

OREGON INNOVATIVE PARTNERSHIPS PROGRAM:

SELECTING THE FORM OF PPP AGREEMENT AND PROCUREMENT APPROACH

Decision Drivers

- Projects under consideration are not yet ready for hard bids
- Finance plans have not matured to point ODOT can pay for construction of the entire project
- Entitlement processes are not completed
- Nevertheless, ODOT's screening process has preliminarily identified projects with potential financial, technical and environmental feasibility
- ODOT is prepared to cost-share and assist in achieving feasibility

Issues

- Have projects progressed to point where private sector is willing to invest sweat equity and cost-share to help ODOT achieve feasibility?
- If so, under what agreement terms?
- How should competition be framed?
- If federal funds are potentially involved, how will OIPP address FHWA restrictions?
- Does Reauthorization offer OIPP potential new tools?

Workshop Purpose

- Lay out ODOT's current thinking about these issues
- Provide private sector open opportunity to comment
- Use input to finalize PPP approach that both is attractive to private sector and serves ODOT goals

Proposed PPP Agreement Form

- Use a two-phased approach to contracting
- Initially define work each party will perform to move project to feasibility
- Allocate costs between ODOT and developer
- Carefully address NEPA document preparation issues
- If and when project proves feasible, ODOT and developer to negotiate subsequent agreement covering design, construction, operation, maintenance and finance
- Nature of business relationship between the parties to be based upon initial proposal and parties' subsequent negotiations

Proposed Approach to Competition

- ODOT has considered three different procurement approaches
 - Unsolicited Proposals
 - Call for Projects
 - Project-specific RFPs
- While many projects are potentially suitable for OIPP, ODOT currently plans to screen number down to 2-3 projects with the best chance for political, financial, environmental and technical success and offer those projects competitively
- This limited number of projects would appear to favor project-specific individual RFPs issued sequentially (could overlap)

Proposed Approach to Competition (Cont.)

- Once selected as Solicited Project, ODOT may issue order suspending unsolicited proposals for the project
- For initial RFPs, evaluation criteria are planned to focus on qualifications to successfully deliver PPPs and demonstration of likelihood to deliver the project successfully according to best interests of taxpayers and traveling public
- Later, if and when more projects appear suitable for OIPP, there is potential for all three procurement approaches

FHWA Role

- If federal funds are involved, the proposed procurement and agreement will be subject to and not permitted by FHWA design-build rule
- FHWA recently established SEP-15, permitting waiver of certain FHWA requirements for PPPs
- Precedent in other states suggests favorable FHWA consideration of planned ODOT SEP-15 application

Reauthorization: Potential New Financing Flexibility

- Under current law, a finance plan must choose between tax-exempt debt and significant private equity/long term private management
- Senate bill would authorize up to \$15 billion of tax-exempt debt without such restrictions for
 - Highway facilities
 - Surface freight transfer facilities

Reauthorization: Potential New Financing Flexibility (cont.)

- If passed, ODOT is well positioned to obtain an allocation of this debt
- Would allow ODOT and developers of such facilities added flexibility in structuring finance plan, developer compensation and project management