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Public Works Financing Exclusive: Rapid Bridges Financial Close a Game Changer.

The financial close of the $899-million Pennsylvania Rapid Bridge Replacement Project on March 18 is a game changer for the P3 market.

- It is the first big U.S. P3 deal to close since Florida's I-4 Ultimate six months ago.
- Rapid Bridges is the largest road project in Pennsylvania history. Yet the concession agreement survived untouched in the transition from conservative Republican Gov. Tom Corbett to liberal Democrat Gov. Tom Wolf.
- Developer Plenary Walsh Keystone Partners and its financial advisor, Plenary Group, arranged the largest Private Activity Bond financing of a P3 deal in U.S. history: $721.5 million in appropriation-risk debt, rated BBB, which drew 40 different investors. No TIFIA loan was sought by Pennsylvania Department of Transportation (PennDOT). $59 million of equity was contributed by Plenary Group (80%) and Walsh Investors (20%).
- It is the first bundling of publicly owned assets under a single, fixed-price construction program management contract. The agreement also shares permitting risk on 558 discrete projects between PennDOT and the Plenary-Walsh project company.

(This is the project's greatest risk, and greatest potential benefit. PennDOT negotiated a SEP-15 waiver from the Federal Highway Administration that allows it to delegate the NEPA documentation to the private program managers. If it works well, other states may pursue the same categorical exclusion from FHWA rules and this approach could become standard procedure. Key to its success is the extensive technical due diligence done by the joint venture to prepare its bid.)

"I think that one of the things that will make our project hugely successful or frankly cause a lot of consternation for the Plenary-Walsh team is how smoothly the permitting process goes," says Bryan Kendro, Director for the PennDOT Public-Private Partnership (P3) Office (until recently a one-man shop but now also run by Deputy Director Dale Witmer and supporting staff.)

- Rapid Bridges involved the first use of a UK-style performance bond, adapted for this project by Walsh Group, its surety, Travelers, and Standard & Poors (see below).
- The secret sauce: To gain the support of local labor and small contractors, all of the bridge rehabilitation work will be subcontracted, and long-term maintenance will be staffed locally—"to make the workforce in each community look like the people who live in that community," says Matthew Walsh, chairman of The Walsh Group of Chicago, Illinois.

Also, money to fund the Rapid Bridges project came from a large increase in annual highway funding to $2.5-billion, which was enacted just as the RFQ for the P3 project was being issued in December 2013.

That new money allowed PennDOT to increase design-bid-build lettings in 2014 from $1.5 billion to $2 billion.

"We passed a massive funding increase, so basically there was a lot of design-bid-build work going

out at the same time, so if you didn't like the P3 program, there was plenty of other work to bid on," says Kendro.

The leadership at PennDOT took a risk on Rapid Bridges in hopes that it would help energize local contractors to be more efficient. "I think we're envisioning that this is going to be kind of a shock to our local contracting community, just how fast they can actually build a bridge if they are incentivized to do so and when given the opportunity to be more innovative," says Kendro. "We think that [Rapid Bridges] is going to be proof that there are certain things that can be done differently with our bridge program, and we're going to do them differently."

Where Credit Is Due

Plenary Walsh Keystone Partners has contracted with joint venture Walsh Construction Company (60%) and Granite Construction Company (40%), with HDR, to permit and manage the design and replacement of 558 mostly small bridges by December 2017.

Major maintenance over 25 years will be performed by Walsh Infrastructure Management, LLC (an affiliate of The Walsh Group.)

Advising Plenary Walsh Keystone Partners are Fasken Martineau, of Toronto (legal); BTY Group (technical); InTech (insurance); and Plenary Group (financial).

Advising PennDOT are KPMG (financial and overall strategic advisor); URS (program management); CDM Smith/ Lochner (technical); Allen & Overy (transactional counsel); Ballard Spahr (bond counsel).

Bond underwriters are J.P. Morgan and Wells Fargo, advised by Ashurst LLP (legal).

An American Performance Bond

What Travelers' construction services calls an "Expedited Dispute Resolution Performance Bond" is described by S&P "as a new form of performance bond, which we view as providing liquidity equaling as much as 10% credit to the performance bond for contractor replacement.

"Although typically performance bonds have the potential for protracted arbitration, under the terms of this policy, the maximum number of days before resolution/payment is 82, and we thus provide credit for some project downside costs. In addition, the bond provider has documented its obligation under the performance bond as a financial obligation, such that its failure to pay could result in ratings consequences for the insurer."

In fact, the Rapid Bridges financing is the first time in the U.S. that a rating agency has recognized the value of a performance bond, according to Stan Halliday, chief underwriting officer for Travelers construction services group. Zurich American and Federal (Chubb) worked as co-sureties with Travelers.

Walsh has also proposed using the new performance bond to help secure its $408-million contract with WMB Heartland Partners (Meridiam/Walsh Investors/Balfour Beatty Capital) to build the Marion County Consolidated Justice project in Indianapolis. The fate of that social infrastructure P3 project will be determined in April.

As use of the new bond spreads, the hope is that letters of credit will no longer be required from contractors on P3 deals. If so, says Halliday, that would eliminate a competitive advantage now held by non-U.S. contractors who have broader access to LOCs. "This sets the stage for U.S. contractors

to have a greater role in P3s," he says. "It's a solution that works in North America."

The total security package provided by Walsh-Granite includes a $22.5 million letter of credit (2.5% of the construction value), and retainage of $22.5 million. The contractors also will provide a performance bond equal to about 100% of the contract price, in addition to parent guarantees with a liability cap of 40% under the design-build agreement.)

Public Works Financing is a monthly newsletter covering P3s in all infrastructure markets, since 1988. It is widely read and cited in the media, academic research, federal reports and congressional testimony.

NCPPP
By Editor April 24, 2015

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By William Reinhardt, PWF editor

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