



**RESPONSE TO REQUEST FOR INFORMATION FOR THE
I-495/I-95 (CAPITAL BELTWAY)
CONGESTION RELIEF IMPROVEMENTS
FROM THE AMERICAN LEGION BRIDGE TO THE WOODROW WILSON BRIDGE
I-270 CONGESTION RELIEF IMPROVEMENTS
FROM I-495 TO I-70**



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Notice

The information and any analyses contained in this response to the Request for Information (“RFI”) are taken from, or based upon, information contained in the RFI for the delivery of the I-495/I-95 (Capital Beltway) Congestion Relief Improvements from the American Legion Bridge to the Woodrow Wilson Bridge (“I-495/I-95”) and the I-270 Congestion Relief Improvements from I-495 to I-60 (“I-270”) (collectively, the “Project”) or otherwise received from Maryland Department of Transportation (“MDOT”) or from publicly available sources. Neither ACS Infrastructure Development, Inc. (“ACS”) nor Dragados USA, Inc. (“Dragados”) (ACS and Dragados together, the “Respondents”) have independently verified or investigated the completeness or accuracy of any such information, unless otherwise explicitly stated herein. The information and any analyses in these materials reflect prevailing conditions and our views as of the date hereof, all of which are subject to change. Should the Respondents participate in subsequent stages of the procurement process of the Project, further investigations and due diligence analyses will be required in order to more precisely define the overall approach to the Project. Additionally, the information contained herein, in particular, our ability to finance the Project, assumes a standard allocation of risk reflective of recent market precedents (including, without limitation, customary provisions regarding appropriations and funding, environmental permitting, geotechnical risks, right of way acquisition, maintenance, etc.).

A) *General*

- 1) *Please describe your firm, its experience in relation to P3 projects, and its potential interest in relation to these potential congestion relief improvements.*

ACS Infrastructure Development, Inc. (ACS) and Dragados USA, Inc. (Dragados) bring unparalleled experience and capacity in transportation P3 projects. ACS and Dragados, themselves and through their affiliates, partner on all P3 pursuits in North America and have been awarded 14 complex transportation P3 projects across the U.S. and Canada since 2006, representing a combined investment value of over \$16 billion. Of these 14 projects, six have been completed so far and are in operations. ACS, who was ranked again in 2017 as #1 in the World's Largest Transportation Developers in Public Works Financing, leads the development, financing, and long-term operations and maintenance efforts on each of these projects, and Dragados brings significant P3 and design-build leadership on our pursuits.

ACS and Dragados are part of the ACS Group, one of the largest P3 developers and infrastructure contractors in the world, ranked the #1 Top International Contractor on ENR in 2017 and 2016, having reached financial close on over 90 P3 projects worldwide. Through our significant involvement and success in the North American infrastructure market and leveraging global experience on complex transportation projects, ACS and Dragados provide the requisite experience necessary to find innovative and pragmatic solutions for the successful planning, structuring and implementation of large and complex infrastructure projects, including highways, bridges, tunnels and rail. Notably, ACS and Dragados were successfully awarded the \$1.07 billion SH 288 Toll Lanes Project in Texas toll risk P3, which provides congestion relief along a 10.3-mile corridor with 150,000-180,000 AADT.

Globally, Dragados has built over 5,300 miles of highways, 3,100 miles of roads, 1,500 bridges, 810 miles of tunnels, 130 dams, 523 miles of railways, a large number of mass transit projects including numerous rail facilities and airports. In North America, Dragados has continued to successfully pursue large, complex transportation projects and is currently ranked No. 6 on the 2017 ENR Top Transportation Contractors. Major projects completed to date by Dragados include the \$1.2 billion East Side Access in New York, New York and the \$1.2 billion I-595 Corridor Roadway Improvements P3 project with ACS in Broward County, Florida. Design-build projects currently under construction include the \$1.4 billion second section of the California High Speed Rail in Central Valley, California; the \$855 million Harbor Bridge, DBOM in Corpus Christi, Texas, where ACS will serve as the long-term operator; the \$1.7 billion SR99 Alaskan Way Viaduct (bored tunnel) in Seattle, Washington; or the \$756 million Parallel Thimble Shoal Tunnel in the Chesapeake Bay, Virginia.

We are very interested in the potential congestion relief improvements contemplated by Maryland Department of Transportation ("MDOT") and are pleased to leverage our development, financing, construction, and operations and maintenance experience on projects similar in scale and complexity to the I-495/I-95 (Capital Beltway) Congestion Relief Improvements from the American Legion Bridge to the Woodrow Wilson Bridge ("I-495/I-95") and the I-270 Congestion Relief Improvements from I-495 to I-60 ("I-270") (collectively, the "Project") to partner with MDOT to structure and ultimately pursue a successful Project.

2) *What would be the benefits and risks to MDOT entering a P3 agreement for congestion relief improvements? What risks do you believe would best be retained by MDOT and what risks would be best transferred to the private sector? Please explain your reasoning.*

Based on our experience in developing similar projects through a P3 structure, we see several key benefits to MDOT entering a P3 agreement for the Project. These include, but are not limited to:

- A well-structured P3 agreement can ensure the most efficient allocation of risks and responsibilities to the parties in the best position to manage such risks, resulting in the overall best-value solution for the Project. The developer is responsible for managing project risks often allocated to the public sector, including, in particular, those related to long-term performance under a P3 delivery approach. Note, we have highlighted some specific benefits and challenges in responses below and included broader feedback on allocation of risks as well (in the table).
- Delivering these critical improvements to the I-495/I-95 and I-270 corridors potentially years earlier than would be possible using a traditional procurement in light of funding constraints.
- Leveraging the benefits of a long-term partner that through integration of the design, construction, finance, and long-term operations and maintenance aspects of the Project will inherently lead to an optimized whole lifecycle solution for the Project. ACS is an expert in providing long-term operations and maintenance on P3 projects using an adaptive strategy to best meet the needs of the project, including self-performance of operations and maintenance through the developer, or forming a separate operating company to perform this scope.
- Encouraging thoughtful and innovative solutions that provide the private sector opportunities to optimize the configuration of the corridor and maximize toll revenues (within the requirements set forth by MDOT). As an example of this benefits, ACS and Dragados leveraged their combined technical and financial expertise on the SH 288 Toll Lanes Project in Texas to develop an Alternative Technical Concept (ATC) that enhanced the solution for the project, increasing access to the managed lanes and generating additional toll revenue that resulted in an unanticipated \$25+ million upfront concession payment to Texas DOT.

As with any properly structured P3 project, it is critical for the owner and the private sector to work together to identify, quantify and ultimately allocate the risks for each individual project in a way that provides the best value for the Project. Based on our understanding of the Project and experience working on similar P3s, we note the following key risks:

- *Insufficiency of toll revenues to support the Project:* As a potential toll revenue concession it is possible that toll revenues will not cover capital and other costs over the term. Throughout this response we discuss certain mitigations to this risk that MDOT may consider.
- *Public Policy considerations relating to toll policy:* Congestion relief strategies rely primarily on market-driven behavior. Thus, the toll rates and toll increases cannot be artificially constrained or the corridor will not benefit from optimally priced managed lanes.

As for general project risks, the following matrix describes, in a simplistic manner, our recommendations for allocation of these risks based on experience and current market trends for P3 contracts (in following our recommendation above to pursue the project as a P3). These basic

principles have been applied to recent, successful transportation projects in North America in which our team has participated, and it would be most beneficial for Project optimization to maintain a market standard approach for the allocation of risks among itself, the developer, and third parties.

RISK	MDOT	DEVELOPER
DESIGN AND CONSTRUCTION RISKS		
Approval of any significant deviation from the conceptual design		•
Delays in obtaining permits and third-party approvals	•	•
Delay in obtaining environmental approvals	•	
Known pre-existing historical, environmental or HazMat		•
Unknown pre-existing historical, environmental or HazMat	•	
Geotechnical and soil conditions known during the procurement		•
Unforeseen geotechnical and soil conditions	•	
Integration of maintenance and major rehabilitation into the design		•
Integration of operations and maintenance of the systems into the design		•
ROW acquisition (please see our discussion on this below)	•	
ROW acquisition outside of the original scope (if proposed by developer)		•
Interface with utility owners	•	•
Construction cost and time overruns (not caused by MDOT)		•
Interface definition to the Project and other MDOT projects	•	
Quality assurance and quality control		•
Subcontractor insolvency		•
Availability and increases in cost of labor and material		•
Workplace health and safety		•
Public consultation	•	•
Force Majeure events	•	•
Latent defects on existing to remain infrastructure	•	
Changes in design and construction standards during construction	•	•
Achieving design and construction standards and specifications		•
OPERATIONS AND MAINTENANCE RISKS		
Changes in standards (depending on nature of change)	•	•
Interface with adjacent facilities	•	•
Safety and availability of the operations		•
Maintenance/lifecycle cost overruns		•

Risk	MDOT	DEVELOPER
Security of facility	•	
Third party claims and accidents	•	
Meeting performance requirements for entire Project		•
Labor and material availability, including spare parts		•
Workplace health and safety		•
Energy consumption risk, as applicable	•	•
Energy pricing, as applicable	•	
Force Majeure events	•	•
Handback of project at end of term in accordance with requirements		•

As noted above, each project present unique challenges and specific risks that do not always benefit from a “one size fits all” approach to allocation of key project risks. We encourage MDOT to consider this when structuring the P3 agreement and when working with the private sector during the procurement phase in order to work towards an optimally structured P3 agreement that allocates risks to the party best able to manage such risks. Depending on the size of the project(s), the risk transfer approach needs to be considered in light of the potential magnitude in dollar terms of the potential risks and exposure to the private sector. Pricing in risks on multibillion dollar projects is very different than pricing the same risks on projects of lesser magnitude, as the potential costs of such risks grow exponentially with larger projects. Retaining certain risks that would be very costly or otherwise unmanageable for the private sector to take on may be a way to ensure feasibility.

3) What, if any, advantages will MDOT potentially gain by entering an agreement in which operations and maintenance and lifecycle responsibility and/or traffic and revenue risk are transferred to the private section? How do you assess the likely magnitude of such advantages? What are the potential offsetting disadvantages?

By entering an agreement in which operations and maintenance and lifecycle responsibility are transferred to the private sector, MDOT gains a long-term partner who is highly incentivized to take a whole lifecycle view of the overall Project. The long-term obligations of the developer over the term of the concession (which can be 50+ years for a revenue risk toll road concession) include the transfer of key performance risks and opportunities to increase efficiency and cost reduction on a whole lifecycle basis. Importantly, the allocation of maintenance and lifecycle responsibility (and potentially operations) to the developer incentivizes a cost-effective approach to the design, construction and long-term O&M considerations through the optimization of technical solutions, including routine maintenance and major rehabilitation cycles, over the life of the Project.

On our South Fraser Perimeter Road project in British Columbia, for example, significant portions of the highway are prone to settlements because of the “soft soils” and geotechnical conditions of the

project zone. Secondary consolidation of the underlying soils in the area leads to differential settlements that can significantly impact the ride quality (measured through the IRI). ACS and Dragados specifically tailored a long-term pavement strategy to meet the project requirements. The solution reduced the thickness of the pavement during construction (compared to a more traditional design), but then included a significant intervention in year 5 of the operating period to correct pavement deficiencies due to settlements (whereas in a normal pavement life cycle plan, mill and overlay would not take place until year 10). While this increased the rehabilitation costs, it reduced the construction costs and resulted in an overall lower net present value of the total costs of the project, and improved user-experience and safety. This solution is an example of how transferring long-term O&M responsibilities to the private sector can delivering a more economically efficient capital improvement plan for a project.

With respect to the transferring of long-term traffic and revenue risk to the private sector, a P3 structure will allow MDOT to allocate the financial risk and reduce funding requirements that may otherwise be shouldered by MDOT and taxpayers during the term. We note (here and elsewhere in our response) that toll revenues may not be sufficient to cover the entire costs of the Project. This should be evaluated by MDOT very early in the Project development process in order to understand the potential impacts of any projected shortfall in revenue necessary to support the upfront and ongoing costs of the Project. If revenues are not sufficient, other options to ensure project delivery are available. For instance, MDOT might consider a “hybrid” toll revenue and availability payment approach, or may choose to supplement toll revenue by contributing some amount of public subsidy as milestone or completion payments during/at the end of construction. ACS and Dragados’ \$1.5 billion Autoroute 30 in Montreal, Quebec, which has been successfully operating since 2012, is a good example of a hybrid revenue risk/availability payment structure. US33 in Colorado is another example of a hybrid revenue risk structure, where Colorado DOT contributes O&M payments during the operating period.

We understand that it is MDOT’s goal that the Project be funded entirely through toll revenues throughout the system and even potentially include a concession payment for MDOT. While this may be possible with the right scope and technical solution, we note that each project is very specific and the revenue and contractual framework will drive these assumptions. There are not a lot of projects that can fund a capital cost of this magnitude through toll revenues alone, but it is too early in the process to fully assess this aspect of the Project. Once additional information is known, we believe that MDOT would benefit from further discussions and feedback from the private sector regarding the viability of supporting the Project through toll revenues along, and structuring of the procurement.

While MDOT cannot control the traffic forecast of the Project and anticipated revenues, it can help the feasibility of the Project as a revenue risk toll concession by being open to different scope options in order to find alternative and optimized solutions such that revenue may be strong enough to sustain the financing necessary to cover the capital cost of the Project. For example, MDOT may consider descoping options to help feasibility including opting to retain certain obligations of the existing to remain general purpose lanes, retaining ROW acquisition, and/or splitting the Project into separate

packages (and procuring certain sections of the Project as design-build projects if revenues are not strong enough to support that segment). If MDOT is planning to use revenues from one segment to help fund (subsidizing) another segment thereby building out a system that is profitable, there will have to be contractual protections to ensure that any funding structure like this has to be maintained through the term so that the revenues are not impacted on the overall system. Furthermore, strong protections against competing facilities will be critical to ensure the overall profitability of the network through the term.

MDOT can also help to ensure project feasibility by allowing maximum innovation as was presented in the Industry Forum. Giving proposers as much flexibility as possible to optimize toll revenue and establishing a confidential ATC process through which proposers can use innovation to find the best value for money solution, including maximizing revenue.

4) Would it be advantageous for MDOT to transfer the operations and maintenance and lifecycle responsibility for the entire freeway or just the added congestion relief improvements? What would be the advantages and disadvantages of transferring the operations and maintenance and lifecycle responsibility for the entire freeway?

Transferring the operations and maintenance for the entire freeway could have efficiencies in economy of scale and reducing interface risks to operating and maintenance crews. However, there needs to be clear performance requirements for key project elements like pavements, bridges, etc. to ensure that the developer accurately plans for and prices to meet obligations should any of these elements need substantial repair and/or renewal work.

Transferring lifecycle responsibility on existing assets carries additional risk and traffic revenues may be insufficient to cover these added costs if those risks are fully transferred to the developer. MDOT can potentially mitigate these risks by providing sufficient as-built and historical maintenance and inspections records to the proposers and establishing reasonable performance specifications for existing assets (for example, more lenient NBIS ratings than for new assets) and eliminating handback requirements for the existing assets, to prevent excessive capital costs outside of the initial construction period. Regardless, it would require a very detailed analysis of existing assets by the private sector to better understand the costs and complications of assuming lifecycle responsibility for existing assets. For obvious reasons, it is difficult for a developer to take on these responsibilities without thoroughly understanding existing conditions, asset life, performance requirements, renewal expectations, and other considerations. Given the general age of the corridors contemplated as part of this project as well as the very large traffic volumes, and the overall size of the contemplated Project, this analysis will require a sizeable effort and increase costs. If toll revenues are insufficient to cover this additional scope, MDOT may consider a hybrid solution, such as the US33 model, discussed above, contributing O&M payments to support the operations and maintenance of the general purpose lanes, but allowing MDOT to benefit from the efficiencies of the developer operating and maintaining the entire freeway.

- 5) *Would it be feasible to have a single solicitation for both corridors? If not, would you recommend any specific phasing for the solicitations including the corridor(s) and limits and why? What would your recommendation be for staggering multiple solicitations and why?*

In general, the project size is limited by the capacity of a team of contractors to undertake the work and the ability to raise financing for a single project/asset. Given the currently anticipated capital costs of the Project which are on the order of \$7 to \$9 billion, it will be very challenging, if not impossible, to procure the full value of these works under a single P3 project. Even in the event that MDOT segments and potentially phases the work required for the Project, we note that at a certain point MDOT will begin to exclude otherwise financially capable and technically qualified firms from pursuing the Project due to the potential risks and the security package implications (in particular, the bonding requirements). MDOT can encourage greater participation of teams for large solicitations by significantly limiting the bonding requirements for the Project and ensuring that the allocation of risks, as discussed elsewhere in our response, reflect the scale of this Project, such that the private sector is not shouldering unmanageable costs in addition to an already large capital cost. The above challenges are also heightened from a financing perspective given the typical equity requirements for a revenue risk project (which can require approximately a 30% to 50% equity investment) and the need to obtain an investment grade rating to ensure competitive financing (noting in the case a TIFIA loan is utilized, two investment grade ratings are required).

We do encourage MDOT to consider multiple solicitations however, with larger capital costs, within reason, as many P3 market leaders will have the ability to pursue such projects. For example, ACS reached financial close for the Eglinton LRT project in July 2015 and is currently constructing this CAD\$5.5 billion (USD\$4.2 billion) project, which is one of the largest P3 projects to be undertaken in North America. (Note that a payment and performance bond was not a base requirement for this project.) This availability payment project benefited from over \$3 billion in public funds during construction, limiting the private investment requirement to around \$1 billion. Another data point is ACS' Champlain Bridge Replacement project, which included over \$2 billion of private financing and reached financial close in June 2015. We view these examples as global examples of the upper limit for a feasible contract and financing size for a P3 project.

Should MDOT elect to stagger the Project through multiple solicitations, from a construction perspective we believe that procuring the I-495/I-95 and I-270 as separate projects is a logical split of the work, and represents a more manageable size and reasonable financing and bonding requirements. However, as mentioned elsewhere in our response, from a revenue and financing perspective, it will be important to understand in more detail the ability of these corridors to support the requisite capital and long-term O&M costs for the corridors.

B) Project Development

- 1) *Do you believe your firm would be interested in submitting a detailed proposal for the development of any of the congestion relief improvements? Are there any particular concerns that may prevent your firm from getting engaged in the project development? How might these concerns be resolved?*

At this point in time we confirm our interest in working with MDOT as it further defines the procurement approach for the Project, and are excited for the opportunity to submit a detailed

proposal on one or more segments or packages of the Project, depending on how MDOT ultimately structures its approach.

However, we note that given the early stages of the Project and the need for further clarity on MDOT's approach, we have highlighted the following potential issues (as also discussed elsewhere in the response) so that MDOT has the opportunity to consider these points in detail as it advances the Project:

- *NEPA and the overall timing of obtaining environmental approvals:* the procurement schedule should synchronize NEPA with other project procurement steps. Along with this, as the NEPA process becomes clear on the ROW needs of the Project (preferred alternative) we would need clarity on the approach to right of way acquisition. We would like to see MDOT assume responsibility for general ROW acquisition and to provide all ROW prior to any scheduled construction activities.
- *Project definition and scope / traffic and revenue information:* this element of the Project will need to be better understood in order to assess whether the Project can be sustained by toll revenues alone and/or in conjunction with public contributions. As we understand it, MDOT seeks to fund the Project entirely through toll revenues. Therefore, review of MDOT's Level II (at a minimum) traffic and revenue study will be critical. MDOT should also perform a careful internal analysis to ensure that revenues are indeed sufficient and, if not, to determine sources and amounts of any required public contribution necessary to deliver the Project.
- *Reference information needed for pricing:* details on existing assets (maintenance records, as-builts, historical inspections data, etc.); enough geotechnical and utility information throughout the project site to complete the pre-design required to submit the Technical Proposal and price.
- *Contract terms and conditions generally consistent with the U.S. P3 market:* terms should include customary risk allocation, as discussed above, and considering that depending on the size of the project(s), the risk transfer approach needs to be particularly emphasized as the result of risk allocation is heightened when the project gets bigger in size and could heavily impact feasibility; also, ensure a confidential ATC process and performance specifications that allow for a high level of innovation.

2) *At what stage of the NEPA and project development process would it be most beneficial to issue a RFQ: after establishment of the purpose and need, after determination of alternatives retained for detailed study, after selection of an MDOT preferred alternative, or after approval of the environmental document? At what stage would it be most beneficial to issue a RFP? Please discuss your reasoning.*

Regarding the issuance of the RFQ, responses by proposing teams are not necessarily NEPA dependent. Assuming the general scope is maintained that is put forward in feasibility studies and/or NEPA scoping documents, the market can generally put forward qualification packages that would be sufficient for MDOT to make a shortlist determination. However, the more advanced the scope details of the project, the better potential proposers can assemble their teams that best meet anticipated scoping requirements.

Given the typical timing between RFQ issuance and final RFP issuance a project that has reached the preferred alternative stage (assuming this happens at the DEIS stage) might be at a logical step to ensure sufficient project scope is defined and that things have progressed adequately to be able to move forward in a synchronized fashion through the remainder of NEPA and the procurement in general.

That being said, it is typical to issue a draft RFP upon announcement of the shortlisted teams. A project only at the DEIS stage may not have been sufficiently developed in terms of scope requirements typically found in an RFP. Therefore, MDOT would have to ensure sufficient effort is put forth to develop the appropriate procurement documents. It is also important to note that potential proposers will be very reluctant to expend appreciable amounts of money on the procurement process without clarity on NEPA finality.

3) What are the critical path items for the solicitation for these improvements and why?

The following elements are critical to moving the technical proposal forward with greater pricing certainty and reduced risk based on known conditions and requirements, progress and completion of the design packages can proceed as planned, and the lead contractor can plan and execute the work on time and fully dedicated to meeting quality and schedule requirements. We suggest the following timeline for these reasons:

Before the start of the RFP process:

- Ramping up internal resources and having the right processes in place to handle the procurement from the MDOT perspective
- Hiring experienced P3 procurement advisors
- Ensuring political and public support for the project
- Clearing any barriers to procurement authority are critical to the path of procurement
- Clear definition of procurement process

By the time the draft RFP is issued:

- Development of appropriate risk allocation
- Sound legal framework and confidential ATC process
- Completing and making available to potential proposers a Level II (at a minimum) grade traffic and revenue study that supports feasibility as a revenue risk P3
- Complete geotechnical information (A complete geotechnical baseline report)
- Comprehensive existing utility survey
- As-built drawings of existing assets.
- Clear and complete scope of design/construction work
- Owner indicative design/basic design to the necessary level of completion for preliminary environmental approvals and that allows for a full ATC development process

- We encourage MDOT to submit applications for alternative finance mechanisms such as Private Activity Bonds (PABs) or TIFIA Loan as early as possible in the procurement process, so any approved allocations can be taken into consideration in proposers' bids.

By the time the final RFP is issued:

- NEPA finality achieved (see more detailed discussion on this topic)
- Clear schedule and approach to ROW acquisition (see more detailed discussion on this topic)

4) *What is the minimum amount of time that your firm would require to develop and submit a response after the issuance of a potential RFQ?*

We recommend that MDOT provide 8 weeks to respond to a standard RFQ. MDOT will benefit greatly by ensuring that the industry is kept up-to-date with the project status, procurement timeline, and related issues and that industry is provided realistic timelines for the procurement in general. In particular, it is important to understand the anticipated release date of the RFQ when determined so that the industry has the necessary time to advance and finalize teaming arrangements in line with the issuance of the RFQ. During the RFQ process, MDOT should have a process for proposers to comment on the RFQ.

5) *What is the minimum amount of time that your firm would require to develop and submit a detailed proposal after the issuance of a potential RFP?*

Assuming that all necessary reference documents are made available at the issuance of the RFP (indicative design drawings, geotechnical boring reports, as-built drawings and historical data for any existing assets) and the draft RFP is issued as a complete set of documents (instructions to proposers, P3 agreement, technical specifications, special provisions, all completely drafted, including forms and exhibits), then 10 to 12 months from issuance of the draft RFP is reasonable for a revenue risk procurement, to allow time for proposers to assess feasibility of the Project and complete an investment grade traffic and revenue study. Particularly if a revenue risk procurement, MDOT's traffic and revenue study and all data collected for it, such as stated preference surveys, historical traffic counts, regional traffic model, etc. should be provided as early as possible, but no later than the issuance of the draft RFP. If TIFIA financing is involved, then the RFP process should be synced with the TIFIA Loan application, enable interaction between the TIFIA Build America Bureau and proposers to comment on the TIFIA Loan Agreement term sheet, and receive the credit council approved term sheet at least two months before the financial proposals are due.

6) *What information would your firm need in order to prepare a response to a potential RFP? What information should MDOT, the offeror, or others provide?*

Please see our response to item B-3, above.

7) *What would you consider a reasonable stipend payment for unsuccessful proposers responding to a potential RFP? Please discuss how the stage of project development (purpose and need,*

alternatives retained for detailed study, preferred alternative, final environmental document, etc.) completed prior to RFP issuance would impact the stipend payment amount.

We recommend MDOT offer a payment for work for product to unsuccessful proposers who have submitted compliant proposals. Additionally, we strongly recommend a MDOT provide a payment for work product for proposers who have already submitted compliant early submittals, such as early work plans or ATCs, in the event that the procurement is cancelled. While these may be seen as additional expenditures to MDOT, these provisions are consistent with market standards, demonstrate public commitment to the process and encourage market engagement by providing some compensation, even though actual expenditures are typically much more. A tiered stipend approach should be contingent on the amount of work done by proposers, rather than environmental status. Representative U.S. P3 stipend regimes:

- \$1,500,000 - \$2,000,000 after issuance of the final RFP
- \$2,000,000 - \$3,000,000 after submission of proposal

8) Would it be more beneficial for right-of-way acquisition activities to be transferred to the developer or should MDOT retain that risk? Please discuss your reasoning.

As noted throughout our response, we believe that MDOT should retain the risk for right-of-way (ROW) acquisition. There can be many issues with an approach whereby the developer is obligated to perform these services. Key questions arise relating to schedule concerns, condemnation rights and responsibilities, land costs, and other related matters. We would be happy to discuss further in a one-on-one conversation.

That being said, it is possible for the developer to perform the activities to acquire ROW, particularly in cases where the ROW acquisition needed is small and not on the critical path, therefore not a great risk to the construction schedule or costs. The developer may also finance ROW acquisition by allocating a certain amount of the total Project investment; remitting any surplus to MDOT, to pay for any extra associated costs.

C) Technical Challenges

1) Based on your experience in the development of similar projects and characteristics of the I-495/I-95 and I-270 corridors, please explain the technical challenges, including minimization of right-of-way impacts, to providing congestion relief improvements. Please provide any recommendations for mitigating or overcoming those challenges that you would be willing to share.

Based on our experience in developing similar projects, there are technical challenges related to the Project given the nature of constructing in a constrained and high traffic volume corridor in particular, but note that we have managed these challenging conditions successfully in North America including on I-595 Corridor Roadway Improvements project in Broward County, Florida maintaining traffic in a live urban highway corridor with 180,000 AADT. Additional right-of-way acquisition may help to mitigate this challenge in some areas, we acknowledge that MODT would like to minimize these activities in order to reduce costs and the impact to the community. Regardless, work on heavily

traveled highways will bring with it the necessity to implement complex maintenance of traffic plans which in turn create impacts the traveling public and may increase construction schedule and costs.

We believe these impacts can be especially mitigated through the application of innovative solutions during the procurement phase made possible by an ATC process. We bring significant experience on previous congested corridors where optimized traffic management plans and innovative ideas helped to reduce the overall impact of construction on the community and the travelling public.

In general, we encourage MDOT to consider the following in order to allow teams to optimize the design and construction approach:

- Implementation of a temporary or permanent reduction of lane widths or a combination of 12-ft lanes and 11-ft lanes in the typical striping plan of the final corridor configuration;
- Use of retaining walls in lieu of slopes to increase corridor capacity;
- Two or three level construction in highly constrained areas, including possibly tunnels; and
- Community participation with respect to construction impacts.

2) *Are there recommendations that you may be willing to share concerning the project scope or development strategies to reduce the upfront capital costs and/or the lifecycle costs of potential corridor congestion relief improvements?*

The P3 approach reduces upfront capital costs to MDOT by financing the project with private equity and debt and lowering the overall net present value, thereby freeing MDOT's capital expenditure and debt capacity for other capital works and maintenance activities. As discussed elsewhere, the P3 structure also enables the private sector to optimize all expenditures over the term, which could mean possibly spending more upfront for long term savings in the operations and maintenance period.

3) *Please explain any technical solutions that you may be willing to share that may enhance the development of the potential congestion relief improvements. Identify risks associated with the solutions and, if possible, discuss estimated cost of the solutions.*

Please see our response to C-1 above. Additionally, see our comments on item B-3 regarding critical path items for the solicitation for preventing schedule delays and additional costs.

D) *Contract Structure*

1) *What is your recommended approach for financing the capital cost of potential congestion relief improvements?*

As discussed elsewhere in our response, it is essential to understand the revenue potential of the Project prior to solidifying a funding approach and determining the most efficient means of financing capital costs and ongoing operations and maintenance expenses. We welcome the opportunity to continue dialogue with MDOT as additional traffic and revenue information is made available.

We encourage MDOT to engage with the Build America Bureau to seek allocations low interest and tax-exempt bonds available for use in P3 scenarios (e.g. Private Activity Bonds, or PABs) and low interest loans through the TIFIA program. Regardless of the availability of these financing tool, ACS will lead a competitive financing process during the procurement process to examine bank and bond debt and any other available sources to achieve the optimal finance solution in the market. We may also explore private placement and taxable bond instruments, which can unlock further capacity in the market and may be essential to ensuring there is adequate financing available for the Project on competitive terms, which may be important particularly given the potential size of the Project (or projects).

We do note however that a trade-off for utilizing a TIFIA loan in the overall financing structure (arranged by the developer) is that TIFIA has historically required higher credit standards than other lenders in the market, which has the effect of creating potentially inefficient capital structures and/or more onerous credit requirements (as it relates to backstops for certain payment obligations by the procuring authority, for example). Despite this, TIFIA Loans can lower overall capital costs, but can also increase procurement and closing timelines and costs, which MDOT should consider when evaluating such options. We note that other authorities have utilized TIFIA loans “outside” of the P3 financing structure, which can bring benefits of low cost TIFIA financing while avoiding some of the challenges noted above.

2) Should MDOT set a concession term or allow proposers to establish a concession term as part of the response to a potential RFP? If MDOT were to set the concession term, what is a reasonable concession term and why?

We encourage MDOT to establish the concession term rather than allow proposers to determine this as part of their response to the RFP to ensure a clear comparison of proposals. Introducing this type of variable into the bid process will make it very challenging for MDOT to evaluate bids on an equal basis if it is left open for proposers to establish a concession term as part of the response to a potential RFP.

For this asset class 30 years would be a typical term length for an availability payment; 50 or more years would be more appropriate for a revenue risk toll road to provide a longer tail to the revenue forecast. Typically, the period is longer for a project where the private partner is taking on revenue risk to mitigate ramp-up risk and potential risk of market fluctuations. We anticipate that MDOT and the developer would mutually evaluate the particular needs for this Project when more reliable cost and revenue cash flows can be estimated.

Another aspect to be considered when determining the concession period is the lifecycle of the project elements. MDOT will realize the best value from the P3 structure if the period is longer than the lifecycle of most of the structural elements of the project. This will encourage innovation by requiring the developer to plan and perform the design, construction and maintenance activities under an integrated approach that is aimed at whole-life cost optimization and long-term efficiency (e.g. design for maintenance).

- 3) *Are there any contract terms you would recommend, such as Alternative Technical Concepts, Alternative Financial Concepts, contract balancing, pre- development agreements or progressive agreements, etc. to minimize risk to proposers, maximize opportunities for innovation, maximize a concession payment to MDOT, or are key to obtaining competition? Please discuss the benefit and risks of the recommended contract terms.*

A key mechanism in a P3 delivery that will provide for development of innovative solutions is the use of an ATC process during the procurement phase. ATCs can bring significant value to owners and the public through optimizations and innovations to the design, construction methods, as well as concepts related to longer term elements of the Project including maintenance, rehabilitation and operating costs in the case of a P3 approach. We note that for MDOT to garner the greatest value from the ATC process, it needs to include a highly confidential approach to encourage proposers to develop and receive the full benefit of concepts that were not otherwise reflected or contemplated in the initial indicative or basic design.

Additionally, we would recommend a confidential Alternative Finance Concept (AFC) process, similar to the ATC process that will provide similar benefits and support innovative approaches to revenue and financing options. Also, writing the technical requirements as true performance specifications and leaving the proposers as much flexibility as possible both in the finance and technical solution can bear innovation even aside from ATCs/AFCs.

Given the significant work advanced by MDOT to date on the Project and the current stage of the NEPA process, we do not believe that a pre-development agreement (“PDA”) approach will bring significant value in this case. However, we would be happy to share our experiences further as it relates to PDAs in a one-on-one setting.

If ROW is not in hand prior to award, we recommend careful construction of appropriate ROW risk mitigation specifications that allow the developer to share with MDOT a priority acquisition schedule, allow for use of eminent domain (by MDOT), and relief to the developer for delays in acquisition that impact the critical path.

E) *Miscellaneous*

- 1) *Are there any particular concerns with the information provided in this RFI? Please explain any concerns and provide any proposed solutions or mitigation to address those concerns.*

The main concerns at this point include the stage of NEPA efforts and the proposed procurement schedule (including submitting the technical and financial proposals prior to receiving the ROD). Synchronizing the schedules of both so that NEPA can be completed prior to issuance of the final RFP is necessary.

- 2) *Please provide any suggestion or comments on how MDOT can encourage participation by Minority Business Enterprise/Disadvantaged Business Enterprise firms and local workforce in the development of the congestion relief improvements.*

We encourage MDOT to hold forums, collaborate with local advocacy groups, facilitate meetings with bidders, and provide training. Importantly, ACS/Dragados would look to partner with MDOT and other industry and regional organizations to develop sound MWDBE strategies during the procurement stage and into execution of the Project. Given the potentially significant capital costs associated with the Project, it will be important to evaluate the regional capacity for Minority Business Enterprise/Disadvantaged Business Enterprise firms and local workforce in terms of a percentage of the overall Project costs.

- 3) *What opportunities would you like to see for industry outreach related to these potential P3 opportunities?*

Additional industry forums to provide detailed updates as the procurement takes form would be helpful, particularly as the NEPA, project scope, funding, and procurement type progress and more specifics are available. On-going one-on-one opportunities (even beyond that planned for January 2018) to discuss with MDOT could be very beneficial.

- 4) *Please provide any additional comments or questions you may have related to the information in this RFI.*

At this time, we have no further topics. However, we are available to further discuss any of our responses found herein and we would be interested to meet in a one-on-one setting, and while we will continue to assess the Project's progress.