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Pennsylvania Sets Precedent with P3 Deal for Bridges.

Pennsylvania set out to fix a major statewide problem: structurally deficient bridges.

Its solution could set a precedent.

The Rapid Bridge Replacement Project, Pennsylvania's first public-private partnership, is also the first P3 in the U.S. to bundle multiple bridges into a single procurement

Pennsylvania intends to replace 558 bridges over three years. Last month the commonwealth raised $800 million through an oversubscribed sale of private activity bonds led by JPMorgan and Wells Fargo Securities.

The sale, which closed March 18, attracted more than 40 investors. Standard & Poor's rated the bonds BBB.

"What we're doing is addressing a serious problem in a calculated way," said Bryan Kendro, the P3 director at the Pennsylvania Department of Transportation.

"I think if I could pick an initial P3 for a state, this one would be straight out of central casting," said John Schmidt, a partner at Mayer Brown LLP in Chicago. "It does something very important, is less expensive, had strong competition and you had a winning team, all with an $800 million private activity bond."

Plenary Walsh Keystone Partners, a consortium of construction, engineering and financing companies, won the bid last October. The team consists of Plenary Group, Walsh Group, Granite Construction Inc. and HDR Engineering Inc. Walsh and HDR maintain Pennsylvania offices. The team also includes 11 Pennsylvania-based subcontractors.

"I believe Plenary Walsh will do everything they said they'll do," said Schmidt, who advised Chicago in its $1.8 billion privatization of the Chicago Skyway toll bridge.

Ross Moskowitz, a partner at New York's Stroock & Stroock & Lavan LLP, sees multiple benefits with the deal.

"You'd have to hold their feet to the fire, but my guess that it would cost significantly less than the standard PennDOT projects," said Moskowitz, a former executive vice president with the New York City Economic Development Corp. and former executive director of the New York City Industrial Development Agency. "Whatever the delta is, the generated savings can go into other projects. That's the beauty of it.

"Take bridges – you have similar classes of bridges for what's needed," Moskowitz said. "You probably have a similarity of types of bridges with the same character, structural design and deficiencies. You could do a mass production, putting them all together as one P3 contracting, allowing respondents to bid with greater efficiencies."

Plenary Walsh expects to begin the work in May. According to Kendro, the company anticipates completing 77 bridges in the first year – up from its original projection of 58 — and targets completion of the overall project by the end of 2017.

The bid process triggered a healthy competition, Kendro said.

“We were able to rely on Plenary Walsh to execute a plan of finance,” he said. “We were just the beneficiaries of being in the market at the right time, and we were able to realize an additional $25 million in interest savings. These were very attractive bonds.”

Pennsylvania’s project could also spark a flurry of P3 activity in the Northeast, which has lagged other regions.

“I think Pennsylvania’s one of the leading Northeast P3 states right now. It’s putting some other local states to shame,” Squire Patton Boggs LLP attorney Roddy Devlin said in a recent Bond Buyer video. “It’s a very interesting project. Common approach in Europe and Canada, less common in the U.S., but if that model takes hold, it has the potential to open up the floodgates for adding lots of smaller projects into a single P3.”

The commonwealth is also seeking qualifications from companies interested in competing for a P3 that would fund, build, and operate up to 37 facilities to fuel public transit buses with compressed natural gas produced in the state. The Public-Private Transportation Partnership Office expects to issue a request for proposals later this spring.

Moody’s Investors Service said last fall the U.S. has the potential to become the world’s largest P3 market, given the sheer size of its infrastructure.

“Late to develop its P3 availability-payment market, the U.S. is able to benefit from lessons learned in the U.K. and Canada, and to some extent Mexico,” Moody’s said in a commentary.

Pennsylvania’s bridge project is one of several transportation-related P3 transactions in active procurement or expected to some to market in 2015. Others include Interstate 70 in Colorado, the Indianapolis Consolidated Justice Complex in Indiana, and managed lanes, bridge replacement and toll concession deals in Texas.

U.S. P3 activity in recent years has clustered around California, Florida, Texas and Virginia.

Then-Gov. Tom Corbett signed a Pennsylvania P3 law in 2012. One year later, lawmakers passed a transportation bill that called for a $7.4 billion investment over five years. The Act 89 bill restructured the state’s gas tax and increased a variety of fees, but armed the commonwealth with new revenue to fix its decaying infrastructure amid declining federal aid.

In crafting the P3 deal, Pennsylvania had to fend off in-state skeptics who recalled former Gov. Ed Rendell’s failed efforts in 2007 and 2008 to privatize the Pennsylvania Turnpike. A plan to lease Turnpike operations over 75 years to Spain’s Abertis Infraestructuras and Citi Infrastructure Investors died in the legislature.

“We have a long history of P3s that never made it to the finish line,” said Kendro. Most recently, at the local level, efforts to sell Philadelphia’s Gas Works utility stalled in City Council.

“If you ask the contracting community, they were skeptical about our ability to get something different done,” Kendro said.

“The biggest skeptics we were seeing were the P3 people at the national level, the contractors, investors and design firms that may have bid on the Turnpike,” he said. “From the start, we tried to build credibility and prove that this is not a one-off proposal.”

According to Moskowitz, transparency early in the process is essential.

“You’ve got to communicate early and often with all the stakeholders. That doesn’t mean everyone has to be in agreement, but the worst thing for any P3 project is for there to be mistrust within a community,” he said.

“Before and during meetings with the government, you have to meet with the community repeatedly in order to avoid any accusation of bait and switch. In any PPP, you have some guiding principles and one of them is to have an aligned vision on what is the ultimate goal, and here the ultimate goal is the rehabilitation of these bridges.”

The project straddled the tenures of governors Corbett, a Republican, and Tom Wolf, a Democrat who unseated Corbett last November.

“I can’t praise both administrations enough,” said Kendro. “Gov. Corbett and [former DOT Secretary] Barry Schoch were very supportive, then the new administration came in after the signing and helped with the financial close. We didn’t miss a beat.”

Pennsylvania thus calmed a P3 market that quickly gets skittish about political risk, said Mayer Brown’s Schmidt, a former associate attorney general in the U.S. Department of Justice and former chief of staff for Chicago Mayor Richard M. Daley.

“This was a very well done deal that transcended a shift in gubernatorial administrations from one party to another,” said Schmidt.

In New York, Gov. Andrew Cuomo’s executive budget proposal to extend design-build authority could stall in the legislature. Such authorization expired last December. Design-build enables a contractor to submit a singular bid for both the design and construction of projects. Proponents cite cost and time savings, and innovation incentives.

“It’s going to be a challenge,” said Maria Doulis, director of New York City studies for the Citizens Budget Commission watchdog organization. “It’s a little discouraging because if it’s so tough to enact design-build, how will New York be able to catch up in this P3 environment?”

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