Hood River – White Salmon BRIDGE REPLACEMENT PROJECT

BSWG Working Group Work Shop: P3 Panel Discussion

Friday, February 5, 2020 | 1-4 p.m.
Port of Hood River – via Zoom Port of Hood River YouTube Channel
1000 E Port Marina Drive, Hood River OR 97031

In Attendance:

Committee: Kate McBride, City of Hood River; Marla Keethler, City of White Salmon; Betty Barnes, City of Bingen; John Everitt, Port of Hood River; Jake Anderson, Klickitat County; Bob Benton, Hood River County; Kristi Chapman, Port of Hood River – alt.

P3 Panelists: Lowell Clary, facilitator; Jen Mayer, Concept Jeneration; Ken Szilga, UBP; Ryan Dolan, UBP; Sia Kusha, Plenary; Nick Farber, Colorado DOT. Lee Whitney, UBP was also in attendance.

Staff/Consultants: Michael McElwee, Executive Director; Fred Kowell, CFO; Kevin Greenwood, Bridge Replacement Project Director; Genevieve Scholl, Communications Manager; Chuck Green, Otak; Steve Siegel, Governance/Finance

Media: None.

Introduction:

The meeting convened at 1:00pm. Mayor Barnes welcomed all to the work shop and introductions were made.

Kevin Greenwood reviewed the objective of the meeting which is to increase understanding and awareness of Public Private Partnerships (P3). Interest in P3s began over 4 years ago when United Bridge Partners (UBP) submitted a proposal. Greenwood turned to Lowell Clary for presenter introductions.

Jen Mayer, Concept Jeneration:

Clary turned to Jen Mayer for a P3 overview. Mayer explained that a P3 model changes the timing and terms on how funds are received. A P3 does not make money for the owner but can provide an increase in effectiveness on cost schedule and other aspects of the project. P3s should not lose public sector jobs or lower employee pay. The government does have to change its standards in order to undertake a P3 for more effectiveness. A P3 does not solve any political disputes. An advantage with structuring something as a P3 is the financial aspect that is also an implicit warranty. If there is a failure of performance, the private sector can stop payment till the situation is resolved. Mayer provided a couple examples of failed P3s and explained why they failed.

Mayer noted that the best time to undertake a P3 is when all the federal environmental work is complete, and you have all the information to evaluate best value and compare what it would look like as a private or public project.

Mayer noted that federal involvement in P3s is common. There is low-cost financing such as Transportation Infrastructure Finance (TIFIA) and private activity bonds. Federal requirements do apply but with important flexibilities that are not available to large infrastructure projects in the private market. Federal support for P3s have been bipartisan.

Clary asked if there were any questions or comments regarding Mayer's presentation. John Everett commented that one reason for pursuing a P3 partnership is the expertise in the building of the project. Everitt asked if it was true that P3 companies are not builders. Mayer said that that is true. P3 is going to be familiar with who to obtain as partners for construction and design.

Ryan Dolan and Ken Szeliga; United Bridge Partners:

Ryan Dolan's UBP presentation provided an overview of the services they provide. UBP fully finances and works with partners to design and build. Then will either lease or own structures and operate or maintain over the long term of the contract or ownership period. UBP's goal is to use their approach and capitol to solve community transportation needs. Relieve public agencies of ongoing burden and serve communities.

Dolan and Ken Szeliga provided an overview of 5 of their structures. Szeliga went on to explain two project delivery models. The first model is Construction Manager/General Contractor (CM/GC or CMAR). With CMAR, UBP works directly with contractors. The second model is Design-Build where the owner would hire a concessionaire. The concessionaire would then provide the contractors.

Dolan stated that most of the time a P3 is chosen due to the lack of funding. The diminishing public funding sources and competitive and cumbersome grant processes have increased the benefits of alternative funding sources that UBP can provide.

Dolan continued with the procurement process. Dolan noted that its always best to bring on a private party earlier in the process, and typically it's only a Request for Proposal (RFP) process. RFP time ranges from 6-months to a year. The level of development at the time that the RFP is released is limited to no design that have not been advanced to 15-30% like you would see on a traditional design bid build. UBP tends to prefer when the design drawings are not developed yet because they are in the position to take on the risk of not having 30% design drawings at that point and allows for more innovation.

Dolan commented that tolling is intended to recoup capital investment and cover operations and maintenance obligations. UBP's incentive is to provide the lowest toll rate possible. There are other revenue structure options such as availability payments and shadow tolls that could be used. UBP projects have been toll full risk projects, but there are other options. Normally the initial toll is agreed upon and the process for any modifications in the future are detailed in the P3 contract.

Clary asked if there were any questions or comments on Dolan and Szeliga's presentation. Marla Keethler asked if they've done any projects where there is still an option of a cash-based toll system. Dolan responded by stating that all their projects are electronic toll facilities but are open to a hybrid type of tolling systems that could include a cash-based payment option. Keethler added that electronic tolling systems usually end up with administrative or late fees that impact the bridge user. Clary said that cash is not typically the new method, but it can be done. The objective is to provide free movement so that people don't have to stop.

Nick Farber, Colorado DOT:

Nick Farber’s presentation started off with an overview about High-Performance Transportation Enterprise (HPTE). HPTE operates as a government-owned business within Colorado Department of Transportation (CDOT) to pursue innovative means of more efficiently financing important transportation projects. The enterprise must raise 90% of its own revenue and 10% can come from the state. Farber spoke about the Express Lane Network project in the Denver Metro area.

Farber commented that project financing is secured through Managed Lanes. In the last 10 years Managed Lanes projects delivered $3.1 billion of funding to the state and $1.27 billion secured through use of Managed lanes. A total of 60% coming from the state and 40% coming from funding sources like INFRA, TIGER and TIFIA.

Farber noted when considering private investment, CDOT decides what project to build, how much money is available and for how long. CDOT outlines expectations for the project. Retains oversight rights. Maintains ownership of the highway and protects against private company bankruptcy or other defaults. When CDOT asks HPTE to explore possible financing, HPTE will examine the cost data, provide matrix of risks and identify best value. Farber also commented that usually any project over $100 million is considered a major project and not a P3 that developers want to take on.

Farber commented that in a traditional Design Build Operate Finance Maintain (DBOFM) project there will be a two-part procurement process. A Request for Qualifications (RFQ) will be issued followed by an evaluation of SOQs for a shortlist of qualified proposers. Then the Request for Proposals (RFP) is issued to the shortlist of proposers. Finally, the best value proposer is selected.

Farber continued, once the proposal with the best Value for Money (VFM) has been selected; results must show that the preferred proposer’s bid provides best value to for the state in comparison to the public sector comparator bid. Then it goes to the board for approval. HPTE will pay the agreed upon stipend to the unsuccessful shortlisted proposers who submitted a bid that received a pass onto formal evaluation. HPTE and preferred proposer finalize the Project Agreement and seek approval from the board. Private partner will take its executed Project Agreement to the financial market to implement the financial plan outlined in their proposal. Once completed and have reached financial close; the next step is the implementation phase.

Farber presented the US 36 Public-Private Partnership project. The preferred proposer was Plenary Roads Denver. They designed built and financed phase 2. They are also responsible for all the operations and maintenance. P3 is reimbursed through toll revenues and public sector construction payments.

Farber explained how the public is protected. The HPTE board and statue have the authority to approve or deny all toll rate increases. HPTE caps the Internal Revenue Rate of Return (IRR). Once the IRR is reached it goes into a cash sharing mechanism. Service delivery is noted in the concession agreement. Failure to meet service delivery standards will result in issuing non-compliance points. If the Developer goes bankrupt HPTE takes over all assets and returns it back to the market. Once the P3 contract is over there are hand back requirements that need to be met.

Farber asked if there were any questions or comments. Fred Kowell asked if there has ever been a time where the payback period has been extended, and for how long to keep toll rates reasonable. Farber said that they have only done one toll revenue risk which was US 36 project and that was in a 50-year concession agreement. Clary added that 50 years is about average, and others might go longer or shorter. Farber commented that Northwest Parkway did a 99-year lease in early 2000s. Clary added that Northwest

Parkway was a high-risk project. Sia Kusha commented that the premise of selection for Belle Chasse project in Louisiana was the least number of tolls for the least amount of time in a 30-year limit.

Clary asked for clarification on the stipend and the amount. Farber replied by stating that developers want to see it first because they are putting a lot of money to put together these bids. The amount on US 36 was $500,000. Kusha added that it was two tenths percent. Farber commented that you want it to be fair enough that you are not covering all the costs of the bid, and fair enough where you are encouraging people to stay and finish the bid. Kusha added that stipends typically do not cover costs. They are intended to incentivize more engagement from the design side when the developer is working with a design builder in order to de-risk the project and reduce the capitol cost of the project. Another reason for a stipend is if a compliant non-successful bidder accepts the stipend; the result of that would be that you have the intellectual property rights over anything that was in their bid. You can then take that and incorporate it into the winning bid or use for other purposes.

Kia Susha, Plenary:

Kusha began his presentation with a brief overview of Plenary. Plenary is the leading P3 long-term investor, developer and operator of public infrastructure. What sets Plenary apart from UBP is that Plenary does not believe in private ownership or private leasing of a public infrastructure asset. Public ownership of infrastructures is a must.

Kusha continued with a presentation on three different project case studies that are all in transport. Kusha described 3 key elements when considering P3s. First is identifying project readiness. Second is political leadership. Finally, performance criteria. Other important key elements are hand back requirements, and identifying all stakeholders involved in the project. Kusha noted that the smallest asset Plenary has in their portfolio is less than $65 million, and largest asset is at over $2 billion. What is most critical about setting the size of a particular P3 project is the financial structure setup and how long of a term is expected.

Kusha noted that to finance Phase 2 for the US 36 project. Plenary employed a sophisticated arrangement, consisting of four tranches of debt on to liens in addition to the Sponsor's equity. Plenary assumed HPTE's existing obligations from the project's first phase. A $54 million TIFIA loan (TIFIA 1) and issued approximately $20 million of additional parity PABs. Plenary also entered a $60 million TIFIA loan (TIFIA2). Finally, Plenary issued approximately $20 million of subordinate debt and contributing additional equity into the project.

Kusha continued with the tolling approach on the Belle Chasse project which included discounted rates for residents in Plaquemines Parish. Lower rates for transponder-based accounts. License plate (non-transponder) rate expected to be primarily used by non-local and infrequent drivers. There are no toll booths. They intent is for free flow of traffic at full speed.

Clary asked if there were any questions or comments. Everitt asked Kusha to speak more about equity. Kusha replied by stating that equity is not ownership. When financing is setup for a particular project, close to 90% of the financing is brought through debt. Equity participation is where the investor developer puts up their equity as opposed to getting a 100% debt financing. Clary added that the public will always own the bridge, but the investor is going to invest in the private activity associated with P3. Everitt asked if P3 would take monthly or annual payments like TIFIA. Clary said that it is a possibility. It would be known as a finance plan that would be provided as part of the proposal. Kusha commented that P3 is committing their money to the asset for the long term. Everitt asked if the return on the equity would be higher than the TIFIA loan rate. Clary turned to Dolan for a case example of what kind of return was expected in the finance plan for the equity. Dolan said that they don't share proprietary returns, but they do use a higher degree of equity. Kusha added that the average return on equity post tax is in the seven to nine percent.

Roundtable Discussion:

Kristi Chapman asked if all models involved their own tolling software, or if that was negotiable. Kusha responded by stating that Plenary can do both. Kusha referenced the Florida Turnpike enterprise where if you do a P3, Florida Turnpike would handle the tolling operations. Even though the developer puts in the infrastructure. The back-office tolling would be handled by Florida Turnpike enterprise. Kusha recommended that if you have a single asset and have tolling operations in place then it should be carefully reviewed and compared to what is being proposed and go with what works best. Dolan added that although UBP works with third parties on tolling infrastructure and software. UBP manages tolling back office in-house. This is important because UBP has built a very efficient operation and are very good with their back-office tolling. This allows for lower toll rates due to the efficiency in invoicing, billing and collections. UBP prefers to manage the back-office tolling but there is flexibility for the public owner.

Michael McElwee asked at what point would it be best to respond as a private entity or issue an RFI with the necessary information. Mayer's recommendation is to engage early and often. Industry forum may be the way to start before you have an RFI. The benefit of the pandemic is that its more economical to get widespread participation and find out before you undertake the RFI process what type of questions people might have. Kusha agrees with Mayer that you should engage early and often. Kush added that discussions with stakeholders outside the project is also very beneficial. There will be a significant interest when this goes to market. There will be plenty of interest from people wanting to give honest advice that might benefit the individual more, but with help from advisor's you will be able to determine what is in your best interest.

McElwee asked what interest there might be in the private sector given the fact that this is a relatively small project with low traffic volumes. Kusha replied that this project will garner attention from big bridge builders and marine environment participants. Kusha believes that this project will get significant interest and there will be robust competition.

Clary asked Kusha when the industry would want to engage. Kusha said that it's not that uncommon for an owner to start procurement when the draft document has passed the initial comment period. Clary asked Kusha that at the time of the RFP what level of engineering would he want to see. Kusha replied by stating that the less engineering the better if the key risk elements are identified. Szeliga commented that UBP prefers less detail. One reason being is they take on more risk. This allows for engineers and contractors to advance the drawings to a level from an innovation standpoint. Kusha added that progressive P3s will allow the authority to procure a developer earlier. Whereas a hard-bid P3 will allow a developer to select a designer and builder later depending on what stage of development the current project is at.

Clary asked the panel if you can progress the design further and then obtain additional funds to move forward with a P3 or use part of that fund to procure a P3 based on qualifications and select the team. Kusha commented that if you were to do a P3 you're developing partner will cash flow the work so that you don't have to come up with additional funds. The developer will recoup the cash flow for the development phase as part of the long-term concession.

Clary asked if you do a progressive approach how to do you select your partners and when. Szeliga commented that any concessionaire is going to have to design and construct the bridge with DOT and ASTRO regulations. That is why the CMGC model is preferred. Kusha commented that the model they advocate for, once they get to the GMP and committed schedule they novate those contracts into a hard-bid fixed price, fixed schedule design build contract with the design builder.

Clary asked Farber for his opinion on a progressive P3 route versus a firm bid proposal approach. Farber responded by stating that this does not work for everyone. You must have a lot of stakeholder involvement in the beginning. Clary added that in an open competitive approach you are not in a 30-year contract and can decide to go your separate ways if things do not work out.

Kate McBride commented that the Bi-State working group is in process of becoming official and asked if at any point the lead agency could be transferred over to the Bi-State working group. Dolan responded by stating that that is a decision for the lead agency and Bi-State working group. Kusha added that it is not uncommon to have multiple lead agencies.

McBride asked if Plenary or UBP would help get other monies like TIFIA loans. Kusha replied yes.

Chapman asked if there would be help if they proceeded with both federal funds and a P3. Kusha said yes. There are different incentives offered to public sector owners who put up non-federal share monies towards a particular project. Based on that non-federal share you can apply for build grants. As for a TIFIA loan the Port would be the lead agency applying for it, but the private development partner would do all the work.

John Everitt asked Farber if the concession agreement for US 36 project is a public document. Farber responded yes.

Adjourn:

The meeting was adjourned at 3:56pm.

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