



# COLORADO REAL ESTATE JOURNAL

THE COMMUNICATION CHANNEL OF THE COMMERCIAL REAL ESTATE COMMUNITY

NOVEMBER 16, 2011 – DECEMBER 1, 2011

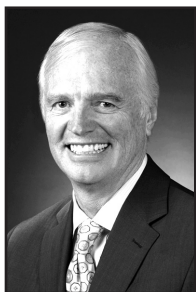
## P3s meet transportation needs

It is no secret that Colorado's budget crisis has immobilized transportation funding, as is the case nationally. The state's vast but unmet and unfunded transportation needs, including safe highway service and efficient rapid transit alternatives, far exceed its limited budget. The Colorado Department of Transportation has identified a long list of roads, highways and bridges that are in need of repair or construction. Yet, due to an acute lack of funds, the schedules for completion of those projects have been extended indefinitely. Traditional means of financing and constructing infrastructure improvements are simply not adequate to meet the demands of today's transportation needs.

The Boston Consulting Group calculates that, at best, governments will be able to pay only one-half of the bill for necessary infrastructure improvements as a result of mounting public debt and sluggish economic conditions. To fill this gap, many governments, including Colorado's, have turned to the private sector. Private companies can add both funding and efficiency to transportation projects. In turn, the opportunities for stable, secure investments should be attractive to the private sector.

In 2009, the Colorado Legislature passed the FASTER (Funding Advancements for Surface Transportation and Economic Recovery Act of 2009) legislation, now codified at C.R.S. § 43-4-801 et seq. Snell & Wilmer's Jim Mulligan was involved in the strategy for and drafting of this legislation. FASTER not only established a mechanism for funding the repair of Colorado's bridges and roads, but also established the Colorado High Performance Transportation Enterprise, a division of CDOT that will revolutionize the way that highway and other transportation projects are financed and constructed in Colorado.

The authority and mission of



**Daniel Frost**  
Partner, Snell &  
Wilmer, Denver

whereby private companies can team with the state to fund, design, construct, operate and maintain various infrastructure elements. This P3 method of private capitalization and a life-cycle project delivery system, it is hoped, will allow the state to activate projects that were otherwise indefinitely stalled due to funding concerns. It also will create longer-lasting, and efficiently designed and maintained improvements that will, in the meantime, create jobs and stimulate the economy. The P3 method of risk allocation between the public and private players will ensure a product that will meet or exceed the parties' goals.

The first HPTE project to be undertaken is the U.S. 36 Managed Lanes project. This project will enhance U.S. 36 by adding one managed lane in each direction for 18 miles from Interstate 25 to Boulder. This lane will be dedicated to high-occupancy vehicles, bus rapid transit and tolled single-occupancy use. It is anticipated that the contract for Phase 1 (I-25 to Interlocken) will be awarded in March, with construction commencing in April and expected completion in July 2015. Funding for Phase 1 comes from various sources, including, but not limited to, the Bridge Enterprise fund, CDOT federal and state grants, Regional Transportation Department sales tax revenues, and a TIGER grant from the Depart-

ment of Transportation. In July 2011, HPTE announced its short list of potential bidders for the project: Ames Construction/Granite Construction/HDR Engineering/Michael Baker Jr. Inc.; Kiewit Infrastructure Co./Concrete Express/Parsons Transportation Group; and SEMA Construction/Parsons Brinkerhoff/AECOM.

Other potential P3 opportunities that have been identified by the HPTE include the I-70 mountain corridor project, the C-470 corridor from I-25 to Kipling, and the I-70 east viaduct project.

Another principal advantage of the HPTE, as opposed to traditional CDOT methods of project delivery, is its authority to accept unsolicited proposals. That is, a private company now has the ability to submit a proposal to HPTE to finance, design, build, construct and operate a project that it deems viable without waiting for CDOT to find public funding and issue an RFP. HPTE has published guidelines for such proposals, including the considerations it will make when determining whether to go forward with the project. These considerations include the following: (a) resources available to the HPTE to enable it to evaluate the proposal; (b) the extent to which the unsolicited proposal offers benefits to the state; (c) the extent to which the unsolicited proposal presents a financing plan that "efficiently" uses state funding; (d) the extent to which the unsolicited proposal may shorten the timetable for a plan set out by CDOT or the HPTE; and (e) the extent to which HPTE and/or CDOT are already developing their own plans for the project.

One question that arises from this method of solicitation is whether the HPTE, after deciding to go forward with the project, must open the project up to a traditional public bidding process. The HPTE Project Proposal Guidelines state that upon receipt of an unsolicited proposal, HPTE may 1) seek com-

peting proposals for the project in accordance with its procedures for solicited proposals; 2) seek competing proposals in accordance with procedures that will "encourage competition, provide transparency and ensure nondiscriminatory treatment of potential bidders"; or 3) notify the proposer that it will not proceed with the proposed project. Assuming it decides to move forward with the project, the prime consideration will be how to honor the unsolicited proposal (thereby encouraging future unsolicited submissions) without violating the public bidding statutes.

A secondary consideration for the HPTE will be what portions of, and to what extent, unsolicited proposals must be released to the public pursuant to a Colorado Open Records Act request. May a competitor simply file the request, review the unsolicited proposal (including proprietary information) and submit a competing bid?

The first unsolicited proposal received by the HPTE for a major highway project was submitted by Parsons Corp. in August for the I-70 mountain corridor. Because Parsons has insisted that the details of its proposal are proprietary and confidential, little is known about the particular terms and conditions it has proposed. Nonetheless, the submission of the proposal represents a huge step forward for P3 projects in Colorado and could be the impetus CDOT needs to go forward with a solution to the I-70 traffic crisis. The extent to which HPTE is willing to go forward with the project, either with Parsons or with a competing proposal, remains to be seen. Stay tuned. For more information on the topic, read "Infrastructure development and related project finance players," which appeared in the July 9, 2011, issue of Colorado Real Estate Journal.▲