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Session 47: Lessons Learned from P3 Public Involvement Initiatives

Lessons Learned from Virginia P3 Projects
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Basics: What is a P3 Project?

- Existing Facility:
  -- Long-Term Lease
  -- O&M Concession

- Greenfield Facility:
  -- Design Build
  -- Design Build Operate Maintain
  -- Design Build Operate Maintain Finance
Public Involvement in P3 Projects

• Existing Facility:
  -- Public Comment During P3 Procurement (depends on legislation)
  -- Legislative Approval

• Greenfield Facility:
  -- Public Comment During P3 Procurement (depends on legislation)
  -- State and MPO Planning Process
  -- NEPA Process
  -- Selection of Locally Preferred Alternative
  -- Project Finance (e.g., special tax districts, bond validation proceedings)
  -- FOIA
Some Unique Challenges Regarding P3 Projects

- Lack of Public Understanding of Benefits of P3 Procurement Generally
- Perception of Lack of Competition
- Confidentiality of Financial Aspects of P3 Proposals and Contract Negotiations Generate Public Suspicion
- Resistance to Private Operation of Existing Toll Roads and Construction of New Toll Roads
Virginia Public-Private Transportation Act (PPTA) Virginia Code §56-556, et seq.

- Authorizes the Commonwealth, its local governments or other public agencies to enter into agreements allowing private entities to develop, design, construct, maintain and/or operate transportation facilities, if they determine that private involvement would provide the facilities in a timely and cost-effective manner.
- Permits private entities to submit unsolicited project proposals as well as proposals solicited by public entities.
- PPTA Implementation Guidelines govern submission and review of proposals.
Two-Phase Submission & Evaluation Process

- Applies to both solicited and unsolicited proposals
- Conceptual Proposals and Detailed Proposals
- Conceptual Proposal describes proposed project and provides information regarding proposer qualifications/experience, project characteristics, project benefits and public support, project financing and project compatibility with state and local transportation and land use plans
- Receiving agency must publish notice of receipt of unsolicited Conceptual Proposal, after which other private entities have opportunity to submit competing conceptual proposals for agency’s consideration
- Initial Review Committee performs preliminary qualifications review of each Conceptual Proposal to determine whether proposal is complete, whether proposer is qualified, and whether proposal presents a project that appears technically and financially feasible
Detailed Proposals

- Following selection of one or more Conceptual Proposals, a Detailed Proposal is solicited and, when received, forwarded to Advisory Panel for further review and evaluation to determine whether the project would promote transportation goals and the public interest.

- Advisory Panel evaluates proposal under specific selection criteria, and makes recommendation to DRPT or VDOT whether proposed project satisfies PPTA goals of timely and cost-effective delivery of transportation facilities.

- Agency head considers recommendation of Advisory Panel and makes final determination regarding proposal.

- If Detailed Proposal is approved, agency and private proposer enter into negotiation of a comprehensive agreement for implementation of the project.
Comprehensive Agreements

- Outlines the rights and obligations of the parties, sets a maximum return or rate of return to the private entity, allocates risk and liabilities, and establishes dates for termination of the private entity’s authority and dedication of the facility to the Commonwealth

- Prior to, or in connection with negotiation of Comprehensive Agreement, the Commonwealth may enter into interim agreement with private entity proposing the project, which may include:
  - Authorization to private entity to commence activities for which it may be compensated, including project planning and development, advance right of way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining availability of financing for proposed facility
  - Establishing process and timing of negotiation of Comprehensive Agreement
  - Any other provision deemed appropriate by the parties
Public Involvement in PPTA Process

- For 30 days prior to entering into either interim or comprehensive agreement, agency must provide opportunity for public comment on the proposals.
- Public comment period may include public hearing – within sole discretion of the agency.
- Once negotiation of agreement is complete and agency has decided to award the contract, it must present the major business points of the agreement, including use of any public funds, to its oversight board at a regularly scheduled meeting open to the public.
- Once agreement has been executed, agency must make procurement records available for public inspection, subject to Virginia FOIA exemptions (including for trade secrets and financial records not generally available to the public through regulatory disclosure or otherwise).
Public Involvement in PPTA Projects: Dulles Corridor Rail Project

- 23.1-mile extension of Metrorail system from East Falls Church station in Fairfax County, through Dulles International Airport, to Route 772 in Loudoun County
- Construction in Two Phases, totaling approximately $5.3 billion
- 11.7-mile Phase I currently under construction – cost of $2.6 billion and estimated completion in July 2013
- No construction schedule yet for 11.5-mile Phase 2, but currently estimated to open in 2016
- Public-Private Partnership originally between Virginia Department of Rail and Public Transportation (DRPT) and Dulles Transit Partners (consortium of Bechtel and Washington Group International)
- Metropolitan Washington Airports Authority took over from DRPT as project sponsor
- Once construction is completed, extension will be adopted into the Metrorail system and operated by Washington Metropolitan Area Transit Authority (WMATA)
Public Involvement in Dulles Corridor Rail Project

- 1997: Major Investment Study by Commonwealth, Fairfax and Loudoun Counties selects Metro-like rail for the Dulles Corridor
- 1998: Virginia Secretary of Transportation named advisory panel comprised of state, regional and local stakeholders to spearhead project
- December 1998-January 1999: Raytheon Engineers and Constructors (now Washington Group) and Bechtel submitted competing unsolicited PPTA conceptual proposals
- 2000:
  -- FTA authorized WMATA, acting as DRPT’s agent, to conduct NEPA review
  -- With concurrence of DRPT, Bechtel and WEST*Group were added to Raytheon team, forming Dulles Transit Partners
- February 2001: Public meetings held to provide information regarding alternatives developed as a result of scoping process and to solicit comments on alternatives
- March 2002: Commonwealth Secretary of Transportation directed DRPT to request PPTA Detailed Proposal from Dulles Transit Partners
- June 2002: DEIS completed; alternatives included three Bus Rapid Transit (BRT) options, a combined BRT/Metrorail alternative and a full Metrorail extension
- June 2002: Dulles Transit Partners submitted a PPTA Detailed Proposal
Public Involvement in Dulles Corridor Rail Project

- July 2002: Three public hearings conducted to present alternatives and receive comments:
  (1) Hearing advertisements published in local newspapers;
  (2) Press releases in Spanish and English delivered to 64 media outlets; meeting announcements designated for public service broadcasting sent to 51 radio and television stations in region;
  (3) Announcements for posting on television “bulletin boards” delivered to Loudoun, Fairfax, Reston and Herndon;
  (4) Project newsletter announcing hearings sent to 11,000 people;
  (5) 13,000 copies of Notice of Public Hearings distributed to state and local agencies and representatives of civic associations within study area;
  (6) Project Web site, project information centers in Reston and Tysons and community libraries in Fairfax and Loudoun counties provide information on the hearings

- During two-month public comment period, 2,520 comments were received from 386 statements. Approximately 750 people attended the hearings.
Public Involvement in Dulles Corridor Rail Project

- November-December 2002: Based on extensive public comments and input from local jurisdictions, WMATA and Commonwealth Transportation Board selected full Metrorail extension as Locally Preferred Alternative.
- December 2002: PPTA Advisory Committee recommended that DRPT proceed to negotiate Comprehensive Agreement with Dulles Transit Partners.
- October 2003: Supplement DEIS (SDEIS) addressing phasing of project issued for public comment.
- December 2003: Two public hearings on SDEIS held – 200 people attended both hearings; 832 comments received from 133 statements.
- January 2004: Fairfax County landowner’s group submitted petition to Fairfax County, pursuant to state law, to establish Transportation Improvement District for first phase of project – petition proposed contribution of up to $400 million through imposition of voluntary tax on commercial and industrial properties.
Public Involvement in Dulles Corridor Rail Project

- February 2004: Fairfax County Supervisors approved tax district petition
- June 2004: DRPT and Dulles Transit Partners executed PPTA Comprehensive Agreement for project
- December 2004: FEIS issued
- March 2005: FTA issued Record of Decision selecting Locally Preferred Alternative (full Metrorail extension)
- February 2006: FTA issued Environmental Assessment evaluating Phase I Preliminary Engineering Design Enhancements and conducted one public hearing in March 2006
- November 2006: FTA issued amended Record of Decision
- June 2007: MWAA and Dulles Transit Partners executed Design-Build contract for Phase I of Project.
- March 2009: $900 million Full Funding Grant Agreement signed by Transportation Secretary LaHood
Capital Beltway HOT Lanes Project

- Project will build four HOV/HOT lanes (2 in each direction) on 14 miles of Capital Beltway in Virginia
- $1.9 Billion Price Tag
- Started in July 2008; Estimated Completion in 2013
- Public-Private Partnership between VDOT and Fluor-Transurban joint venture
- Fluor-Transurban performing design/build with VDOT environmental review and oversight, and providing $350 million of private equity
- VDOT will own continue to own the facility
- Fluor-Transurban will operate and maintain HOT lanes over 80-year concession
Public Involvement in Capital Beltway HOT Lanes Project

- Project shaped by over a decade of planning studies, environmental review and public input
- 1997: VDOT completed Major Investment Study, concluding that HOV/bus lanes would serve current and future travel demand
- 1998: FHWA and VDOT initiated Environmental Assessment, but in response to public comments during scoping, switched to EIS
- First Quarter 2002: Draft EIS issued, including 3 HOV alternatives. After 3 public hearings held in May, at which concerns were expressed regarding cost and associated impacts of the Candidate Build Alternatives to the environment and area residents, VDOT significantly scaled back each Build alternative
- June 2002 – Unsolicited PPTA Conceptual Proposal submitted
- October 2003 – PPTA Detailed Proposal submitted – stated that the concept “was developed in response to citizen concerns at 2002 VDOT public hearings”
Public Involvement in Capital Beltway HOT Lanes Project

- VDOT hosted public meetings to present and solicit public comment on traditional HOV and a HOT lanes plans, resulting in 64% of comments submitted supporting HOT lanes plan
- August 2004: Virginia Transportation Commissioner directed VDOT to enter into Comprehensive Agreement negotiations with Fluor-Transurban under PPTA
- January 2005: Commonwealth Transportation Board selected HOT lanes plan as locally preferred alternative
- April 18, 2005: FHWA released FEIS for public comment
- April 25, 2005: VDOT and Fluor-Transurban executed Comprehensive Agreement
- Summer 2005: National Capital Region Transportation Planning Board included HOT lanes project in Constrained Long-Range Plan
- 2006: FHWA released Record of Decision (ROD) selecting HOT lanes plan
- March 2007: FHWA released re-evaluation of ROD due to project scope enhancements
- December 2007: VDOT and Fluor-Transurban entered into Amended and Restated Comprehensive Agreement and Design-Build Contract