

US INFRASTRUCTURE OPPORTUNITIES: THE PURSUIT OF LOCAL KNOW HOW - GREENBERG TRAURIG

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The Federal government may be encouraging the development of infrastructure projects but it is the states and regional and local authorities that wield the real power

Despite the ambitious scale of the \$787bn (€579bn) US Stimulus Plan and emphasis given to infrastructure projects, there is no pan-US or even regional master plan, says Patricia Menéndez-Cambó, Chair of the Global Practice Group at national US firm Greenberg Traurig.



'The management of projects is largely the domain of individual states. However, the Federal government provides at least partial support for many projects. The Federal Highway Administration, for example, an agency of the US Department of Transportation (USDOT), recently issued a white paper on how states can best implement P3 (Public Private Partnerships) toll road infrastructure projects.'

For example, the US Department of Transportation (USDOT) has made \$15bn of private activity bond (PAB) allocation to permit federally tax-exempt financing of certain surface transport projects and intermodal freight facilities, and offers subordinated loans and other forms of credit support under the Transportation Infrastructure Finance and Innovation Act 1998 (TIFIA) program.

A notable exception to the absence of a pan-US infrastructure plan, Menéndez- Cambó suggests, may be high speed rail. President Obama unveiled a strategic plan for ten high speed rail corridors: California, Pacific Northwest, South Central, Gulf Coast, Chicago Hub, Florida, Southeast, Keystone, Empire and Northern New England, and the American Recovery and Investment Act 2009 (ARRA) includes \$8bn in federal stimulus funds for these and potentially other high speed projects.

New greenfield infrastructure projects predominantly fall under the remit of the states, regional metropolitan planning organisations, or individual cities or counties.

'Efforts to privatise existing transportation projects seem driven more by a need to balance budgets in the face of large revenue shortfalls, for example the Pennsylvania Turnpike, Midway Airport, Chicago Parking Meters, Illinois Skyway, or Florida's Alligator Alley, than by any overall plan to develop transportation resources.'

Among the Iberian companies now active in the US, are Abertis, Cintra, FCC, ACS Dragados, OHL, Brisa and Acciona, while others such as Global Vía are now entering the market. The geographic location of a project will be a primary determinant as to whether it can be developed as a P3, notes fellow partner Yosbel Ibarra.

'While the number of states that have significant statutory authority to engage in P3 projects is on the rise, currently only around 22 have enacted specific legislation. In some states, for example Texas, Virginia and Florida, the statutory authority is quite conducive. In others, the legislation is more restrictive.'

Even within those states with the relevant authority, the eligibility of a particular project for some form of public financing may still depend on whether the legislation extends to the local jurisdiction undertaking it. In Florida, for example, projects are utilising three different revenue models, availability payments, tolls or user fees, and multiyear appropriations.

'Florida Department of Transportation's use of multiyear appropriations, embodied in what it refers to as a 'design/build/finance model' , has enabled it to advance the completion of projects by requiring the constructor to provide interim financing, which is then repaid in stages as the Legislature appropriates programmed funds,' says Ibarra.

Therefore, alongside environmental and tax issues, the finance and business models for projects often will depend on the nuances of each state's P3 laws.

'Some states require a revenue sharing mechanism, whereby the private party has to share its revenue once certain metrics have been achieved. In addition, each has its own legislative and executive approval process, which can affect a project's political risk and, accordingly, the ability of the private party to obtain financing.'

While both believe that the Obama administration wants to implement a nationwide strategy, in the end the detail of project implementation will inevitably be left to the local governments. The Federal government's key role is therefore to provide guidelines and instructions so that P3 and other infrastructure projects can be put out to tender in a consistent manner, streamlining the bidding process and attracting a larger number of bids.

'The biggest challenge, particularly for P3 projects, is to convince state legislatures that such financing structures are viable and provide a benefit to local governments. Some public relations work also may be necessary to convince the public that P3 is a positive public financing tool and not just a myopic reaction to current budget crises,' says Menéndez-Cambó.