



Public Private Partnerships In Transit

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Robert Bergen
K&L Gates LLP

www.klgates.com

Defining Public-Private Partnerships

- USDOT Definition
 - December, 2007 Report to Congress
 - A form of procurement
 - Single solicitation (Design-Build, DBOM)
 - Not DBB
 - Transfer of functions to private sector
 - Assumption of risk by private sector
 - Not necessarily innovative finance
 - Some investment of private capital
 - Not TOD or joint development

Defining Public-Private Partnerships

- U.N. Economic Commission For Europe
 - Guidelines to Promoting Good Governance in PPPs (10/07 Draft)
 - “innovative methods used by the public sector to contract with the private sector,” leaving to the public sector the responsibility to assure services, enhance economic development and improve quality of life.

Transit PPPs

Anticipated Public Sector Benefits

- Develop projects more quickly
- Develop projects at lower cost
- Improved ability to manage future budgets
- Allocate risks appropriately
- Assure high quality operation and maintenance
- Capitalize on private sector innovation and technology

Transit PPPs *(cont'd)*

Private Sector Objectives

- Create investment opportunities for private capital
- Earn return on investment
- Promote employment and economic development opportunities
- Apply private sector efficiencies, technology and innovation to transportation infrastructure projects
- Expand PPP opportunities in the public infrastructure arena

Transit PPPs *(cont'd.)*

- **Toll Road Concession Model Is Not Promising**
 - Assumes revenues sufficient to cover costs plus profit
 - Virtually no transit system operates without subsidy
 - Length of lease may be an obstacle

Transit PPPs *(cont'd.)*

- **Outsourcing and Subsidy Minimization Are Tried and True Transit Models**
 - Allow for allocation of capital expenses
 - Allow for allocation of program and financial risks
 - Can establish operating and service standards
 - Can establish maintenance standards
 - Can set financial incentives and disincentives

What Are The Obstacles?

- Legal authority
- Procurement restrictions
- Funding and finance authority
- Labor concerns
- Public perception and community opposition
- Political will

What Authority May Be Needed

- Best value/RFP procurement
- Contract out/outsourcing
- Property acquisition, including eminent domain
- Dedicated funding stream
- Design/build contracting
- Long-term contracts, including financing
- Confidentiality

Procurement Issues

Competitive Negotiation vs. Competitive Bid

- Best qualified proposer vs. responsible proposer
- Best overall value, price included vs. lowest bid

Design/Bid/Build vs. Design/Build

- A/E contracts awarded per Brooks Act
- Construction and equipment supply based on low bid

Separation of Contracts

- General Contractor
- Electrical
- Plumbing
- HVAC

Procurement Issues *(cont'd.)*

- May the agency accept unsolicited proposals
- Are two-tiered procurements permitted (e.g., pre-qualification of proposers)
- Are negotiations with proposers permitted
- May/will the agency pay stipends
- Effect of Sunshine and Records Access Laws

Other Issues That Could Affect Transit PPPs:

- May transit property or operations be sold, leased or assigned
- Payment/Performance Bond Requirements (Miller Act)
 - Permit alternative security, such as LOC
 - Permit flexibility as to amounts
 - Limit bond requirement to certain aspects or phases
- Restrictions on Risk Allocation (e.g., indemnification)
- Control over fares and service levels

Other Issues *(cont'd.)*

- Environmental approval risk
- Labor protection
- Union/public employee opposition
- Prevailing Rate of Wage (Davis – Bacon)
- Revolving Door Prohibitions

Funding PPPs

- **Debt Issuance**
 - Transit agency
 - Other governmental entity
 - Private special purpose entity
 - Legal Authority
 - Debt Limit
 - Duration Limit

FUNDING PPPs

- **Source of credit**
 - Fare revenue
 - Subsidy/availability payments
 - Dedicated Tax (e.g., TIF; special assessment district; sales)
 - Other guaranteed funding stream
 - Credit Guarantee (Back-stop)

Transit PPPs

- The private sector has been a long-time transit provider
- The benefits are there
- The challenges can be met
- The risks can be allocated fairly
- Not the solution for all systems
- But another useful tool for growing and improving public transit service

Contact

Robert Bergen
K&L Gates LLP
599 Lexington Avenue
New York, NY 10022

(212) 536-4093 Direct

(212) 536-3901 Fax

robert.bergen@klgates.com

www.klgates.com