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Denver Eagle P3 Financed, First U.S. Rail PPP

Denver's Regional Transportation District issued a Notice to Proceed on Aug. 12 to Denver Transit Partners for the first phase of the FasTracks Eagle P3 Project's 22.8-mile East Corridor Commuter Rail Line to Denver International Airport. The notice was given concurrently with financial close on $397.8 million in availability pay-based private activity bonds (PAB) at an average coupon of 6.078%, underwritten by Barclays Capital and Bank of America Merrill Lynch. The PABs were rated Baa3 by Moody's and BBB- by Fitch.

Macquarie Capital Investments Ltd., which acted as developer of the Eagle P3 Project for the past two years with Fluor, sold its 90% equity position at the financial close on Aug. 12 to Uberior Investment (part of Lloyd's Bank) and a unit of John Laing plc. Sponsor equity of $55 million (12%) is held by Fluor Enterprises (10%)/ John Laing (45%)/ Uberior (45%).

The closing is the first for a U.S. transit project procured under a PPP. Fluor (50%) and Balfour Beatty Rail Inc. (BBRI) (50%), will perform the six-year $1.27-billion DB component. O&M will be handled for 28 years by Fluor (33%); BBRI (33%); and Alternate Concepts Inc. (33%). Rolling stock will be supplied by Hyundai-Rotem USA.

Denver's Regional Transit Transpsortation District (RTD), which is funded with sales taxes, put in $1.14 billion in construction payments and $44 million in substantial completion payments.

The PPP approach worked in Denver partly because it had a persistent champion in Cal Marsella, Regional Transportation District's CEO when he was there. Also, in creating the RTD the state required as part of its enabling legislation, that RTD contract out at least 15% of its operations. Thirdly, the East Corridor segment is a new part of the system. The commuter rail line to the airport is a different technology and it doesn't interface with any of RTD's other lines, so it made sense to start with that segment.

Denver Eagle P3 Financial Close Set (7-8/10, p. 4)

Financial close is set for August 12 on the Eagle P3 commuter rail project in Denver, less than two months after the DBFOM contract was awarded to Denver Transit Partners (DTP), a joint venture of Fluor Enterprises Inc. and Macquarie Capital Group, with constructors Ames Construction and Balfour Beatty Rail Inc. (PWF 6/10, p. 5).

The DTP partners will contribute about $55 million in equity and $404 million raised through tax-exempt private activity bonds—about one-quarter of the total capital cost of $2.1 billion. However, Macquarie will transfer its 90% equity interest in the project at financial close, to be split equally between John Laing Investments and Uberior Infrastructure Investments, a subsidiary of Bank of Scotland. Laing's development arm pulled out of the bidding for the project last year. Fluor will retain its 10% equity position.

The concession term will also be 12 years shorter than called for in the request for proposals. Denver Transit Partners and the Regional Transportation District (RTD) agreed in July to reduce the length of the concession agreement from 46 years to 34, with a new expiration date of Dec. 31, 2044.

The shorter concession term coincides with the anticipated need to replace rolling stock after about 30 years. Though RTD planned to pay for the new train cars, the concessionaire would have led the procurement and had significant input into the decision of what to buy. RTD staff concluded that shortening the concession would give the authority greater flexibility without changing the capital cost or scope of the project. Availability payments will be minimally increased, to achieve the private sector's equity return over a shorter period of time. Total payments to Denver Transit Partners will be reduced by about $2 billion, though RTD will also be responsible for operations and maintenance 12 years sooner.

Denver Transit Partners included the shortened term in its proposal as an alternative technical concept. However, RTD held off evaluating the concept until after awarding the contract to the team, so that there would be a like comparison of net present value over 46 years with the Mountain-Air Transit Partners team, which was led by HSBC, Siemens and Veolia Transport, and also included Kiewit.

The Mountain-Air team did not propose a shorter term in its proposal. Transit and rolling stock concessions worldwide typically are for no longer than the useful life of the assets.

Although both teams intended to use private activity bonds and equity, the Fluor-Macquarie team bid a significantly lower capital cost, which led to the need for far less private financing than previously estimated by the RTD. Total construction is pegged at $1.27 billion and will be carried out by a joint venture of Fluor Enterprises and Balfour Beatty Rail, Inc. The operations contract is with Fluor, BBRI and Alternative Concepts Inc.

Fitch Ratings announced July 23 that it expected to assign the private activity bonds its lowest investment-grade rating of BBB-. Concerns cited by the ratings company included the high leverage: Equity makes up just 12% of the private financing, and won't be contributed until just prior to scheduled completion. However, the equity will be covered by a letter of credit at financial close.

Other Fitch concerns: The debt service reserve account—equal to six months of principal and interest—is low, especially considering the risks inherent in six years of construction and the integration required with private railroads, RTD's existing system and work on Union Station.

Poor performance by the operator could also lead to termination of the concession agreement, and thus a default on the bonds, according to the Fitch analysis. The availability payments paid to the concessionaire will be split into two parts. The part covering debt service is not subject to appropriations, but the part covering O&M is and could be reduced if the concessionaire fails to meet performance targets.

Fitch notes the participation of Fluor on equity, construction, and operations as a positive.

The RTD expects to receive a $1-billion federal grant to pay for much of the project. The private team will start work on the 22.8-mile East Corridor to the airport first, and then begin work on Phase 2—the 11.2-mile Gold Line and the first two miles of the Northwest Rail Corridor—once the federal money is committed next year.

The concession agreement provides alternatives if the federal money does not come through. RTD can increase payments to cover the unfunded construction costs on Phase 1, or ask Denver Transit Partners to use reasonable efforts to secure an additional $412 million in debt and $56 million in equity. The Fitch report notes that the team is not required to pursue the funding if it would be inconsistent with the financial model submitted at financial close.

▪ **Denver Eagle P3 To Fluor-Macquarie (6/10, p. 5)**

Fluor Corp. and Macquarie Capital Group delivered a winning proposal this month for the Eagle P3 commuter rail project in Denver that will cost significantly less to build—and require far less private financing—than previous public agency estimates. The challenge now is for Macquarie to arrange financing within 60 days of contract signing, as called for in the RFP. The Regional Transportation District (RTD) owner is aiming to execute a contract for the 46-year DBFOM concession in July and reach financial close by the end of August.

RTD anticipates that federal funds will start flowing in 2011, following execution of a full-funding grant agreement with the Federal Transit Administration (FTA) for $1 billion. The private team will start work on the East Corridor to the airport first, then begin work on Phase 2—the Gold Line and Northwest Rail Corridor—once the federal money is committed. The airport line is targeted to open by January 2016, 11 months ahead of RTD's deadline.

Eagle P3 is the largest component of Denver's ambitious FasTracks program to expand rail and bus service throughout the eight-county Denver metro region. Denver Transit Partners will build and operate commuter rail lines from downtown Union Station to Denver International Airport (22.8 miles) and to the communities of Arvada-Wheat Ridge (11.2 miles) as well as the initial two-mile segment of another corridor. The contract also includes a commuter rail maintenance facility.

The Regional Transportation District (RTD) selected Denver Transit Partners as the preferred bidder over a partnership led by HSBC, Siemens and Veolia Transport. RTD said both teams delivered strong and affordable proposals, but the winning bid promised a lower present-value cost over 46 years and had a slightly higher technical score.

The award culminates an intense two-year competition and breaks new ground in financing U.S. transit projects. Part of the upfront private capital will be repaid during the 40-year operations and maintenance period. It is also the only one of three "Penta-P" projects to secure private financing. The Federal Transit Administration's P3 pilot program offers expedited reviews and other benefits and encourages private investment (PWF 11/09, p. 5).

The entire FasTracks vision, including the Eagle P3 project and the redevelopment of Denver's Union Station, is "one of the success stories that has remained a success as it relates to public-private partnerships," says FTA Administrator Peter Rogoff. "A lot of other public-private partnerships didn't stand the test of time in the economic downturn."

The winning proposal includes a capital cost of $2.086 billion, about $300 million less than the RTD's latest estimate in February. Private financing is expected to total approximately $500 million—about half of earlier estimates—and will include equity and private activity bonds, but not a federal TIFIA loan. Public funding will come from an expected $1-billion federal grant and sales taxes. The RTD will set fares and receive all revenue.

According to the proposal, Denver Transit Partners expects to fund about $1.3 billion of the capital costs, while the RTD directly pays $777 million for right-of-way, project management, utility relocation and other costs.

The team would receive $1.136 billion in progress payments during construction. During 40 years of O&M, the team would receive $6 billion in service or availability payments. The net present value of these service payments is pegged at $1.12 billion. That's about $350 million less than RTD's estimate for the service payments.

"The cost savings RTD is seeing are actually quite typical of those achieved in public-private partnerships," said Nicholas Hann, executive director of Macquarie Capital Group, at a press conference in Denver. He said the RTD's thought-out and well-structured project allowed the team to achieve innovations in capital costs, operations and financing. "The savings came from all three, in a very integrated way," Hann said.

Macquarie is putting up 90% of the equity and Fluor 10%. Fluor also has 50% of the design-build contract with Balfour Beatty Rail Inc. (BBRI), and 33% of the O&M contract with BBRI and Alternate Concepts Inc. (ACI). Hyundai-Rote USA will supply about 50 electric-powered rail cars. Other team members include Ames Construction, HDR Global Design Consultants, PBS&J and Parsons Brinckerhoff.

The award caps an aggressive expansion in the U.S. by U.K. builder Balfour Beatty, which acquired Parsons Brinckerhoff last year. "The Eagle P3 Project will be the largest dollar-value project any Balfour Beatty company has been awarded in the U.S., as well as the first public-private partnership we have teamed on," said Jim Moynihan, president and CEO of Balfour Beatty Rail.

RTD did not release the bid price of the losing proposal; Mountain-Air Transit Partners could still be tapped if contract negotiations are unsuccessful. The Mountain-Air team also includes a design-build joint venture of Kiewit, Herzog, Stacy and Witbeck, with Siemens providing the rolling stock and Veolia Transport in charge of operations. Siemens has provided RTD with light rail cars for other FasTracks lines. The team will receive a stipend of $2.5 million in exchange for its design work and other intellectual property on the project.

More details:

Macquarie intends to sell down its equity share in the "near term," according to an RTD presentation. Its equity is fully committed with letters of credit as backstops.

The Macquarie team anticipates using 30-year, tax-exempt private activity bonds with a 10-year call. RTD did not allow bidders to use a federal TIFIA loan because the agency wanted to limit federal funding to FTA's New Starts process and "not complicate the federal funding matrix," a spokesman says.

The lower-than-budgeted capital cost in the winning bid means RTD may be able to issue more debt for other parts of FasTracks. Bidders warned last year that the P3 deal was not financeable because the availability payments would be subject to annual appropriations by the RTD board. The agency responded by promising not to use its remaining authority to borrow money for other FasTracks projects. In the event of a default by either party, a trustee would disburse sales tax revenues first for existing debt payments and then the Eagle P3 service payments. The concessionaire will be entitled only to the capital value of work completed if it is the defaulter.

Under Colorado's Taxpayer Bill of Rights (TABOR), voters in 2004 set a limit on how much money can be borrowed for FasTracks and how much can be spent to service the debt. After borrowing for other projects, RTD's unused authority equals $2 billion in principal and $4.5 billion in total debt service (principal and interest). The proposal from Denver Transit Partners will use only part of the remaining TABOR authorization whereas the Mountain-Air bid would have used it all.

Fluor's team proposed 29 alternative technical concepts, which will be part of the contract negotiations, though most have already been accepted by RTD. One of the major changes is to single-track a 6-mile section of the East Corridor to the airport.

RTD's P3 consultants include financial advisors Goldman Sachs and J.P. Morgan, British law firm Freshfields Bruckhaus Deringer and Jacobs Engineering.