# Public Works Financing

**Published monthly since 1988**
**by William G. Reinhardt**
**Westfield, NJ**

**www.pwfinance.net**
**PWFinance@aol.com**

**Reprinted from January, 2012**
**and April, 2010**

# Travel Plaza P3s in Maryland and Connecticut

**By William G. Reinhardt, PWF editor**

## I. Maryland Signs a 35-Year Contract With Áreas of Spain

**January 2012—**A large Spanish travel hospitality operator has given Maryland something it's been talking about for seven years—a fair and enforceable contract to substantially upgrade its two I-95 travel plazas, share revenues, and guarantee performance, including hazardous waste removal, for 35 years.

The agreement is being held out as an example of the P3 potential Lt. Gov. Anthony G. Brown hopes to tap via new enabling legislation to be introduced this year. Maryland is modeling its program on Virginia's successful P3 efforts under Barbara Reese, Virginia DOT's former CFO, who recently joined Parsons Brinckerhoff's strategic consulting group.

Pending a 30-day review by the General Assembly, a design, build and operate team assembled by Areas USA will begin a $56-million program to rebuild the two plazas. Design will be done by the state's largest architect, Ayers St. Gross, and construction by its largest contractor, Clark Construction. The group will take control of the state-owned facilities in September 2012 and rebuild the most critical facility, the Maryland House, in 13 months.

The state's estimate for rebuilding the two plazas, built in 1964 and 1976, was over $80 million.

Ayers St. Gross, known for its university work, has designed the visitor centers as gateways to impress the 5 million visitors per year who will use these facilities (http://www.i95mdtravelplazas.com/images/partnership_announcement/Maryland_House_Renderings.pdf).

Maryland encourages subcontracting to small and minority owned business in its public contracts. P3s are not subject to those rules, however, so Lane set its own minority, woman and small business goal at 27% and met them in its subcontracting. Sunoco is responsible for convenience stores and fueling, which also will be operated by minority-owned businesses.

Environmental risk is always an issue in fueling facilities. The state already is under orders to clean up groundwater and hazardous waste at the plazas. The Areas contract shares the risk. The RFP set out the maximum amount of contaminated soil that had to be removed by the private operator and a unit price to be paid for certain amounts over that. The state assumes the full financial risk for contamination that exceeds estimates. The private operator takes all performance risk for the full cleanup, however.

Áreas, one of Europe's largest airport and highway hospitality operators, will finance the contract from its balance sheet. The company recently began construction of eight travel plazas in Florida and is seeking other opportunities in the U.S. Maryland has six other facilities it wants to outsource.

A 1956 law prohibits commercial operation of rest areas on Interstates. I-95 in Maryland is grandfathered, as are sections of Oklahoma's Interstates. But many states have been forced to shut down rest areas to conserve capital, so support is growing to lift the ban in the next reauthorization of the surface transportation bill.

However, there is also strong opposition, mostly from local businesses and national retail chains that operate existing Interstate fuel and food stops on private land at interchanges. For example, despite Virginia's budget problems, early in his term Gov. Bob McDonnell chose not to concession its rest stops, and instead said public funds would be used to reopen 18 stops that were closed in 2009.

Maryland's share of the revenues from its two travel plazas is about $8 million per year now from Host International. There is no accounting for the public's spending at the plazas, however, so the state's net gain is not known.

The gross revenue-sharing component of the Areas agreement is estimated by the Maryland Transportation Authority (MDTA) at $400 million over the 35-year term of the contract. The state's share starts at 10% and grows to 50% as revenues reach certain thresholds.

MDTA and its consultants tried and failed to attract interest in a P3 for the travel plazas in 2010. Its 700-page draft agreement was highly prescriptive, which is not the approach used in Europe, and there is little experience with these projects in the U.S. The procurement was cancelled in November 2010.

MDTA's second attempt, a performance contract drafted with advice from consultants Laurie Mahon and Jacobs Engineering and awarded on a best-value basis, drew more interest in July 2011.

Mahon was financial advisor to Maryland Transportation Authority in 2009 on its $334-million Seagirt marine terminal P3 with Highstar Capital. The state received an upfront payment of $140 million, and equity funded half the cost of building the improvements, which are being completed early by McClean Contracting Co.

Though demand for post-Panamax berths won't begin until after 2014, the ability to handle the largest container ships has drawn interest in Seagirt from CSX, which is considering connecting the new terminal to its double-stack intermodal rail service. Several new container lines also are considering a move there.

**Connecticut P3: "Overwhelming Pleased"**

Judd Everhart, Director of Communications for the Connecticut DOT, says the agency has been "overwhelmingly pleased" so far with the work and commitment of Project Service LLC, the company that took over the operations and renovation of the 23 service plazas in Connecticut under a contract signed at the end of 2009 **(PWF 4/10, p. 25)**.
Two of the service plazas have been completely overhauled and reopened (both in North Haven on Rt 15, the Wilbur Cross Parkway). Two more—in Milford on I-95—will reopen in the next six weeks or so. All 23 will be done by 2015, he says.

The 35-year concession requires the private operators to fund an estimated $178 million in upgrades, including replacing most of the underground fuel tanks, during the first five and a half years. The custodial services union SEIU Local 32BJ is a member of the winning consortium. A total of 340 new jobs will be created in the construction and operation of the facilities, which now employ 750 service and custodial workers.

Project Services LLC is led by Doctor's Associates, the parent company of Subway restaurants, and includes Paul D. Ladino, President of Subcon, which develops Subway restaurants. The Carlyle Group, based in New York City, is the equity partner in the 478-page concession agreement (http://www.das.state.ct.us/rfpdoc/DOT/results/concession%20file.pdf)

## II. Private Developer To Upgrade 23 Service Plazas in Connecticut

**April 2010—**A 35-year concession recently awarded to private investors to upgrade, operate and maintain all 23 existing highway service plazas in Connecticut commits the private operators to fund an estimated $178 million in upgrades, including replacing most of the underground fuel tanks, during the first five and a half years.

The private members of the project company—most of which are based in Connecticut—claim the state will receive $500 million in economic benefit over the full term of the redevelopment.

The existing service plazas (10 on I-95, three on I-395 and 10 on Route 15) were built in the 1940s and 50s and have had no significant capital investment in 25 years. Three will be replaced and enlarged under the new contract, which took effect in December. The rest will be renovated, all at private risk and with approval of plans by Connecticut DOT (CTDOT).

The gas stations at all 23 plazas have been operated by Mobil for the past 27 years. Connecticut DOT says it has not reached an agreement with them on environmental remediation, but that the new supplier, Alliance Energy, only will be responsible for future spills or leaks. A state senator claimed last fall that $18 million had been set aside for environmental remediation in the current contract.

The custodial services union SEIU Local 32BJ is a member of the winning consortium. A total of 340 new jobs will be created in the construction and operation of the facilities, which now employ 750 service and custodial workers.

Most of the companies that make up the project company, including Subway, are headquartered in Connecticut. Project Services LLC is led by Doctor's Associates, the parent company of Subway restaurants, and includes Paul D. Landino, President of Subcon, which develops Subway restaurants. The Carlyle Group, based in New York City, is the equity partner.

**487-page concession**

CTDOT decided two years ago to recompete the service plaza concessions. Long-term contracts held by Mobil and McDonald's had produced too little income for the state and were coming up for renewal. Figures for 2007 showed that capture rates of 3.4% to 7.7% on the 71,000 adt on I-95 south were far below the rates of other states in 2007 on comparable roads. Estimates of gross revenue per visitor ranged from just over $1.00 to $1.67 for nonfuel sales. Again, that was well below other states.

Hoping to do better, the department issued an RFQ in 2008. Eight firms submitted letters of intent to bid and four of them partnered to form the two groups that submitted proposals in October 2008—HMS Host Corp. and Subway/Carlyle. Competitive negotiations were held and Subway's team was selected as preferred bidder.

(HMSHost Corp., based in Maryland, and Canadian j.v. partner Kilmer Van Nostrand Co. Limited, signed a 50-year P3 with Ontario this month to rehabilitate and operate 23 service centers on Highways 400 and 401, serving Toronto. Host is owned by Italy's Autogrill. See p. 30.)

In Connecticut, a 487-page concession agreement was negotiated with the latter group over seven months last year. It calls for Subway to pay a minimum annual guaranteed rent starting at $561,644 in 2010 and escalating to about $4.5 million in 2044.

Additional revenues from revenue-sharing start at 1.25% of gross revenues plus 1¢ per gallon of fuel sold in 2010 and escalate to 5.5% and 2.25¢ per gallon in 2044. There are no minimum revenue guarantees for Project Services LLC.

The minimum guaranteed payment to CTDOT would be reduced by a mutually agreed-upon amount if tolls were to be reintroduced on I-95 and had a significant effect on service plaza revenues.

Net revenue to the state in 2007-08 from all 23 stations was about $5.9 million from restaurants and $6 million from fuel. CTDOT expects to do better under the new contract.

“The expectation is that in the long term, the value to the state on an annual basis, including the pro-rated value of investments/improvements, reinvestments and increased capture rates, will certainly exceed the current levels of income to the state,” says Judd Everhart, Director of Communications for CTDOT.

Connecticut Gov. M. Jodi Rell called the concession “an unprecedented commitment to economic development, job creation and meeting the needs of the traveling public.”

The state was advised by public management consultant Whys Solutions LLC, of Hartford, and the law firm Halloran & Sage LLP, also of Hartford.

**National Model?**

Under the 1956 law that set up the Interstate system, commercial rest areas are not permitted on most Interstate highways. I-95 in Connecticut and Maryland and sections of the Oklahoma Turnpike are grandfathered because they were built before the law was signed.

Commercial service plazas are common on toll roads, many of which provide food and fuel operators with a captive market for customers. The Connecticut concession could be a prelude to the much larger Interstate market. Support has been growing steadily among states for lifting the ban on Interstate commercialization in the next reauthorization of the surface transportation bill, probably next year.

However, there is also strong opposition, mostly from local businesses and national retail chains that operate existing Interstate fuel and food stops on private land at interchanges. For example, despite Virginia’s budget problems, newly elected Gov. Bob McDonnell has chosen not to concession its rest stops, and instead will use scarce public funds to reopen 18 stops that were closed last year.

In addition to the time and expense of a procurement, one member of his transition team says, “In the end, I think they [McDonnell’s people] were too timid to push the issue.” ■

## Connecticut DOT Q&A

Judd Everhart, Director of Communications for the Connecticut Department of Transportation (CTDOT), provided the following answers to PWF’s questions about the state’s 35-year concession for its service plazas.

Question: What are the sources of new future revenue that could be created by investment of private capital? Fiber optic? Truck services?

Response: In a sense, there is no limit to the sources of new future revenue possibilities that could be incorporated into the Service Plazas by an entrepreneurial team bringing private capital to the deal. If there is a service that the public desires, private capital can move quickly to take the risk of investing in it and hopefully generating a reasonable return on that investment.

The Agreement allows for such potential future revenue opportunities, and in a way that protects the State's interests (through various approval processes) while assuring that the State would also share in any such future revenue opportunities.

Question: What was CTDOT's revenue per visitor before it handed over control of rest areas?

Response: The state does not have an accurate number to share. In a study of the Service Plaza and rest areas commissioned a few years ago, the following was concluded:

"Connecticut service plaza visitors tend to be wealthy, older, and educated, and prefer more food variety and a healthier menu than currently offered. Findings indicate that annual average visitor traffic at Connecticut roadside facilities is over 34 million persons. Compared to current gross sales, this yields an average sale of just over $1 per person."

It is important to note however, this excluded fuel sales completely and the estimate appears to be low on the dollars used for food and other sales. Using a more accurate $56.7 million in sales divided by the study's author's 34 million persons, one will see a figure of $1.67/person for non-fuel sales emerge.

In developing the RFP, CTDOT was careful to not jump to too many conclusions resulting from the study. However, it did incorporate as many facts as it could. With regards to the revenue per person, CTDOT surmised that it seemed pretty low and might be one of the factors that would attract a substantial private investor who would be willing to risk their capital if there was some likelihood of future growth.

Question: How did you conduct "competitive negotiations" with the private firms?

Response: Two "teams" of firms submitted proposals to the state. Paul Landino/Doctor's Associates led one team, and HMS Host led the other team. Each team consisted of a "prime," along with a number of "team" members, which included business expertise, various food providers, a fuel provider, design and contracting expertise and environmental expertise. The state built tremendous flexibility into the RFP in order to be able to create the greatest value for the state. The concept of "competitive negotiations" offers many useful tools and benefits. Two of the most beneficial tools in the RFP were the ones that allowed the following:

- during the evaluation process the state had the ability to conduct "discussions" with each proposer. This activity allows for significant clarification of issues and questions from all parties; and

- upon the completion of the evaluation process, one Proposer was chosen as the state's "preferred proposer" and invited to negotiations. The 2nd Proposer was identified as the State's 2nd most preferred proposer. Both Proposers were aware that in the event the state could not successfully conclude negotiations with the 1st Proposer, it would cease those negotiations and had the option to invite the 2nd Proposer to the table.

Question: Please explain the minimum payments and revenue sharing agreements. How are they indexed to account for CPI/GDP growth?

Response: Article 4, Sections 4.1, 4.2 and 4.3 explain in detail the methodology used in calculating payments to the state, as well as the specific percentages and cents per gallon of fuel sold. The state will be paid a MAG or Minimum Annual Guarantee payment every contract year (divided by 12 and actually paid monthly). The table in Section 4.2 details the levels of those payments. The "percent of Gross Receipts" and the "cents per gallon of fuel" that are used to calculate the "Participation Payments" to the state escalate every 5 years, regardless of the effects of inflation or deflation on sales at the Service Plazas.

To clarify how it works, Project Service LLC must pay its monthly MAG payment on the first business day of each month. By the 20th day of each month Project Service LLC must make its Participation Payment to the state for the prior month (as example, by the 20th of January, the state would have to receive the Participation Payment for the month of December).

The calculation of that payment is as follows: In any year, consistent with the tables in Article 4 of the Agreement, a percent of Gross Receipts (see definition in Glossary in Agreement) plus a "cents per gallon" of fuel sold are calculated. If that total amount is greater than the monthly MAG payment for the month in which they were calculated, the state will receive the difference (example: if the monthly MAG payment is $83,333 and the total Participation Payment were to be $100,000 then the state would receive the difference by that 20th day, in this case an additional payment of $16,667).

Question: Your July 2008 RFP said 52 million gallons of fuel were sold and over $56 million in other goods were purchased annually at the 23 stations. How have those numbers changed?

Response: The numbers are for all 23 service plazas and represent the number of gallons of fuel sold plus the sales of non-fuel retail goods (including food, convenience store items, gift shop items, kiosk sales, other minor retail services and miscellaneous automotive goods such as oil and washer fluid). The service plazas saw a reduction in the number of gallons of fuel sold, but that was attributed more to the skyrocketing price of fuel than to the recession. The number of gallons sold has been recovering albeit at a slow pace, and it's the slower pace of recovery that is likely a result of the recession. With regards to the non-fuel retail, the sales were not affected very much as a result of the recession.

CTDOT's request for proposals is located at:
http://www.das.state.ct.us/rfpdoc/DOT11/bids/09dot7001.pdf

The concession contract with Project Services is at:
http://www.das.state.ct.us/rfpdoc/DOT/results/concession%20file.pdf