Denver's Landmark Eagle P3 Project

Robert Lovell

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Denver's US$1.6 billion Eagle P3 municipal rail system is the largest transit-oriented P3 project to close in the US and stands as a benchmark for future rail investment across the country.

The innovative transaction [Projects Database] is significant not only for future transit projects in the US, but in particular the financing of high speed rail (HSR) globally.

FasTracks System 2009 incorporating the East Corridor, FasTracks Gold Line and Northwest Rail Electrified Segment. (Please click map to enlarge) © FasTracks RTD Denver, Colorado, USA

There will be many looking to the financing structure and procurement process that delivered the Denver FasTracks deal, at a time when HSR in the US finally has the political will and financial backing to bring it about.

Other accolades for the landmark P3 include the first use of private activity bonds (PABs) for a transit rather than road P3 in the US, and the first availability P3 in the transit sector.

Procurement Process

In August 2008 the Regional Transportation District of Denver (RTD) issued a request for qualifications (RFQ) resulting in three teams responding to the RFQ.

The RTD had the following advisers for the procurement process:

- Freshfields - legal
- Jacobs Engineering - technical
- JPMorgan - financial
- Goldman Sachs - financial

Following an initial evaluation process, all three teams were found to be qualified to participate in the procurement.

They were:

- **Mile High Transit** - Bombardier, Flatiron Corporation, Archer-Western, Aldridge Electric, DMJM-Harris/ AECOM and CH2M-HILL
- **Denver Transit Partners** - Fluor Enterprises, Macquarie Capital Group, Ames Construction, Balfour Beatty Rail, Alternate Concepts, HDR Global Design Consultants, Arup, Gannett Fleming, Orrick, Herrington & Sutcliffe, Interfleet Technology and Romero and Wilson
- **Mountain Air Transit Partners** - HSBC Capital, Siemens, Veolia, Kiewit, Herzog, Stacy and Witbeck, HNTB Corporation, Mass Electric Construction, Millibank, Tweed, Hadley & McCoy, Citi and Merrill Lynch

As the authority developed the request for proposal (RFP), stakeholders were asked to participate in an online survey designed to seek input into the RFP. RTD staff then evaluated the input and determined what was appropriate to incorporate into the RFP.

When RTD had completed a draft of the RFP this was issued to the pre-qualified teams for their review and comment. This process ensured that the latest thoughts and innovations that the industry developed were allowed for in the project.

RTD also reviewed key elements of the RFP with affected stakeholders as well as the federal agencies that provided funding and oversight. The RFP was issued to the pre-qualified teams on 30 September 2009 and on 14 April 2010 two technical proposals were received followed by two final proposals, including financial proposals, on 14 May 2010.

The Bombardier/Flatiron-led Mile High Transit consortium withdrew from the bidding process stating it could not submit a competitive proposal within the required timetable.

RTD and a group of stakeholders performed a detailed evaluation of the proposals. On 15 June 2010, RTD staff recommended to the RTD board selection of Denver Transit Partners (DTP) to be the concessionaire.

The board unanimously accepted the recommendation and awarded the contract to DTP.

The Denver Transit Partners consortium includes:

- Fluor Enterprises
- Macquarie Capital Group
- Ames Construction
- Balfour Beatty Rail
- Alternate Concepts
- HDR Global Design Consultants
- Gannett Fleming
- Interfleet Technology
- Romero and Wilson

Orrick, Herrington & Sutcliffe acted as legal adviser to the consortium, Arup was technical adviser, while Macquarie was financial adviser.

The team had a 61-day deadline to go from selection to financial close - and they achieved this smoothly in just 59 days. The contract was executed on schedule on 9 July 2010 and was followed by financial close ahead of schedule on 12 August 2010.

Denver Union Station (DUS) © FasTracks RTD Denver, Colorado, USA

RTD issued a notice to proceed (NTP) for Phase 1 of the work - simultaneously with the FC - allowing DTP to proceed with final design of the project, construction of the East Corridor, the maintenance facility and the tracks from Denver Union Station (DUS) to the maintenance facility and the provision of all of the rolling stock required for the project.

The Project

In the US there's a tendency to re-invent the wheel on P3 transactions, but on the Denver deal, the RTD wisely borrowed heavily from prior models.

In particular, the RTD took from the Canada Line project in Vancouver - a successful deal that was completed in 2005 and became operational last year.

The RTD sought to deliver the Eagle P3 under a concession agreement that requires DTP to DBFOM the East Corridor, Gold Line, Northwest Electrified Segment (NWES) - segment one of the Northwest Rail Corridor - and Commuter Rail Maintenance Facility project under a single contract.

RTD retains all the assets while shifting much of the risk of providing the projects to the private partner. The authority will make service payments to DTP based on their performance of the operation and maintenance of the project.

The concessionaire will also provide and maintain the rail vehicles for the three commuter rail corridors. The proposed rail vehicles are similar to vehicles being supplied to the Southeastern Pennsylvania Transportation Authority (SEPTA) in Philadelphia.

Rolling stock is being supplied by Hyundai Rotem USA Corporation - a subsidiary of Hyundai Motor Group.

DTP will also operate and maintain everything it designs and builds, assuring safe and reliable commuter rail service for almost 30 years. The O&M element will be undertaken by another JV of Fluor and Balfour Beatty together with Alternate Concepts (ACI).

Fluor Enterprises is leading the design-build team during the six-and-a-half-year construction phase and will also form part of the team that will operate and maintain the project's commuter rail lines for the 28-year operating period. The construction contract with Denver Transit

Systems - a 50/50 JV between Fluor Enterprises and Balfour Beatty Rail - is a turnkey lump-sum fixed-price contract.

The project capital cost is pegged at just under US$2.1 billion.

Groundbreaking took place on 26 August on the south lawn of DIA's Jeppesen Terminal.

The notice to proceed is for phase one, which includes the East Corridor, a new maintenance facility, provision of the trains that will provide service on the project and final design work on the FasTracks Gold Line and Northwest Rail Electrified Segment.

In addition to the East Corridor, the Eagle P3 also includes the DBOM of the Gold Line Commuter Rail to Arvada and Wheat Ridge as well as a short segment of the Northwest Rail Line to Westminster.

Construction and operation of these portions are part of a phase two notice to proceed, which is dependent on receipt of a US$1 billion grant from the Federal Transit Administration anticipated next year.

DTP will now work on the final design for the project. It expects to start early construction work such as site-clearing and utility relocation along the East Corridor in the coming months. The East Corridor is scheduled for completion in January 2016.

Financing

Up to the credit disruption in 2008 the US was largely characterised as a monoline insured bond market. This all changed and returned to the period prior to the early 1990s in the US where deals were financed from a tax exempt investor base.

The Eagle P3 financing can be seen as following on from the two Texan P3 projects - LBJ Freeway and North Tarrant Express - that achieved FC earlier this year through the issuance of private activity bonds (PABs).

These projects showed that the PAB market was robust and this financing route looked favourable compared to bank finance.

Due to the debt amount - at just under US$400 million - it was going to be one or the other, rather than a combination of bank debt and bonds. If a hybrid option had been selected, there would also have been additional inter-creditor issues to deal with.

The final bid date was 14 May 2010 and from this point on a decision was made to proceed with the PAB option.

At this time the Greek Euro crisis was in full swing and unsettling the bank market. There were also one or two last remaining conditions that the banks had that the bond underwriters were not insisting on. At this time European banks were also concerned about dollar funding and the state of the financial markets.

On 4 August Barclays Capital and Bank of America Merrill Lynch priced the US$397.8 million tax-exempt PABs with spreads to the benchmark Municipal Market Data AAA Index ranging from 217-247 basis points. This resulted in an average cost of below 6 per cent.

The offering included 14 semi-annual serial maturities totalling US$80.3 million and three term bonds. The serial bonds priced at yields ranging from 4.85-5.6 per cent, with the term bonds yielding 5.90, 6.08 and 6.13. The bonds will mature on 15 January 2041, four years before the expiration of the concession agreement.

The PABs are rated as follows:

- Fitch Ratings - 'BBB-'
- Moody's - 'Baa3'

Macquarie Capital Investments - which acted as developer of the Eagle P3 project for the past two years with Fluor - brought in subsidiaries of John Laing and Uberior Investments, as the long-term equity investors. The new investors' equity allocation was made at closing.

The total project size is US$1.6 billion, of which US$1.1 billion will be funded through construction period payments from the RTD. The balance will be funded with proceeds of the US$398 million bond offering as well as a US$54 million equity contribution from the concessionaire.

The equity partners are:

- Fluor - 10 per cent
- Uberior Infrastructure Investments No 4 USA (an affiliate of Lloyds Banking Group) - 45 per cent

- Denver Rail (Eagle) Holdings (a wholly-owned subsidiary of John Laing Investments - 45 per cent

The deal is particularly significant for John Laing as it marks its first US P3 project.

Mayer Brown acted as financing partners' counsel, while Arup provided technical advice. Mayer Brown represented both bank lenders and bond arrangers at the bid stage.

Challenges

Firstly, and perhaps one of the biggest challenges, was the TABOR (Colorado's Tax Payer Bill of Rights) issue. Colorado has the added complication of TABOR and appropriation risk, and structuring the project within TABOR caused delays.

Availability payments the project receives from the RTD will be broken down into two components - the TABOR portion and the Appropriated Service Payment. The TABOR portion is not subject to appropriation risk and will be secured by a pledge of RTD 1.0 per cent sales tax revenues subordinate to the RTD's existing senior and FasTracks bonds, but senior to its certificates of participation and O&M expenses.

This portion of the service payment will be sized to cover debt service and provide a return on equity, protecting bondholders from appropriation risk.

During the period between shortlisting and RFP - November 2008 to September 2009 - an industry consultation process took place to get around this issue, among other financing concerns.

Another challenge was sources of funding, including sales tax and the sizable federal grant. Due to federal reauthorisation uncertainty, there was the challenge of how to progress the P3 without the security of getting this federal funding.

Consortia bid to construct the entire project, but RTD retained an option not to proceed with the Gold Line if federal funding didn't come in. This added structural complexity with the provision of an additional borrowing facility to support the first phase.

Finally, the long construction period of 6.5 years - due to the land acquisition programme - was an additional challenge to work into the financing structure.

Conclusion

In the past attempts have been made to deliver US transit deals, but people will now look to the Denver deal for an example of how a project of this type can be completed successfully.

Looking to the future of rail P3s, Florida DOT has submitted a financial plan to the FRA for the Tampa-Orlando HSR line and it is somewhat similar to the Denver FasTracks deal with US$350 million expected in PABs. The Los Angeles Metro Rail P3 is also expected to have a very similar structure.

It is therefore hoped that there will be an expansion of the PABs allocation, in addition to recent news that a US$50 billion transportation plan is being put forward by the Obama administration.

The Denver deal has set a precedent for the sector - an innovative financing structure, delivered on time, and resulting in the transfer of fully integrated responsibility to the private sector for all elements of the transit system.

