STATE OF NORTH CAROLINA
TURNPIKE AUTHORITY

BEVERLY E. PERDUE
GOVERNOR

1578 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1578

DAVID W. JOYNER
EXECUTIVE DIRECTOR

BOARD OF DIRECTORS MEETING MINUTES

Wednesday, March 18, 2009
Board Room, NCTA Offices

Members present:	Gene Conti, Chairman
	Perry Safran
	Robb Teer
Members present via phone:	David Redwine
	Lanny Wilson
	Anthony Fox
Members absent:	Sang Hamilton
	Bob Spencer
	Bill Lackey
Also present:	David Joyner, Executive Director

Secretary Gene Conti called the meeting to order at 11:06am. Secretary Conti declared that there was a quorum present and read the state ethics act statement.

Perry Safran moved approval of the February 2009 minutes. Robb Teer seconded the motion and the minutes were approved unanimously.

Update on Triangle Expressway Financing: David Joyner gave an update on the Triangle Expressway financing. He discussed Plan C which was introduced at the February Board meeting and stated that it seems to be viable. He discussed that the new plan of finance would have a coverage ratio of 2.48. The new plan of finance was sent to the rating agencies, Assured Guaranty, TIFIA and the Local Government Commission. Mr. Joyner stated that he expects to obtain a formal rating sometime within the next couple of weeks. He also discussed that there has been encouraging news for the rating on the TIFIA loan.

Perry Safran asked what the coverage is on the Senior debt. Mr. Joyner stated that the Appropriation bonds have a 1.1 coverage ratio. Grady Rankin discussed all approvals for the April Board meeting and noted that a book of documents for review will be sent out next week.

Mid-Currituck Bridge Pre-Development Agreement: David Joyner discussed the Mid-Currituck Bridge Pre-Development Agreement (PDA). He stated that this is the realization of over one year's work. He thanked all that have been involved in the work on the Pre-Development Agreement. Mr. Joyner also discussed an article regarding I595 in Florida. (See attached article.)

Steve DeWitt gave a summary of the PDA. Mr. Dewitt discussed the fee schedule explaining the process of Phase 1A and Phase 1B. He stated that each category has a scope that explains each in further detail. Mr. DeWitt discussed that this will be a lump sum contract and will be paid on each milestone.

Perry Safran asked that the definition of suspension be added to the document. Mr. DeWitt stated that if the NCTA had to suspend, we would be liable for demobilization and remobilization costs. Perry suggested that there be an appendix added to further explain any suspension. Karen Hedlund stated that if it happened in Phase 1b, the contractor is completely responsible for cost if we suspend for convenience then we would pay them for work; if for convenience we would incur some additional costs. Secretary Gene Conti suggested that Perry Safran work with NCTA to fine tune the agreement.

Perry Safran requested to see a list of subcontractors to be sure of any conflicts of interest. Mr. DeWitt provided a list of subcontractors. (See attached list.) Secretary Gene Conti went on the record to note that Eco Science is now part of PBS&J, his former employer.

Karen Hedlund, Nossaman, discussed the changes in the draft PDA that was initially sent to the Board for review last week.

Action item: Mr. Teer made the following motion:

- I move to recommend Board approval of the Resolution to approve a Pre-Development Agreement for the proposed Mid-Currituck Bridge project between the North Carolina Turnpike Authority and Currituck Development Group, LLC. Perry Safran and Anthony Fox recused themselves from the vote due to possible conflicts. The motion was seconded by Lanny Wilson, and it was approved unanimously.

NCTA-NCDOT Construction Completion Assurance and Renewal and Replacement Funding Agreement: David Joyner discussed the NCTA and NCDOT resolution. This agreement is in reference to NCDOT's offer to assist in the effort to improve the credit worthiness of the Triangle Expressway project. Mr. Joyner stated that this is in place to replenish any shortfall.

Action Item: Mr. Safran made the following motion:

- I move to recommend Board approval of the Resolution of the North Carolina Turnpike Authority Board authorizing the Executive Director to enter into a Construction Completion Assurance and Renewal and Replacement Funding Agreement with the North Carolina Department of Transportation. The motion was seconded by Robb Teer, and it was approved unanimously.

Secretary Conti thanked Tom Lee for his hard work

The meeting was adjourned at 11:59 am.

Minutes prepared by Jillian Bliss.

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PUBLIC WORKS FINANCING™

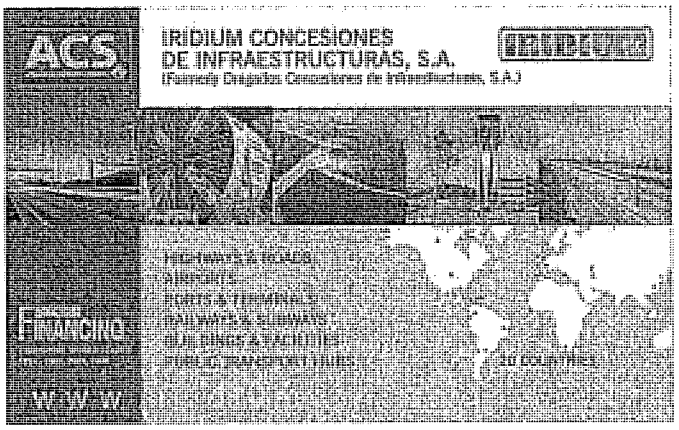
ACS Finances Florida I-595 Availability-Pay Project

Against all odds, ACS-Iridium closed the interest rate swap on $780 million in loans from a 12-bank club at 10 am on March 3 to complete the $1.656-billion financing for Florida DOT's I-595 managed lanes project in Broward County.

The $1.2-billion design-build project is Florida's first P3, the largest construction project in the state, and the country's first availability-payment transportation project. In these agreements, traffic risk remains with the state; developer payments are made by the state as in a guaranteed off-take contract in which the public agrees to buy the incremental service specified for the new infrastructure if, and only to the extent that, the service is actually provided (PWF 1/07, p. 12).

"I commend our FDOT team for making the project a reality in record time," said FDOT Secretary Stephanie Koupelousos. "This is a landmark project for three reasons: it produces jobs, provides relief to our motorists on an accelerated timetable, and promotes innovative contracting solutions."

The project consists of the reconstruction, addition of auxiliary lanes and resurfacing of the I-595 mainline (including associated improvements to adjacent cross-roads, frontage roads and ramps) along a 10.5-mile urban corridor. Three new express lanes will be added in the median and operated as managed lanes with variable tolls to optimize traffic flow. The lanes will reverse directions at peak travel times.



Key to the financial close was a $678-million (including $75 million in capitalized interest), 35-year TIFIA loan at favorable terms. ACS Infrastructure Development (ACSID), advised by Macquarie Bank, bid the project last September assuming it could issue $826 million in Private Activity Bonds. The collapse of the bond market forced it to restructure soon afterwards using a bank club. After defections and additions, a total of 12 banks plus TIFIA participated in the final deal. The TIFIA loans at the federal borrowing rate of 3.6% kept the borrowing cost within the bid budget. ACS equity is 12% of the financing at an IRR of 11.5%.

Members of the bank club are Santander, Calyon New York Branch, La Caixa, Société Générale, Dexia Credit Local, New York Branch, Caja Madrid, National Australia Bank Limited, Banco Popular Español, BBVA, Banco de Sabadell, WestLB, and Caixa Nova.

Jeffrey Parker & Associates and Nossaman LLP advised FDOT, and Taylor DeJongh advised US DOT on the TIFIA loan.

In addition to Macquarie, which had been part of ACSID's bid as an equity partner, the development team includes: builder Dragados USA; designer Earth Tech Aecom; concessionaire's legal counsel Dewey & Lebouf; lender's legal counsel Simpson Thacher; local counsel Hunton & Williams; lender technical advisor Scott Wilson; insurance advisor Allied; lenders insurance advisor Marsh; and O & M advisor, Roy Jorgensen Associates Inc. ■

First Availability-Pay Road Project a P3 Template

by Jeff Parker, President, Jeffrey Parker & Associates

The financial close of I-595 is the result of: close coordination between the Florida Department of Transportation (FDOT) and ACS; flexibility in the face of volatility and disruption in the capital markets; a clear focus on getting the deal done within the bid validity period; and a strong and dedicated concessionaire willing to leverage its corporate relationships, invest additional equity, and assume significant financing risks.

Over $600 million of TIFIA credit was the decisive factor in maintaining affordability. A comprehensive interest rate risk-sharing mechanism was built into the Request for Proposals. It contemplated movement in credit spreads as well as benchmark rates, and granted broad flexibility for FDOT to modify the financial plan in response to market conditions in return for accepting risk. This allowed the parties to respond rapidly to financial market changes. Perhaps most significantly, the role of FDOT's lead staff—Gerry O'Reilly and Joseph Borello—from the inception of the I-595 program provided the foundation for a successful outcome.

Within weeks of selecting the winning bid on October 24, FDOT began questioning the capacity of the financial markets to absorb the $900 million of Private Activity Bonds (subject to the Alternative Minimum Tax) that were assumed in the bid's financial plan. By mid-December the parties reached agreement on a complete restructuring of the transaction, switching from bonds to bank debt (maximum 10 years).

ACS and its legal and financial advisors did an extraordinary job of organizing the bank club, revising the financial model and modifying the documentation to effect this change—this was incredibly hard work and a virtuoso performance. Nossaman's team, led by Patrick Harder, anticipated key issues and supported FDOT Chief Counsel Alexis Yarborough and Clay McGonagill of her staff so that key decisions could be made efficiently by FDOT management. Similarly, as financial advisors, Jeffrey Parker & Associates provided direct support to District staff as well as to the headquarters financial management team—Leon Corbett, Gary Drzewiecki, Marsha Johnson and William Thorp who handled the decision-making and oversaw coordination with USDOT's TIFIA team.

Critical to the success of this process was the effort to keep the project's price (reflected as the maximum availability annual payment amount) within FDOT's affordability range while still absorbing interest rate risk—this requirement could not have been met without TIFIA's capacity to lend at U.S. government interest rates on a long-term basis. Falling TIFIA rates reduced the costs of the TIFIA portion of the debt, and TIFIA program flexibility allowed the tenor of the senior debt to be shortened, facilitating the bank solution. The TIFIA team's ability to keep pace with rapidly morphing events, arising from discussions among the bank club, and its dedication to working through difficult issues were critical success factors in this "miracle" closing.

From a policy perspective, I-595 brings multiple new dimensions to the P3 conversation in the U.S. and realizes many long-sought transportation goals in Florida and at the federal level:

- It is the first availability payment transaction in the U.S.
- The private sector is assuming cost and schedule risk for completion; no public money will be paid to the concessionaire until the project is complete. The private sector also is assuming the risks associated with future operations, maintenance and resurfacing for over $1 billion in public infrastructure during a 35-year concession.
- Congestion-priced, reversible HOT lanes are being constructed on an existing interstate facility with the objective of maximizing throughput rather than revenue yield.
- The entire interstate tolling debate, typically intertwined with P3s, was avoided because FDOT will set the rates and retain all of the revenues, with Florida's Turnpike Enterprise handling electronic toll collections—there is no private sector "upside" or downside from tolls and no private benefit from congestion.
- A majority of the construction investment is going to needed improvements to the free, general-purpose lanes adjacent to the HOT lanes.

- Strong, competitive bidding for a "shovel ready" project yielded a winning price of that was approximately $275 million (in net present value terms) under FDOT's construction, maintenance and finance estimates.

- A comprehensive approach to construction and design for a 10.5-mile corridor is yielding efficiencies, cost savings and reduced maintenance-of-traffic impacts compared to the conventional approach of issuing numerous contracts over more than 20 years.

- FDOT is sponsoring new Bus Rapid Transit services utilizing the HOT Lanes.

None of these outcomes would have been possible without the solid project development, planning and financial priority-setting conducted by FDOT. P3s are not just financial and legal undertakings. The department's in-house technical staff at District 4 and Reynolds Smith & Hills, its technical consultant, performed years of rigorous planning studies that preceded the launch of the P3 process.

Unlike many P3 projects that are brought to market with significant funding "gaps," limited right-of-way and environmental work in hand, and political consensus-building still in progress, FDOT had all of its homework done on I-595. The project was a top priority for the community, as well as for Gov. Charlie Crist, FDOT Secretary Stephanie Kopelousos, District Secretary James Wolfe, and local elected officials—they kept the pressure on the project team to get the deal done quickly, in the public interest, and to keep it affordable.

Despite the challenges, the financial close of I-595 in these turbulent times underscores the benefit of implementing P3 transactions in the U.S. market, utilizing the institutional structure of a well-run, line governmental agency. ■

Credit Spread Protection for Availability-Pay Projects

Uniquely, movements in the credit spread on the I-595 debt were shared between ACS Infrastructure Development (ACSID) and Florida DOT to cover the tumultuous period between the bid last September and the financial and commercial close on Mar. 3.

The risk-sharing mechanism developed for the project covered the collective movement (upwards or downwards) of the following items in the final financial model:

- the credit spread, which was initially set at 300 basis points;

- the loan establishment fee, set at 300 basis points; and

- the LIBOR swap margin, set at 30 basis points.

FDOT had the unilateral right to decide whether the credit spread assumptions in the initial bid (the basis for indexing) were reasonable.

According to Tuyen Mai, a director at Jeffrey Parker & Associates, who served as the firm's lead staff member on the project, the credit spread protection applied to both upward/downward movements, by way of a simultaneous increase/decrease to the MAP (Maximum Availability Payment) and a reduction/rise in the equity IRR.

The movements were shared by FDOT and ACSID at the rate of 75% to FDOT and 25% to ACSID, up to a $2.5-million MAP adjustment. The adjustment was made at the concurrent commercial and financial close on Mar. 3.

If upward movement exceeded $2.5 million, and FDOT elected to proceed with the project, then the excess movement would have been shared at the same 75%/25% ratio described above.

If downward movement exceeded $2.5 million, then FDOT would have been entitled to 100% of the benefit of the excess downward movement.

ACSID, which was forced to quickly shift from a Private Activity Bond structure to a bank group at the end of 2008, has relied on this risk-sharing mechanism throughout the financing structuring process. Initially crafted during the RFP stage, this protocol has been a key factor in delivering a successful financial close, says Mai. ■

Currituck Development Group

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