The uncertainty in US P3s

Sakshi Sharma

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The future of Maryland’s Purple Line light rail transit (LRT) PPP remains uncertain, following news that construction on key elements of the much-awaited project is suspended.

The suspension of construction came on the back of recent court litigation surrounding environmental issues and reassessment of ridership figures for the planned 26km light rail transit line, which have already caused extensive and expensive delays for the $2.5 billion project.

This is not the first time state and county politics have threatened the future of an infrastructure project in the US when it is at an advanced stage of procurement. In 2015, a Meridiam-led consortium was disappointed when a county council vote cancelled the Indiana courthouse PPP, just days before its scheduled financial close.

The Trump administration has emphasised its support for infrastructure development, through headline figures such as a $1 trillion investment plan and a stated push to rebuild the country's infrastructure by partnering with the private sector and "getting government out of the way." However so far most project procurement in the US still takes place at the local and municipal level, which inevitably involves more layers of governance and bureaucracy.

The Purple Line saga

Once built, the new Purple Line LRT would be a 25.7km line with 21 stations that extend from Bethesda in Montgomery County to New Carrollton in Prince George’s County, Maryland. The line would connect to other regional commuter rail lines and the Amtrak’s key Northeast Corridor, but it might be a distant reality now.

The project is the first such for the state of Maryland and only the second ever transit PPP to reach financial close in the US, following on from Denver's $1.6 billion Eagle LRT project closed in 2010.

The Purple Line Transit Partners consortium, led by Meridiam (70%) with Star America (15%) and Fluor (15%), reached financial close on the project in July 2016. But troubles then began cropping up within a few months, as the project became embroiled in legal proceedings regarding its Environmental Impact Statement (EIS). More recently state judge, Richard J. Leon, told the state's transit agencies to study the proposed ridership forecasts.

The project, initially viewed as ambitious, had been launched to the market in 2013 under the governorship of Martin O'Malley. His successor Larry Hogan, who assumed office in January 2015, put the project under review but finally approved it in June that year - albeit reduced in scale. The project had since won most state and local approvals, however no major construction works have taken place since close.

At the end of May 2017, the Office of the Maryland Attorney General filed a notice of appeal regarding Judge Leon’s decision to order further study of the project’s contested ridership estimates. But a timeline for an appeal is not defined. For now Maryland Department of Transportation (MDOT) Secretary Pete K. Rahn has ordered steps outlining works suspension. All parties are directed to limit the obligation of further costs for the Purple Line project to those of agreed necessity. Further steps should be anticipated as more information is available, Rahn said.

"We will only know more once all parties put an end to the litigation followed by negotiations between the state and concessionaire with respect to the impact on cost and time," explains Scott Zuchorski, a senior director at Fitch Ratings in New York.

The project was financed using a combination of debt comprising private activity bonds (PABs), a loan under the Transportation Infrastructure Finance and Innovation Act (TIFIA) and sponsor equity. The PABs were the first 'green bonds' to be used for a transit PPP in the US. Zuchorski says in the event of total termination, bond holders would be able to exercise protection. "Bond holders remain protected if any sort of termination happens as a result of non-performance by the state. They will be paid back in full," he adds.

While all this is bound to have a huge impact on the project's timetable and final completion, Zuchorski says the ratings agency is not anticipating any negative rating actions or downgrades in the near term. The bonds suffered a slight downgrade in May 2017 when DBRS downgraded the PABs series a notch to BBB (high) from A (low). The trend was noted to remain stable.

Fluor and Meridiam declined to comment on the project for sensitivity reasons, when contacted by *IJGlobal.* Orrick did not respond in time for publication.

Coming pipeline

Zuchorski says there isn't a huge concern for P3s overall as such, since this is a local issue. "The hope is for an expedited review of the issues." The project risks losing its overall federal funding if the issues related to the Record of Decision are not resolved as federal funding can’t be committed without it. Zuchorski says if delays continue and get pushed to 2018, it could get "problematic."

According to the *IJGlobal* database, there are approximately 55 projects at various bidding and pre-financing stages. Although there are not many transit projects in that list, there are significant infrastructure transactions in bidding phases, of which several are procured at the local level.

Larger projects that are due to close in 2017 include Virginia's I-66 and Colorado’s I-70. I-70 has already suffered delays while in the bidding phase, due to environmental and record of decision hurdles.

An environmentally efficient project which can garner positive support from its local governments is key for success in the long-run. But cancellation of a project at an advanced stage of development is only a step backward for the US, which has some daunting infrastructure renewal needs within the next decade.