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MEMORANDUM

To: **Advanced Technology Task Force**

Date: **June 19, 2008**

From: **Claire Bozic**

Re: **Public Private Partnerships Summary**

Public Private Partnership: "Any contractual agreements between the public sector and a private entity that allow for private sector participation in the delivery of transportation projects." (FWHA's definition, see www.fhwa.dot.gov/ppp)

Types of Public-Private Partnerships: They range from the least degree of private sector responsibility and risk, the familiar fee-based contract services, to the highest degree of private sector responsibility and risk, asset sale.

In Illinois, enabling legislation has been proposed, but not enacted, allowing IDOT, ISTHA, RTA and its service boards to enter into public/private partnerships (SB0378, referred to the Rules Committee in December 2007).

Potential Benefits of Public-Private Partnerships

Attract Additional Resources and Capacity: Scarce public resources can be leveraged, expanding access to private capital markets and conserving limited public debt capacity, and gaining access to specialized expertise.

Accelerated Project Delivery: Project delivery steps can be consolidated, reducing the potential for additional claims and work order changes.

Reduced Costs and Increased Efficiency: Accelerated project delivery reduces the likelihood of cost increases because of inflation. Application of best practices from industry experts familiar with innovative approaches reduces costs. Application of "life cycle asset management" is encouraged to increase long-term savings from reduced frequency of reconstruction or replacement.

Transfer of Selected Risks to the Private Sector: Transfer project cost, schedule and quality risks to the private sector and potentially avoiding risks relating to corruption in procurement and performance reporting. Public sector retains risks associated with environmental clearance, permitting, and right-of-way.

Greater Access to Technology and Innovation: Prompt introduction of cost-effective technology to lower project delivery and operating costs, use of innovative technology to improve pricing and operating efficiency, access to specialized expertise and supporting technical tools.

Increased accountability for performance: Application of performance-based standards to all aspects of the project delivery and operation.

Public Concerns:

Public Sector Inexperience: Many forms of partnerships are new to the public sector in the United States. Consequently, most public agencies have not developed in-house expertise in developing and managing such agreements. Does the public sector have the experience required to protect the public interest.

Undervaluation of Projects: There is much uncertainty involved in estimating the value of transportation projects. How do we ensure that the public getting the best deal? What are the relationships between the companies assigning values to the projects and those involved in the partnerships, and how can we also ensure that the process is protected from the influence of political and personal aggrandizement.

Upfront Payments: Decision makers (i.e. politicians) may not use this funding wisely.

Perception that the Public Sector could also Attain this Profit: Statutes and lack of political will often prevent the public sector from extracting more benefit from public infrastructure, this could be changed.

National Security: Various entities will control infrastructure underpinning American society.

Public Benefit vs. Private Benefit: Private entities are not focused on the "public good," they are focused on ensuring that the particular investment is profitable.

Secrecy and Lack of Public Input: When infrastructure is turned over to private entities, the public's ability to participate in how the infrastructure is managed may be limited. In addition, information on the contracting process and contract terms becomes secret.

Concerns related to Contract Terms

Pricing Policy – Will generating a profit will be the only factor considered when setting rates. Contracts may specify a pricing structure, but this may be very generous.

Allocation of Revenues, Profit Sharing and Windfall Revenues: When situations arise that make the project even more profitable than expected, the public has lost some benefit. Some contracts include profit sharing clauses.

Length of the Contract: Most of the PPP information to date seems to focus on large items of infrastructure. Other countries typically have an agreement for 30-40 years. The Skyway is 99 years, and the Indiana Toll Road is 75 years.

Extent of Noncompete Clauses: These clauses can limit the public sector's ability to make other improvements and contribute to the perception that the private sector is being sold a monopoly.

Default or Renegotiation: It can be very costly if the private sector defaults on its loans, agreements with the public sector, or goes bankrupt. If the project environment changes, it can be costly to renegotiate a project to meet new needs.

Operating and Maintenance Requirements and Environmental Standards

Creation of a Fragmented System: A fragmented system may not work together as a whole.

Labor Issues: The possibility of replacing public sector workers with private sector workers is controversial.

Eminent Domain – Concerns over the use of eminent domain powers to benefit private investors and whether those powers are transferred to the private sector under a long –term concession agreement to build or expand a facility.

Applicability to ITS Projects

Most of the projects currently discussed as public-private partnership arrangements are bridges, tunnels, tollways, expressways and railway links. These facilities are similar to ITS projects in that they are only one component of a linked regional system. Unlike ITS projects, the technology or materials used to construct or maintain the facility do not affect the facility's functionality or interaction with other parts of the system. For ITS projects, the technology used to build the facility can have a definite impact on its interaction with the rest of the system. Also, it seems that while traditional PPP projects are capital intensive, ITS projects may not require the initial capital outlay but are "change intensive" because the technology can be expected to evolve and be replaced quickly over time.

Cooperation and coordination are required of ITS projects, whose relationships are defined in the regional ITS architecture. The regional architecture provides a framework for effective ITS investments, regardless of fund source, which should be maintained within a PPP based project. The primary purpose of the architecture is to insure compatibility, interoperability, and integration of ITS projects to create a regional system.

The regional architecture and the MPO process (starting with the ATTF) provides the forum for the coordination of ITS investments and regional integration.

How must the process be adapted to consider the competitive nature of some PPP and the desire for confidentiality while maintaining the objective of regional integration and transparency of the planning and implementation process?

PPP are likely to increase in future and to become a more important component of the regional systems. How can the region build on the regional architecture to enhance the spirit of cooperation and coordination as the foundation for building and operating ITS technologies?

Sources:

FHWA Public Private Partnership Website http://www.fhwa.dot.gov/ppp/

USDOT FHWA User Guidebook on Implementing Public-Private Partnerships for Transportation Infrastructure Projects in the United States. Prepared for the United States Office of Policy and Governmental Affairs by AECOM Consult Team (July 7, 2007)

Protecting the Public Interest: The Role of Long-Term Concession Agreements for Providing Transportation Infrastructure. Research Paper 07-02 by Jeffrey N. Buxbaum, Iris N. Ortiz, Cambridge Systematics (June 2007)