



Oregon Department of Transportation



# ***Innovative Partnerships Workshop***

***July 20, 2005***





Oregon Department of Transportation



# STRUCTURE OF PPPs

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## Overview

- Previous Briefings /Background
- Where We Are Today
- Where This May Lead



# Previous Briefings /Background

- September 28, 2004: Public Private Partnerships Background And Lessons Learned
- January 20, 2005: Approval To Proceed With Formal Solicitation On Five Projects



# Two Phase Approach

- Pre-Development Phase
  - Initially Define Work Each Party Will Perform To Move Project To Feasibility
  - Allocate Costs Between ODOT And Developer
  - Carefully Address NEPA Issues



- Implementation Phase
  - If And When Project Proves Feasible, ODOT And Developer Will Negotiate Subsequent Agreement Covering Design, Construction, Operations, Maintenance And/Or Finance



- Approach Based On Project Characteristics And Sponsor Priorities
- Reflects Lessons Learned From Other States
  - Virginia DOT
  - Texas DOT
  - Georgia DOT
  - Caltrans
  - Washington DOT
  - South Carolina DOT



## Where We Are Today

- Ongoing Procurement Governed By RFP  
(To Be Discussed By Others)
- Presentation Does Not Modify Or Affect In  
Any Way Current Procurement



## Where This May Lead

- Every Project Is Delivered Through A Public-Private Partnership
- Continuum From Traditional Approach To Private Concession
- Ultimate Implementation Agreement(s) Will Be Based On Proposal and Subsequent Negotiations
- ODOT Does Not Favor One Likely Implementation Agreement Structure Over Another
- Up To Proposers To Make Their Case
  - Justified deviating from traditional approach
  - Reconcile competing goals



# Justify Deviation From Traditional Approach

- Accelerate Project Delivery
- Fix Costs / Schedule Early In Design Phase
- Effectively Involve Private Sector Early In Project Development Process
- Shift Risk And Reduce Claims
- Use Private Capital To Leverage Limited Traditional Government Funding



# Reconcile Conflicting Goals

- Maximize Project Scope v. Minimize Public Funding
- Maximize Construction Capital v. Minimize Tolls
- Maximize Income Through Longer Term (And Depreciation) v. Minimize Potential For Uncertainty
- Shift Development Risks v. Retaining Control Over Means And Methods
- Shift Revenue Risk v. Retain Revenue Potential



# Likely Implementation Agreement Structures

- Public Financing of DB/DBOM Contracts
  - TxDOT SH 130
  - WSDOT Tacoma Narrows Bridge
- Non-Profit Intermediary
  - VDOT Pocahontas Parkway
  - SCDOT Southern Connector
  - Las Vegas Monorail



- For-Profit Concession
  - Caltrans SR 91 (Pre-Acquisition)
  - Caltrans SR 125
  - VDOT Dulles Greenway
  - TxDOT SH 130 (5-6) (Under Negotiation)
  - TxDOT IH 635, IH 820/SH 183, SH 121 (Under Procurement)
- Chicago Skyway – A Different Beast
  - Long Term Lease Of Existing Asset
  - Not Used To Develop New Facilities



# Review Of For-Profit Concessions

- Concessions Will Be Reviewed Because They May Be Less Familiar Than Other Implementation Structures
- ODOT Has Not Expressed a Preference For Any Particular Methodology



# Key Concession Contractual Elements

- Developer Takes Over Responsibility
  - To Complete Development;
  - To Operate And Maintain Project
  - To Meet Or Exceed ODOT Standards
  - For Specified Maximum Term
- ODOT Retains
  - Ownership of Asset
  - Right To Inspect And To Assure Quality
  - Right To Terminate For Cause And Convenience



- Developer Provides Project Financing With Limited/No ODOT Financial Commitment
- Developer Entitled to Collect Project Revenues Subject To One Or More Limitations
  - Direct: Toll Rate Caps
  - Indirect: ROI / ROE Caps



- If Revenue Positive Project, Revenue Sharing And/Or Upfront Payment To ODOT
- If Revenue Negative Project, Payments To Developer To “Buy Project Down” Until Revenue Positive



- Developer Obligation To Add Capacity As Level Of Service Degrades Or Based On Other Measure/Time
- Extent (If Any) To Which ODOT Will Compensate Developer For Unanticipated Economic Effects On Project Revenues



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# FINANCIAL ASPECTS OF PPPs

Keith D. Curry  
Managing Director  
Public Financial Management





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**In the beginning there was  
gas tax-funded pay-as-you-go.**





## Reasons For The Evolution Of Innovative Finance In Transportation Project Delivery

- Gas Tax Does Not Keep Pace With Inflation
- New Legislation Allows Leveraging Of Federal Gas Tax
- Project Costs Have Escalated Faster Than Inflation
- Greater Acceptance Of Private Sector Project And Investment Capacity
- Improved Procurement And Project Management Efficiency
- Risk Mitigation





## State And Local Efforts In Innovative Finance

- California AB 680
- Washington, Arizona, Minnesota, Virginia, South Carolina
- Massachusetts
- Colorado
- Los Angeles / Pasadena Gold Line
- Alameda Corridor Transportation Authority
- Las Vegas Monorail





# Innovative Finance Techniques

- Limited State Appropriations
- Development Value Capture
- Toll/Revenue Finance
- TIFIA
- Concessions
- Corporate Credit Supports
- Subordinated Debt
- Infrastructure Banks





## Taxable vs. Tax-Exempt

- Public Agencies Have An Inherent Advantage In Access To Tax-Exempt Financing
- Tax-Exempt Rates Can Substantially Increase The Leveraging Capacity Of A Project Cash Flow
- IRS Management Contract Guidelines Have Dampened The Interest In Long-Term Concessions By Private Investors/Operators
- The Emergence of 63-20 Structures
- New Federal Legislation May Provide Some Relief To This Issue





## The Chicago Skyway And The New Paradigm

- Traditionally, Private Equity Demanded a 20% ROI
- In a Quest For Diversification, Private Equity Funds Are Seeking Public Infrastructure With 8% - 12% ROI Hurdle
- Investment Equity Has a Long-Term Horizon.
- Investors Include Major Pension Funds, Insurance Companies And Specialized Equity Funds
- Emergence Of International Highway Investors/ Operators





## Risk Management And Due Diligence

- Understand The Project Cash Flow As A Public Asset
- In a DBOM Approach, The Financial Health Of The Lead Firm Is Crucial
- The Ability To Obtain Performance Bonds And Ensure Liquidated Damages Must Be Assured
- Shell Corporations Are Often Used; Financial Commitments Must Run To The Parent
- Bond Holders, Rating Agencies And Insurers Will Demand Risk Mitigation
- PPP Does Not Mean Free Project Or Free Money
- Evaluate Corporate Credit Worthiness And Negotiate Control Of Bond Or Other Cash Assets





## **PFM's Role As Advisor To Oregon DOT**

- Nation's Largest And Top-Ranked Financial Advisory Firm
- Number One Transportation Financial Advisor
- Advisor To PPP Efforts In Colorado, Nevada, Massachusetts, Washington, Arizona, South Carolina and Minnesota
- Due Diligence Evaluation Of Over 40 Proposals, Negotiated 8 Project Development Agreements, Advised On Over \$1.5 Billion In Financings





- Due Diligence Evaluation Of Proposer's Financial Strength And Project Delivery Ability
- Advise On The Valuation Of Project Cash Flows, ROI, Risk Allocation, Sensitivity, Financing Viability And Market Reception Of Any Proposed Debt
- Assist In Negotiating Financial Terms And Conditions In The Development Agreement





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# OTC WORKSHOP EVALUATION AND APPROVAL PROCESS

Pamela Bailey Campbell,  
Vice-President  
Carter & Burgess, Inc.

**Carter**  **Burgess**



## **Carter & Burgess, Inc. Role As Advisor To Oregon DOT**

- Multi-Disciplinary Firm Specializing In Program Management And Strategic Advisory Services For Public-Private Partnerships, Toll Roads, HOT Lanes, Alternative Delivery Approaches
- Advisor To PPP Efforts Across The Country Including Oregon, Washington, Texas And Colorado
- Role For Oregon Is To Support The OIPP As Program Manager Including Overall Program Set-Up And Structure, Support Solicited And Unsolicited Proposal Procurement, Negotiation And Implementation



# Where We Are In Overall Procurement Process / Remaining Steps

- Completed To Date
  - Internal Project Screening Process In The Fall Of 2004 Identified About A Dozen Projects With Potential Financial, Technical And Environmental Feasibility To Be PPP.
  - ODOT Selected And OTC Approved In January 2005, Five Projects To Pursue, Including Three Highway Projects
  - ODOT Issued An RFP For Three Highway Projects On April 29, 2005
  - Proposal Preparation Phase Including Responding To Q&A, One-On-One Meetings
  - Proposals Due On August 29, 2005



## Next Steps

- Evaluations And Rankings For Each Project
  - OTC Approval Required To Proceed With Each Negotiation
- Negotiations For Each Project
  - OTC Approval Required For Award
- Award Of Pre-Development Agreement With Conditional Right Of First Negotiation To Proceed To Implementation Phase
- Various Opportunities To Terminate And/Or Lose Implementation Opportunity If The Specified Milestones Are Not Met



# Unique Aspects Of PPP Submission And Evaluation Process

- Conceptual Level
- Emphasis On Qualifications And Approach
- Three Projects – Each Separately Evaluated
- Value Determination



## Major Elements Of Proposal Submission

- Qualifications And Experience
- Project Approach
- Public Support
- Compensation



# Corresponding Evaluation Criteria

- Qualifications And Experience
  - Experience With Similar Infrastructure Projects
  - Demonstration Of Ability To Perform Work
  - Leadership Structure
  - Project Manager's Experience
  - Management Approach
  - Financial Condition
  - Participation Of Disadvantaged, Minority, Women And Emerging Small Businesses



- Project Approach
  - Project Understanding
  - Success Factors And Innovation
  - Proposed Project Schedule
  - Operation And Ownership
  - Role Of Governmental Entities
  - Tolling
  - Environmental Process
  - Financing



- Public Support
  - Community Support
  - Community Outreach Strategy
  - Issue Resolution
  - Context Sensitive And Sustainable Solutions
  - Environmental Process



- Compensation
  - Risk Sharing
  - Payment Amount
  - Payment Timing



## Evaluation Team And Roles

- Evaluation Panel
- Technical Review Team
- Technical Analysis Support



## Evaluation Process Overview

- Receive Proposals 8/29/05 – Review For Responsiveness
- Update Made To OTC At September Meeting
- Technical Analysis And Technical Review Team Evaluation
- Local Consultation Process
- Evaluation Panel Review And Interview Determination



- Interviews
  - Brief Presentation
  - Question Set For All Proposers
  - Questions Specific to Proposal
- Final Ranking And Value Determination
- Recommendation To Director
- Recommendation To OTC



- Decision By OTC On Proceeding To Development Agreement Negotiations
- As Approved, Negotiations With Selected Proposer For Each Project
- Approval By OTC Of Negotiated Agreement