

FENGATE

Real Asset Investments



MDOT Congestion Relief Improvements RFI

December 20, 2017



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Jeffrey T. Folden, P.E., DBIA
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MDOT State Highway Administration
Email Address: l495_l270_P3@sha.state.md.us

Re: Request for Information – MDOT Congestion Relief Improvements

Dear Mr. Folden,

It is with great pleasure that Fengate Real Asset Investments (“**Fengate**”) presents this response to the Request for Information (“**RFI**”) issued by the Maryland Department of Transportation (“**MDOT**”) regarding the proposed Capital Beltway and I-270 Congestion Relief Improvements (the “**Project**”).

Background and Qualifications

Fengate is an international alternative investment firm with a primary mandate to invest in infrastructure and real estate assets in the United States and Canada. Fengate has over \$2.3 billion in assets under management and since its inception has executed investments in over 100 infrastructure and real estate transactions. To date, Fengate has raised 11 infrastructure funds, invested nearly \$800 million of equity capital, and arranged nearly \$12 billion of debt financing in support of 36 infrastructure projects across North America. Fengate has participated in the North American Public-Private Partnership (“**P3**”) market since its inception, and over the past decade, our firm has invested in 20 P3 infrastructure assets with a combined project value of \$6.5 billion. Fengate is actively engaged in Maryland, having been shortlisted on the Howard County Courthouse RFP, and is working with the County, local and international firms to submit a world-class P3 proposal to meet the County’s objectives.

Future Meetings with MDOT

Fengate is cognizant of how transformational the proposed Project will be for Maryland’s Baltimore-Washington corridors and the residents who are affected by the significant congestion daily. Fengate recognizes the unique opportunity to contribute in the transformation of the corridors and looks forward to supporting the MDOT in realizing the goals and objectives of the Project.

Fengate’s Role

Fengate intends to pursue the Project as a Lead Developer and Majority Equity Provider.

While Fengate submits this RFI as a stand-alone entity, our firm is in discussions with several major local and national industrial partners with demonstrated, long-standing track records of successfully constructing and maintaining large highway development projects. Based on our experience, we are confident that our team will offer a best-in-class consortium that is tailored to address all MDOT’s goals and objectives for the Project.



Regardless of how the Project is procured, the approach of our team will be perfectly tailored to address MDOT's objectives and requirements. Our confidence comes from deep rooted financing and commercial experience as well as ample available capital to invest, as highlighted below:

1. **Capital Redundancy:** Fengate has significant redundant equity capital to invest in the Project. As well, Fengate has very strong lender relationships who will provide optimal financing terms, should third-party debt be required.
2. **Financing Experience:** Fengate has reached financial close on nearly \$12 billion worth of projects, making it one of the most active infrastructure investors in North America.
3. **Commercial Experience:** Fengate has extensive experience in drafting contractual structures that mitigate key project risks and ensure financeable infrastructure projects.

Fengate appreciates MDOT's commitment to procuring the Project and we recognize the constructive and collaborative approach that has been applied so far in the procurement process. We look forward to the start of a long and fruitful partnership with MDOT for this exciting opportunity.

We remain at your disposal to respond to any inquiries relating to the content of our proposal.

Sincerely,



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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.

Fengate Real Asset Investments is a leading capital management firm that specializes in infrastructure, real estate, and private equity investments, with nearly \$2.3 billion in total assets under management. Fengate employs over 120 professionals and targets investment opportunities across Canada, the United States and select OECD countries. Based in Toronto, Fengate's investment team has deployed nearly \$800 million of equity capital across 36 infrastructure projects with an aggregate project value of more than \$12 billion. Fengate has been named one of Canada's Best Managed Companies™ since 2007, achieving its Platinum status, in recognition of its astute financial management and vision.

MDOT would benefit from Fengate's extensive track record of successfully developing, financing and managing P3 projects in North America. Fengate has invested approximately \$315 million into 20 P3 projects with a combined value of \$6.5 billion. Fengate manages some of the most complex P3 projects in Canada, ranging from large-scale transportation projects to courthouses, jails, hospitals and residential care facilities. Moreover, Fengate is an active participant in the United States P3 market, having previously raised committed debt financing for the Marion County Criminal Justice Complex in Indianapolis, and most recently, shortlisting for the Howard County Courthouse procurement. Additionally, Fengate is currently shortlisted on two major congestion relief projects, namely the \$1.0 billion LAX Consolidated Rental Car Center and the \$3.1 billion Gordie Howie International Bridge, and is actively pursuing the \$575 million I-75 Modernization Segment Three Project in Michigan.

Fengate is uniquely positioned in its ability to leverage its established in-house asset management team of 18 professionals who work alongside the investment team to (i) establish a trustworthy relationship with the client, (ii) assess asset risks and mitigation strategies, (iii) assist in design optimization to achieve maximum design scores while reducing construction and operating costs, and (iv) increase competitiveness of design-build and operating costs. This team currently manages a portfolio of 20 P3 projects.

While Fengate submits this RFI as a stand-alone entity, our firm is in discussions with several major local and international industrial partners with demonstrated, long-standing track records of successfully constructing and maintaining large highway development projects. Fengate is highly interested in continuing its teaming discussions and forming a handpicked consortium to actively pursue the project as it falls directly within Fengate's North American investment mandate.

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.

We believe that a DBFOM P3 model is the optimal procurement solution for the Project. The following describes some of the additional advantages of a P3 approach relative to traditional procurement methods:

- **Cost Savings and Schedule Reductions:** There is a growing body of empirical data that provides evidence that traditionally delivered projects run over budget and schedule at a rate that is materially higher than that observed among P3 procurements. Consider the following conclusions from various research reports:
 - *University of Melbourne:* P3 projects were 31.5% better than traditional projects in terms of on-budget performance (Infrastructure Ontario, 2015).
 - *Mott MacDonald:* Traditional procurement was on average 17% late relative to the planned schedule and 47% over budget. This is compared to an average of 1% of P3 projects being delivered early with virtually zero cost overruns (Infrastructure Ontario, 2015).
 - *Infrastructure Partnerships Australia:* The average cost overrun of traditional projects was 35.3% compared to 11.6% for AFP projects (Infrastructure Ontario, 2015).
- **Reduced Public Capital Funding Requirements:** Engaging in a P3 procurement would allow MDOT to defer a large upfront capital cost in favor of future annual payments or revenue sharing during operations. As such, MDOT would have the opportunity to invest the capital cost of the Project toward more immediate funding needs, or into other revenue generating assets.
- **Asset Performance:** A P3 model creates significant long-term incentive for the private sector partner to design, construct, and maintain the Project so that it performs as expected throughout its entire life.

- Long-Term Maintenance and Handback:** Rigorous handback requirements, user-deflection and availability penalties incent the proponent to maintain the asset in good condition until the contract is over and the Project is returned to MDOT. The selected proponent only receives a repayment and return on capital over the life of the asset if the Project is properly maintained and performs according to specifications. In contrast, under traditional delivery methods the project is more susceptible to neglect – as changing political agendas or lack of oversight may impede necessary major maintenance funding over time. Including a revenue-sharing approach incentivizes the proponent to optimize traffic throughput, meeting both MDOT’s objectives of solving congestion issues as well as the private sectors goal of maximizing revenue.
- Innovation:** The use of performance based specifications in P3 projects allows the proponent to consider innovative and alternative delivery solutions. As such, the hard costs of a project under a P3 method are typically lower than traditional delivery, which use more prescriptive specifications.

Effective risk allocation is essential for the successful delivery and operation of any infrastructure asset, and should be of critical importance to MDOT, particularly given the high-profile and complex nature of the Project. Based on our experience pursuing over 100 P3 projects, Fengate has developed a comprehensive risk allocation approach that we have consistently negotiated, executed, and financed in the marketplace over the past decade.

The core of Fengate’s approach is a market-proven contractual structure that allocates each risk to the party best able to manage, evaluate and price it. Under this structure, the obligations of each party will be documented in full “drop-down” contracts, which ensure a comprehensive risk transfer. For example, Fengate will use traditional drop-down principles to allocate construction-specific risks to the contractor, which is best suited to manage and evaluate those risks. Examples of construction risks that would be dropped down to the contractor include: permitting, contamination, and fixed-price date-certain pricing with liquidated damages payable in the case of a delay. Fengate will also use traditional drop-down principles to allocate risks to the O&M service provider, which is best suited to manage and evaluate operating risks including: timing of lifecycle expenses, as well as actual inflation rate differences compared to the inflation rate bid at financial close.

The table below provides a high-level summary of the Fengate’s typical P3 risk transfer. It is important to note that Fengate tailors the risk allocations within its structures to suit unique aspects of each sponsor and project. Please note that this is a preliminary assessment and subject to further diligence.

Key Risks		MDOT	Equity Provider	Construction Provider	O&M Provider
Project Structure	Change in Law	x	x	x	x
	Scope Changes by MDOT	x			
	Financing		x		
Construction Stage	Scheduling and Cost		x	x	
	Permits & Approvals	x		x	
	Land acquisition	x			
	Environmental Issues	x		x	
	Design			x	
	Structural Defects			x	
	Replacement of Contractor		x	x	
O&M Stage	Replacement of Service Provider		x		x
	Cost Inflation				x
	Rehabilitation and Handback				x

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 sector? How do you assess the likely magnitude of such advantages? What are the potential offsetting disadvantages?

O&M Responsibility

The transfer of operational and maintenance responsibilities is fundamentally tied to a long-term P3 project. The selected proponent has significant equity capital at risk, prompting the effective management of operational risks. This creates the incentive as well as an express need to meet and exceed all performance specifications set out by MDOT to avoid penalties, maximize any revenue sharing, and meet all financing obligations. As a result, MDOT receives the benefit of

a dedicated consortium with full alignment of interests and active daily monitoring to ensure MDOT's objectives are satisfied. The selected proponent will have operational expertise and best practices gained from operating numerous road / managed lane projects worldwide that will be applied to the Project.

A further benefit of P3s holistic procurement approach comes from combining construction and operational responsibilities together. By doing this, the construction working group managing the design and construction will include members from the operations team. As such, the design and construction of the Project will include input from the O&M team who will then bear the responsibility of managing the Project once commercial operations begin. This gives the private partner the incentive to design the infrastructure in a manner that would generate cost savings in both the construction period as well as operations period of the Project, ultimately benefiting MDOT over the concession term.

Lifecycle Responsibility

Transferring lifecycle responsibility to the proponent achieves synergistic value: the proponent who builds and operates the Project will have the best understanding of lifecycle timing, costs and be best suited to coordinate the facilities downtime. This eliminates the need of MDOT to request lifecycle financing, which is often delayed due to political roadblock. The proponent, as a requirement under most P3 debt financing documents, is required to retain a lifecycle reserve account, which is funded in the years prior to anticipated lifecycle spending to provide confidence to lenders that funds are readily available when needed.

Traffic and Revenue Risk

The decision to transfer traffic and revenue risk to the proponent creates a fundamentally different investment profile for both equity and debt investors. The primary benefit of transferring this risk is knowing that the economic loss due to a decline in traffic patterns will be borne by the private sector. However, we see value in MDOT retaining this risk:

- Bearing this responsibility falls into MDOT's primary mandate;
- It is well understood that there are serious congestions along the various corridors. As such, MDOT would be giving away to the private sector any benefit that comes from current toll revenues or any growth in such revenues; and
- Financiers (both equity and debt), as a widespread and well understood approach, apply a significant premium to projects that contain revenue risk, especially if tolls comprise 100% of the revenues. This increases the cost of the Project. Having MDOT retain this risk significantly de-risks the Project thus minimizing the cost for MDOT.

For example, consider the 407-express toll route in Toronto, Canada which was procured under a P3 structure. The project allocated revenue-risk to the private sector, for which the private sector allocated a premium. Given the congestion on Toronto's other roads, traffic volume far exceeded original estimates and the private sector gained a windfall that could have ultimately benefited the city's taxpayers.

While Fengate would participate in any future P3 procurement set out by MDOT, whether it contains revenue-risk or not, Fengate would prefer and highly recommend MDOT to consider availability-based payments.

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?

Given proper due diligence, the O&M and lifecycle of the entire freeway can be included within the procurement and efficiently priced by the proponent. There may be value to MDOT in having to only deal with a single proponent actively monitoring, operating and maintaining the entirety of the freeway. There would be additional work required by the proponent to understand the additional scope. Both options are viewed favorably by Fengate.

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?

Given the two corridors are connected and within the same jurisdiction, Fengate believes having a single solicitation would be feasible. Although a staggered approach would benefit from lessons learned to improve upon prior phases, a single solicitation would likely result in a more timely and cost-efficient project delivery under a single project agreement. Moreover, if different contractors are selected for the separate phases, there may be variances or discrepancies in the design techniques, construction methods or materials, and general maintenance of the corridors, resulting in an inconsistent experience for users.

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?

Fengate is highly interested in submitting a detailed proposal for the Project. This Project falls within Fengate's express mandate to invest in infrastructure assets in North America. Fengate has recently submitted a similar RFQ response for the I-75 Modernization Project. At this stage, Fengate's primary concern would be MDOT's decision of offering a toll concession in lieu of availability payments, in the event this risk transfer is selected by MDOT. However, with sufficient historical traffic data, Fengate believes it would be able to gain comfort around revenue risk.

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.

It is Fengate's opinion that an RFQ should be issued once MDOT has reviewed the procurement alternatives, chosen the best public funding and technical approach and obtained the required major approvals to go forward with the project. It would provide the private sector confidence if, at the time of RFQ release, MDOT has received approvals for any federal or state financing.

Rating and determining the best alternatives and performing initial studies are tasks most effectively left with MDOT as MDOT is subject to specific requirements and objectives. Further, the private sector may not provide additional value for money at this stage compared to advisors retained by MDOT.

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

Major critical path items include but are not limited to:

- Determining whether traffic risk will be retained by MDOT;
- Retain a process advisor that manages the P3 procurement, as well as technical and financial advisors that will set out the required scope of the Project;
- Finalize the scope of the Project and required output / performance specifications;
- Obtain all major government approvals, permits and licensing to progress with the Project;
- Obtain initial commitment for any government financing support;
- Issue an RFQ to the private sector and shortlist preferably three proponents to proceed to the RFP stage; and
- Issue an RFP setting out the payment mechanism, draft project agreement and output specifications providing the proponent all the information required to provide a technical and financial proposal submittal.

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?

Fengate would be able to develop and submit a detailed RFQ response within two months of MDOT issuing 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?

Fengate would be able to achieve commercial and financial close within 12 months of MDOT issuing the RFP. Fengate is flexible to MDOT's schedule and would work within MDOT constraints.

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?

In addition to industry standard RFP documentation, Fengate strongly recommends that MDOT provides as much information as possible regarding (i) the environmental condition of the Project site and (ii) geotechnical condition of the Project site. The potential losses that can arise from risks in either category are significant and more information about

these conditions will allow proponents to price risk more efficiently and ultimately deliver a more competitive bid to MDOT. We note that, if MDOT employs a hybrid availability / volume payment mechanism as described in the Contract Structure section, detailed traffic and fare data should be provided to proponents.

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.

It is difficult to determine a reasonable stipend payment for unsuccessful proposers at such an early stage. However, Fengate believes it is important that the stipend payment is reflective of the estimated design and other costs that bidders will invest and incur throughout the development of their proposal. Meaningful stipend payments provide leeway and flexibility for bidders, in turn promoting innovation and enhanced alignment which ultimately benefits MDOT and project stakeholders.

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.

Fengate is in partnering discussions with local and international design and construction firms who possess a more in-depth and qualified perspective on this matter.

Technical Challenges

Fengate is in partnering discussions with local and international design and construction firms who possess a more in-depth and qualified perspective on this matter.

Contract Structure

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

DBFOM P3 projects are generally funded by a combination of public and private sources. While the optimal sources of financing can vary significantly based on project-specific factors, especially revenue source, the following provides an overview of the typical elements of a P3 capital structure.

Public Funding

The most common source of funding in DBFOM P3s involves the project's sponsor providing the proponent with payments contingent on the availability of services and the satisfactory completion of predefined performance standards. Typical mechanisms include:

- **Construction Period Payments:** Payments made to the proponent in connection with achievement of certain predefined construction milestones while the project is being built. These can be structured as small payments over several smaller milestones, a larger one-time payment upon substantial completion, or both.
- **Operating Period Payments:** Also known as "availability payments", this mechanism involves regular periodic payments made to the proponent on an ongoing basis while the asset is operating within its concession term. These payments are typically structured to incorporate an indexation factor based on inflation and may also include benchmarking / testing against certain project cost elements at predefined intervals.

Fengate is aware that MDOT is considering offering a toll concession for the added capacity in lieu of an availability payment structure. Fengate encourages MDOT to consider the use of such a hybrid structure to enhance the value-for-money proposition of the Project. In the past, certain P3 procurements have featured a modified payment mechanism that includes both availability payments as well as a share of volume-based revenues. Under these hybrid structures, a component of the private sector's revenues during operations are derived from service use of the asset, such as transit ridership or highway tolls.

It is important to note that 100% toll concessions (i.e. no availability payment component) will have the potential to reduce value-for-money for MDOT, as the added risk and complexity will cause lenders to increase the cost of debt financing for the project. Further, volume exposure may cause private sector proponents to be less inclined to accept performance deductions proposed by a project's sponsors.

Fengate believes a hybrid structure would achieve MDOT's goal of not being required to make a financial contribution directly from the Maryland Transportation Trust Fund. Public funding could potentially be sourced from federal funding resources and programs like TIFIA.

Fengate stresses the importance of sizing construction payments appropriately to ensure the total long-term private capital investment is significant enough to maintain alignment between the sponsor and private partners (both equity and debt investors). This 'skin in the game' ensures that taxpayers are not on the financial hook for cost overruns, delays or any performance issues over the Project's life. The total amount of milestone or substantial completion payments should not reduce the total private capital requirement to the point where it adversely impacts the level of interest from potential private investor

Short-Term Debt Financing

As noted above, P3 projects typically feature milestone payments during or upon completion of the construction period. Should MDOT pursue milestone payments, they will allow for the inclusion of a short-term debt tranche to the overall financing strategy of the Project. Short-term debt will typically take the form of either a bank loan facility or a short-term bond, as detailed below:

- **Bank Loan Facility:** A bank loan facility has the benefit of minimizing negative carry, as the proponent would be able to draw down on the facility as per the anticipated construction period spend curve and only incur a small commitment fee on the undrawn principal.
- **Short-Term Bond:** A short-term bond would be fully funded at financial close, thereby incurring the all-in interest rate on the full principal from 'Day 1'. A short-term bond would be fully paid off with the substantial completion payment at the end of construction.

Long-Term Debt Financing

A DBFOM P3 project would feature regular periodic payments to the proponent over the term of the concession through either toll revenues and / or availability-based payments subject to predefined deductions for non-performance. This

reflects the standard operating period availability payment regime for North American P3 projects and is well-understood and financeable by the long-term debt market. Long-term debt would typically come from either a long-term rated bond or an unrated private placement, as detailed below:

- **Long-Term Rated Bond:** A long-term rated bond would have an investment-grade credit rating from 1-2 rating agencies (i.e. Moody's, S&P, DBRS, Fitch) and would be broadly marketed to the fixed-income investor market. A long-term rated bond would be fully drawn at financial close, interest-only during the construction period, and amortize over the course of the operating period.
- **Unrated Private Placement:** An unrated private placement would not need any credit ratings and would be narrowly marketed to those institutional investors that are able to buy products without ratings (e.g. life insurance companies). Unrated private placements are typically interest-only during the construction period, and would amortize over the course of the operating period. Unrated private placements can be structured to allow for delayed-draw during the construction period whereby Project Co would be able to draw down on the facility as per the anticipated construction-period spend curve and only incur a commitment fee on the undrawn principal (similar to a bank loan structure).

As mentioned above, the greater amount of revenues derived from tolls will reduce the amount and increase the cost of long-term debt financing.

Transportation Infrastructure Finance & Innovation Act Funding ("TIFIA")

TIFIA provides direct loans and / or credit assistance to qualified projects of regional and national importance. If approved by USDOT, all bidders will have access to a TIFIA loan with a maximum size of 33% of the eligible capital costs and with an applicable margin fixed at 1bps (over the relevant US treasury rate). Utilizing TIFIA may impact the procurement timing. Based on its experience and feedback from TIFIA personnel, Fengate understands that it is challenging for TIFIA administrators to finalize terms with a preferred proponent and achieve financial close within 6 months of selection of the preferred proponent. This may pose a challenge since bank lenders typically are reluctant to hold their pricing for more than 180 days from bid submission.

Private Activity Bond Funding ("PABs")

PABs are tax-exempt bonds issued by a conduit issuer (acting as an instrumentality of or on behalf of a state or a political subdivision) for use on eligible projects. While the current version of the U.S. Senate's tax reform legislation retains the tax-exemption for PABs, the legislation initially drafted by the House of Representatives contemplated elimination of tax-exemption for PABs issued after December 31, 2017. If PABs tax-exemption is retained, Fengate would retain a financial advisor with extensive rating structuring experience to optimize the ratings approach to the project. For example, while a A-/A3 rating can drive tighter margins, the higher rating typically comes with a costlier design-build joint venture security package. In projects with TIFIA loans, the impact of a higher rating is dampened by the fixed cost of the TIFIA loan, which makes up a substantial portion of the capital structure, often making a BBB-/Baa3 rating more cost effective in transportation PPP projects.

On the I-75 Modernization Project, Fengate's consortium includes a financial advisor with significant experience structuring bespoke PABs from its work on the Central 70 Project, where it structured bespoke short-term PABs secured by milestone payments and competed this solution against a revolving bank facility to find an optimal financing structure. On this deal, the advisor worked with the lender's technical advisor to structure call dates and legal maturities for these PABs which drove the tightest pricing at each rating category.

Equity Capital

Availability payments and toll revenues would be sized to cover the principal and interest of the long-term debt during operations, along with all operating, maintenance, and rehabilitation costs. The Project's remaining long-term capital requirements would be provided through equity investment from the proponent. The ratio between long-term debt and equity capital invested in the project (gearing) is determined based on detailed analysis of construction, operating, and revenue risks in order to achieve optimum risk allocation between each capital providers. The gearing would be significantly lower in a 100% toll concession P3 compared to an availability-based DBFOM structure.

Fengate currently has more than \$240 million in available equity capital providing the liquidity required to fund the Project's equity. In addition to Fengate's available capital, Fengate has a broad network of debt providers which it will leverage when arranging financing for the Project.

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?

In our experience, the authority typically sets the concession term. The term's tenor is generally set to match the useful life of the project. A lengthy contracting period allows the sponsor to benefit from efficiencies, innovations and cost certainty, while the proponent can rely on a long-term source of revenue that is reasonably secure and sufficient to recover its investment. A longer contracting period also generally increases the appetite from the private sector, thus improving the competitive dynamics of the process ultimately benefitting the sponsor. As the project approaches the end of its O&M period, there are generally handback requirements (i.e. an independent third party would assess the state of the Project to confirm it has been maintained in a way that it will continue to be fully operational upon transition back to MDOT).

Fengate believes the most cost-effective duration for the O&M period would be 25 years or above. Such a duration would allow the proponent sufficient time to pay off third-party debt obligations, which help reduce the cost of the Project to MDOT and its taxpayers, as well as earn a suitable return on invested capital. With that being said, Fengate would be willing to consider shorter durations depending on the proposed transaction structure.

Handback provisions are another key reason why it is important to ensure there is significant amount of private sector capital in the deal. Sponsors want to make sure that by the end of the concession, the proponent still has enough 'skin in the game' to fulfill its obligations to reinvest in upholding the project. This is relevant when sponsors determine the amount of public-sector payments made during construction (detailed in Fengate's response to question 1 of this section). These payments are made to pay down construction costs as well as the amount of private sector capital needed to fund such costs.

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.

An inherent advantage of DBFOM P3s is that they are structured to maximize private sector innovation. The use of performance based specifications in P3 projects encourages the proponent to consider innovative and alternative deliveries to arrive at the most competitive solution for the client. As such, the hard costs of a project under a P3 method are typically lower than traditional delivery, which use more prescriptive specifications. Rather than the government specifying the "best" solution and hiring a private sector partner to deliver it, the government can present the problem to developers in a competitive environment. Traditionally, if a government engages the private sector as a subcontractor, the focus is, understandably, on delivering under budget and on time. But in a long-term DBFOM P3 framework – especially one based on quality of service (i.e. availability payments) – the private sector is encouraged to offer new solutions and ideas.

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.

At this stage, Fengate does not have any concerns with the information provided in the RFI. However, as previously mentioned, Fengate encourages MDOT to consider the use of a hybrid revenue structure to enhance the value-for-money proposition of the Project.

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.

Fengate is committed to partnering with minority-owned, women-owned, and disadvantaged business enterprise (“**MWDBE**”) firms, as well as Small Businesses (“**SBEs**”) and local businesses (“**LBEs**”) by strategically applying inclusion to all aspects of the approach and delivery of our projects. It is our policy to create and maintain an inclusive, high performing environment where all parties have a fair opportunity to compete and succeed.

Fengate has observed a number of practices and strategies that have been successfully employed by project sponsors to develop inclusivity, including:

- **Certification:** MDOT can develop and publish resources for small / diverse businesses to receive relevant certifications in order to best position themselves to be involved with the Project. MDOT can provide additional assistance through dedicated conferences and seminars supporting these application processes.
- **Documentation:** MDOT can publish its acknowledged small / diverse business certification agencies, and make lists of certified businesses available to proponents.
- **Procurement Outreach Conferences:** MDOT can host events that provide SBEs, LBEs, and MWDBEs with the opportunity to learn about the project, assess their potential involvement, and interact with contractors and developers.
- **Submission Requirements:** MDOT can include inclusivity submission requirements as scored components of the RFQ and RFP responses. These can include dedicated inclusivity narrative sections outlining respondents’ approach to inclusivity and methods for achieving participation, as well as points allocated for inclusion of certified small / diverse businesses on proponent teams.

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

Fengate attended and appreciated the industry day hosted by MDOT on December 13th. Going forward, Fengate does not need any further industry outreach. However, if MDOT would like to discuss the benefits of any particular financing technique or project development scheme, Fengate would be pleased to assist.

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

Fengate has no further comments but looks forward to working with MDOT in the future on this transformational Project.