold interest in, a facility to a private party. It is a government agency-regulated enterprise, and not governed by contract law, and thus technically not a PPP. The privatization model is the basic concept behind the transfer of control of the London Underground.

Privatization of British Rail was initiated in 1992, eventually resulting in over 100 separate companies. The resulting system organization basically separated the ownership and maintenance of railway facilities from the train operators. Relationships between the entities were established by various contracts, franchise agreements and some regulatory mechanisms. The inefficient management structure of one consortium has resulted in bankruptcy filings, forcing a government takeover to continue essential transportation services. Industry analysts speculate this could have been avoided by including more rigid performance specifications in the agreements.

Private Investment and Public Funding Sources

The security of a public infrastructure investment, as well as the long life of the asset, meets the needs of the many investors, especially pension funds on the market for securities not backed by mortgage assets. Private sector equity investment allows the public agency to leverage limited funds, and the private entity to realize the tax benefits of asset depreciation during the concession agreement term.

While various models are available to meet the requirements of specific projects, and while PPPs may create efficiencies and possibly reduce costs, it is understood that the taxpayers and users are still paying for the project. Potential funding and/or revenue sources to provide for that economic return must be identified for any project which ultimately reaches the stage of formal PPP negotiations. The revenue could be generated from future sources such as operations revenues, development rights, sales taxes, container fees, tax increment financing, government-backed loans, etc.

A private partner requires a reasonable economic return on the up-front capital investment, expecting up to an 18% return. Most all agreements require a sufficient length of term, typically a minimum of 35 years, to allow the private partner to recover the investment and realize a return.

Potential Benefits, Limitations and Barriers to Implementation

The general benefits, limitations and barriers to implementation of a PPP program are summarized as follows:

- **Benefits**
 - Use of private funds conserves public capital, freeing it up for other needs
 - Potentially accelerates project delivery
 - Shared risks, appropriately allocated
 - Cost, scheduling, operation, maintenance and/or funding risks and future capital facility expansion can be transferred to the private sector
 - Involving the private sector can capitalize on economies of scale and efficiencies

- Time and cost savings; private sector historically delivers PPP projects on time and at, or under, budget
- Improved quality through opportunities to incorporate innovations and technology
- Limitations
 - Difficulty and/or failure to anticipate future issues in contract
 - Perceived or actual loss of public control
 - Value uncertainty
 - Overpricing of risk by private partner
 - Difficult to define project “success”; may not please both private and public
 - Public sector inexperienced in procurement process; must develop expertise and adapt to competition, financial elements and risk transfer concepts, or get help
 - A long time frame or term is needed to compensate investor for initial capital outlay, operating costs and profit. Private partners become temporary owners (lessees) of the asset.
 - Conversely, private equity firms want short time frame (i.e. 10 years) for dividend repayment, and want dividends paid as soon as possible. Exception may be if financing comes from pension funds
 - Private equity firms demand ability to sell concession to another debt holder (a firm not involved in initial negotiations)
- Barriers to Implementation
 - Higher cost of private financing
 - Policy and legal limitations
 - Perceived or real lack of political and stakeholder commitment
 - Non-compete clauses requested by private sector to ensure user demand
 - Perception of lack of transparency in procurement process

PPP Roles

A significant feature of the PPP approach is the allocation of risk to the partner most able to manage and mitigate that risk in a cost-effective manner. The real benefit of this is the fact that one party does not need to bear all the risk, as in a strict public project. The public agency is in the best position to assume the project definition risk, and should be responsible for components such as environmental clearance and conceptual engineering, right of way acquisition, political commitment and necessary legislation.

The private partner is reluctant to assume unanticipated issues that cannot be resolved financially. However, the private partner will more readily bear most of the project financial risk, if allowed to manage the design and construction process, especially by incorporating schedule incentives, alternate technical concepts and technological innovations.

What Private Investors Look For

Depending on the scope of a project, proposers could spend millions of dollars preparing a proposal in response to a public agency request, and therefore will likely be very selective in their solicitation responses. To assure the greatest likelihood of success, proposers will look for the following factors:

- Indication of considerable time and effort expended by public agency to ready the project for contract solicitation, including
 - A clearly defined project, with agency expectations and standards identified in the solicitation documents
 - Funding and completing environmental clearance and conceptual engineering
 - Assumption of right of way acquisition responsibility
 - Securing of agency permits and utility relocations
 - Design standards
 - Risk assessment
 - Traffic and revenue analysis
 - Financial feasibility analysis
 - Knowledge of operation and maintenance costs based on public agency's standards
- A high priority, non-controversial project with demonstrated commitment by the public sector, including stakeholders and elected officials
- A clearly defined, transparent procurement process and procurement staff experienced in the PPP process;
- Clear understanding by all project partners of respective roles, responsibilities, risks and rewards;
- A fair risk allocation
- A willingness by the public agency to reduce government involvement in project delivery and implementation

What Public Agency Must Do

The PPP contracting process requires a detailed project definition and a clear outline of project roles, structure and standards, including political and legal parameters, to maximize opportunities and minimize agency costs. The more work the public agency completes prior to proposal solicitation, the lower and more accurate the proposal bids will be. Certainty of procurement standards and transparency in the proposal process is essential.

Public agencies must have the expertise to appropriately negotiate and oversee the PPP projects. They must provide the transportation framework, and assure that all PPP projects appropriately fit within that framework. Private partners will naturally want to maximize revenues for their specific projects, which could conflict with the overall integrated transportation plan. The public agency must assure that the arrangement is a partnership that is fair to both sides.

The project must demonstrate value for money received, based on specific performance standards, i.e., delivery through a performance based contract, effective risk allocation, social implications of the project, etc., as compared to a reference project solely delivered by the public sector (the public sector comparator).

To ensure a successful PPP program, the public agency should:

- Establish goals for PPP program, i.e.,
 - Quality
 - Affordability
 - Competitive environment
 - Control
 - Schedule
- Offer a well defined procurement process and procurement staff experienced in the PPP process;
- Establish measurable project performance standards;
- Undertake a value for money analysis to evaluate if public or private is best project delivery option;
- Ensure regulatory certainty so that concession contracts won't be renegotiated;
- Make sure the project does not rely on an unproven approach or technology;
- Conduct constraints analysis to understand agency baseline,; i.e.,
 - Legal framework and legislation requirements
 - Organized labor agreements
 - Hiring constraints
 - Operating prohibitions
 - Maintenance terms
 - Tolling policy
 - Policies for long term asset lease and asset return at end of lease term
- Ensure continued program integrity by committing revenue generated by the project, to the facility or to the transportation system, not to the public agency's general fund;
- Protect public interest; PPP strategies must balance interests of society, government, industry and the market for ultimate success; and
- Project must be evaluated on basis of social value, as well as revenue benefit.

Lessons Learned by Others

Interviews have been conducted with several current and former PPP project managers, as well as PPP consultants in the legal and financial fields. All are supportive of continued PPP efforts, but most were fully aware of the challenges presented by this type of project delivery. One manager reported that his PPP toll road project was not necessarily accomplished faster, better or cheaper, but recognized a significant benefit of private participation is the private sector's ability to secure financing much more quickly and bring different money to the project.

Several of the interviewees have strongly recommended that a specific group of staff be dedicated to manage the PPP process, and that they be assisted by PPP-experienced legal, technical and financial advisors. The public agencies should be aware that the procurements are usually multi-phased and could be lengthy and costly. If the project is very complex, it is recommended that the private partner not be solicited until the agency has nearly completed the environmental work. Others suggest that if the project is very complex, it would be wise to undertake it as a fully public project, rather than a PPP.

The term “put some skin in the game”, was used several times, suggesting the value of at least some seed money being offered by the public agency shows a certain level of public commitment to the project. Public contribution can also be in-kind services such as project oversight, maintenance and security, or rights such as land development or advertising. It is important, however, to understand the value of this type of contribution.

The best facility value is realized by requiring the private partner to operate the facility, as well as design and construct it. This assures the private partner has added incentive to produce a better quality project. The public agency must be willing to give up some control, and avoid being too prescriptive in its design, construction and operating specifications, in order to get the “best value” deal for the agency.

PUBLIC-PRIVATE PARTNERSHIP FRAMEWORK

June 18, 2008

PURPOSE

Public-Private Partnerships (PPP) provide a unique opportunity for public agencies to partner with private companies on public infrastructure projects. This procurement method has been utilized with significant success by transportation and transit agencies both nationally and internationally. The Los Angeles County Metropolitan Transportation Authority (Metro) intends to evaluate this project delivery as a method to manage costs, utilize new revenue sources and accelerate project delivery. This document serves to guide our investigation of the potential to deliver future capital projects through a PPP program, and to identify acceptable parameters to implement projects under the program.

This Framework consists of an evaluation of projects included in the Long Range Transportation Plan (LRTP) as Tier 1 Strategic Unfunded transit and highway projects, to see which, if any, would be viable candidates for a PPP. Those which seem suitable would be further evaluated based on the process described below.

A significant feature of the PPP approach is the allocation of risk to the partner (private or public) most able to manage that risk. The public agency should assume most of the project definition risk, and thus would be responsible for the following:

- Environmental clearance
- Conceptual engineering
- Sketch level traffic and revenue forecast
- Financial feasibility analysis and public sector comparator
- Right of way acquisition
- Agency permitting
- Political and stakeholder commitment
- Any necessary enabling legislation

The private partner is most readily equipped to handle financial risk due to the ability to manage construction procedures, incorporate technological innovations and attract

Public-Private Partnership Framework

financial investment capital. The private partner would be responsible for the following, depending on the scope of the project:

- Financing project
- Preliminary engineering
- Final design
- Construction
- Construction management
- Facility operation
- Facility management

PPPs are effective in advancing major capital projects for financially constrained public agencies. This is due in great part to the private partner's assumption of a significant share of the financial risk, which usually includes providing up-front capital to fund design and construction. A PPP agreement presupposes a reasonable economic return to the private partner for the up-front capital investment. Therefore, potential funding and/or revenue sources to provide for that economic return will need to be identified for any project which ultimately reaches the formal stage PPP negotiations. Further, the project will need to be recommended for inclusion in the Constrained portion of the LRTP to secure the Board's identified funding commitment, prior to execution of any Partnership contract agreements.

In order for the project to be considered as a Transportation Control Measure, SCAG's Regional Transportation Plan will also need to be amended to include the project.

GOALS

The PPP program will advance the commitment to improve Los Angeles County's transportation system by exploring new transportation project delivery methods. The PPP program will be guided by the goals of:

- Improving mobility by accelerating project delivery;
- Utilizing cost effective contracting and construction methods;
- Providing projects which will be an integral component of the existing transit and highway infrastructure
- Operations and maintenance meet or exceed certain established performance criteria; and
- Allocating risk fairly and appropriately among all partners.

PRELIMINARY PPP EVALUATION PROCESS

STEP 1

The projects identified in the Tier 1 Strategic Unfunded LRTP highway and transit project lists will be reviewed to determine if any may be considered possible candidates for a PPP. A feasibility screening process will identify those projects that have some preliminary project development work such as alternatives analysis, draft environmental clearance, etc., and have the greatest likelihood of acquiring:

- Final environmental clearance within 12-24 months
- Political commitment
- Stakeholder ~~consensus~~ **support**

The projects which meet these criteria will be evaluated in the following preliminary steps:

- Evaluate Environmental Impact analysis status and pending information;
- Perform a financial feasibility analysis;
- Assess risk allocation; and
- Conduct industry outreach to determine private sector interest and acquire technical guidance in the project development.

STEP 2

Those projects identified in Step 1 as likely candidates will be considered for recommendation to the Board for a continued environmental review process.

During the final environmental review process, additional agency decisions will need to be made regarding:

- Procurement methodology and source selection process;
- Optimum project delivery option;
- Benefit or relevance of opportunities for project innovation and alternate technical concepts;
- Policy regarding private operation/maintenance of project;
- Parameters for revenue generation proposals, including decisions on tolls, fares, etc.;
- Option(s) to phase project, if resulting funding or interest is limited; and
- Enabling legislation, if the project is not covered within California Government Code 5956.

Public-Private Partnership Framework

STEP 3

Once a detailed project definition has been completed, the Board could authorize the initiation of a formal proposal solicitation process.

The resulting contract negotiations will clearly refine and outline project roles, structures and standards, including risk allocations.

Should negotiations prove successful, the Board could decide to:

- A. Approve source of public sector funding commitment;
- B. Authorize the CEO to execute a PPP agreement; and
- C. Amend the LRTP to include the project in the Constrained (funded) Plan.

Final partnership funding commitments will not be effective until all necessary contracting agreements have been executed.