

BY ELECTRONIC MAIL

To: Jeffrey T. Folden, P.E., DBIA
Chief, Innovative Contracting
MDOT State Highway Administration
I495_I270_P3@sha.state.md.us

December 20, 2017

Re: Response to Request for Information regarding the I-495/I-95 (Capital Beltway) and I-270 Congestion Relief Improvements

Dear Mr. Folden,

InfraRed Capital Partners Limited ("InfraRed") is pleased to submit to the Maryland Department of Transportation ("MDOT") its response to the Request for Information ("RFI") for the I-495/I-95 (Capital Beltway) and I-270 Congestion Relief Improvements (together, the "Projects").

InfraRed, having invested in infrastructure for 20 years, has considerable experience in the successful development of large and complex projects through effective public-private partnership agreements, including appropriate allocation of risk between government and the private sector. We have a long history of participating in and developing P3 projects, and providing maximized certainty of delivery and value to the public sector, and as such are keenly interested in participating in the Projects.

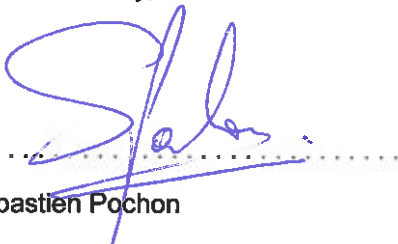
We remain at your disposal to answer any further questions you may have, and would like to hereby request the opportunity to participate in a one-on-one meeting with you to further discuss the Projects, as outlined by MDOT during the Industry Forum of December 13, 2017.

Should you have any further questions, please do not hesitate to contact:

Filip Guz
Investment Director
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We thank you for the opportunity to submit this letter.

Yours sincerely,



Sébastien Pochon

Director

InfraRed Capital Partners Limited

General

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

InfraRed has developed over 80 greenfield infrastructure projects globally. We are extremely well versed in structuring greenfield projects under Public-Private Partnership (“P3”) arrangements, negotiating all necessary legal documentation and obtaining competitive financing. Further, we have well-established teams and procedures for project oversight, ensuring that projects are delivered on time and on budget.

InfraRed is an experienced investor in infrastructure assets, including in road transportation assets. We have investments in 12 road assets globally, including:

- SH-288 Toll Lanes (Texas): a managed lanes project currently in construction, with planned in-house operations;
- Tyne Tunnels (UK): a pair of toll tunnels that have been under in-house operation since 2008, where InfraRed was the lead equity partner in the development of this project;
- A63 Motorway (France): a toll road that has been under in-house operation since 2013, developed by InfraRed as largest equity holder, which was the first demand-risk project to secure senior debt financing after the financial crisis;
- Southern Ohio Veterans Memorial Highway (Ohio): an availability road currently in construction, with planned in-house operations; and
- Northwest Parkway (Colorado): InfraRed led the consortium that acquired 100% of the equity interests in the Northwest Parkway, an all-electronic toll-road in the Denver metropolitan area with in-house O&M, toll system integration and operations.

The SH-288, Tyne Tunnels and A63 Motorway projects were all developed as congestion relief improvements. InfraRed has experience with road assets that self-perform operations and maintenance, including tolling, as well as with projects that outsource those services.

InfraRed is interested in participating in the Projects as a development sponsor and equity investor.

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.

Public-private partnership structures offer significant advantages to the public sector and end users in delivering holistically conceived and well operated projects. The Design-Build-Finance-Operate-Maintain (“DBFOM”) model creates a single point of contact for the public sector in the private developer, which is accountable for the overall, whole-life project performance, which creates more room for innovation, better whole-life value to the public sector through competition, and an overall lower level of risk assumed by the public sector. We believe this to be particularly true in congestion relief improvement projects where the nature of traffic can be well appraised by the private sector through historical data, provided the public sector offers access to as much data as possible.

- **Greater innovation:** a whole-life, holistic approach, combined with the right level of competition and good quality information provided through the process will allow the private sector to offer innovative solutions to best address and relieve congestion, improve user experience, and minimize disruption and impact to adjoining properties.
- **Greater whole-life value:** by creating a single point of contact for the public sector that is accountable for the whole-life performance of the project, and through a competitive procurement process that appropriately reflects performance over the life of the Projects, MDOT can ensure it receives maximum whole-life value, as opposed to running separate construction and operation procurements that would not allow for the same level of whole-life cost optimization.
- **Lower level of risk:** the DBFOM approach allows MDOT to transfer significant risk to the private sector, particularly traffic and revenue risk, but also short and long-term performance, technical, and interface risk, through risk allocation to the party best positioned to manage and mitigate it, and the creation of a single point of contact and accountability for MDOT.

P3 procurements do bring specific risks, compared to traditional procurement methods, that the public sector needs to accept. In particular, P3 procurements are longer and more complex processes than traditional procurements (and as such tend to incur higher upfront transaction and financing costs), and they require a strong level of public and political support, which needs to be secured through stakeholder engagement from the public sector.

Further, we would expect the public sector to retain – or offer protections for – risks that cannot be controlled or appropriately assessed by the private sector, and which would therefore lead to inefficient pricing or a project that is not financeable. This would typically include force majeure; right-of-way (“RoW”) acquisitions; obtaining environmental approvals; change in law; and development of unplanned competing routes. Appropriate risk allocation with respect to these topics, and many others, is now well established in the P3 market, including on many previous managed lanes projects.

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?

Allowing the private sector to assume operations and maintenance and lifecycle responsibility, and the risk and reward of traffic and revenue, are hallmarks of P3 contracting which enables the public sector to offload risk onto parties specialized in its appraisal and management, and deliver infrastructure that has benefitted from a holistic approach in its inception, innovation, and whole-life cost optimization. The single point of contact constituted by the private developer, when structured appropriately, gives the public sector a better, more economical asset designed with a long-term view for an overall lower risk exposure to the public purse. This benefits both direct users of the asset, and the taxpayer in the long-run. We believe this approach to be particularly well suited to the Projects, where the private sector will be able to deliver significant long-term value through proposals. The key disadvantage of this model comes from the private sector and lenders’ need for certainty over future revenues to secure competitive financing; the public sector should therefore expect to forego control over future tolls, for which any escalation mechanism should be clearly set out at the RFP stage, and to provide appropriate protections against any future competing routes or modes.

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?

InfraRed is open to either solution; we would expect however that for MDOT and for end users, transferring responsibility for the entire freeway would deliver a cleaner, logistically more efficient and more user-friendly solution, offering a single point of contact and better management of lane closures. We would note however that it would be difficult and atypical for a private investor to accept minimum-life requirements at handback on existing assets taken over from the public sector (as opposed to the assets built by the private developer).

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?

We see any potential incremental innovation or potential economies of scale from a single solicitation as very limited, and that a single solicitation of this size would attract a very limited number of consortia, potentially leading to an uncompetitive process. We would recommend running separate procurements. From a resourcing standpoint in the industry, to allow for bidders to participate in both and therefore maximize competition, RFP due dates should ideally be set 6 months apart, and at the minimum 3 months apart.

Project Development

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?

InfraRed is interested in submitting a detailed proposal as response to a potential RFP for the Projects. We would encourage MDOT to address the following key topics in the next phase of the process:

- A fully defined scope of work to be devised and communicated, to better assess construction costs;
- A project, or projects, of suitable size, so as to avoid multiple overlapping procurements or too small equity tickets (i.e. lower than \$150 million), or conversely projects so large as to restrict the number of possible bidders;
- Appropriate risk allocation, with a process set out for refinement of the Project Agreement based on bidder feedback;
- Detailed historical traffic data and Project feasibility analysis based on robust traffic and revenue forecasts; and
- Ensuring continuing public and political support through strong stakeholder engagement led by MDOT.

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.

InfraRed would recommend advancing the NEPA process to the point of approval/Record of Decision, or clear, timed path to approval by RFP issuance, so as to avoid any uncertainty surrounding project timing before incurring significant bid costs. An RFQ should be issued with the timing of the RFP in mind – ie. an RFP launch within one to two months of bidder short-listing.

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

We see the critical path items for RFP issuance on these Projects as:

- Developing a traffic and revenue study and confirming project financial feasibility;
- Materially completing the NEPA process;
- Materially progressing any required RoW acquisitions, and where incomplete, providing a clear pathway to completion;
- Identifying any public-sector funding if any; earmarking the Projects for TIFIA loans; and
- Conducting ongoing stakeholder engagement to ensure continuing support.

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?

The minimum amount of time we would require to develop and submit a response to a potential RFQ is 30 days.

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?

The minimum amount of time we would require to develop and submit a response to a potential RFP is 180 days, contingent on the quality of information provided by MDOT.

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?

The key pieces of information we would require to prepare a response to a potential RFP would be:

- Investment Grade Traffic & Revenue study
- A fully defined Project Scope of Works
- A Draft Project Agreement
- Geotechnical information; Existing Asset Condition report; and any other key technical information.

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 see NEPA approval as more of a pre-requisite than one affecting the sizing of a stipend payment amount. For a project of this size and complexity, we would expect a stipend to be made available to all responsive unsuccessful bidders of at least \$3 million per procurement. We expect bidders' at-risk procurement costs to be in excess of this. Importantly, we would urge MDOT to pick an appropriate number of pre-qualified teams to maximize competition without making it uneconomical for prospective bidders to pursue the Projects. Given the significant bid costs we expect to incur, we would be reluctant to participate in a process with four or more pre-qualified bidders.

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.

RoW acquisitions should ideally be completed before RFP issuance; we acknowledge however that this may not be achievable in the timeline MDOT wishes to follow. Should this be the case, MDOT should clearly outline any outstanding RoW acquisitions and a committed timeline for achievement of those acquisitions, with reasonable buffer to the expected construction schedule. We would expect this risk to be retained by the public sector given the tools available to it to manage these activities. A private partner can however act as process agent on the public sector's behalf. In all cases, we would seek to minimize any required RoW acquisitions in our technical solution.

Contract Structure

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

We would expect the financial structure of the Projects to be consistent with recent managed lanes precedents, namely a combination of a TIFIA loan, Tax-Exempt Private Activity Bonds ("PABs") and equity investment. The use of a TIFIA loan is typically an important way to render a project's financing more competitive and therefore deliver value to the public sector. MDOT should be aware that TIFIA processes can be lengthy and that MDOT support will be required in order to secure a TIFIA loan.

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 would be open to a process where the concession term forms part of the proposal, assuming the grading of the option to be clearly defined. The required concession term is a function of the traffic and revenue forecasts, due to the level of risk inherent in those projections and the necessity to repay debt financiers (including a tail) and allow equity to break-even in the event of underperformance against forecasts. As an indication, however we would expect a concession term in the range of c. 50 years of operation or more to be appropriate, subject to traffic and revenue forecasts.

Are there any contract terms you would recommend, such as Alternative Technical Concepts, Alternative Financial Concepts, contract balancing, predevelopment 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.

We believe giving bidders flexibility is key to maximize innovation and traffic throughput, and therefore value to the public sector. As such, we would strongly encourage allowing for Alternative Technical Concepts and Alternative Financial Concepts. InfraRed is also open to a form of early works agreement, which can help achieve earlier delivery of a project. We would note however that MDOT should be aware that it will be a direct

counterparty to the Design-Build contractor during the time that the early works agreement is in place, and will therefore not benefit of the advantages offered by a P3 contractual structure during this time – which is expected to be short.

Miscellaneous

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.

We do not have any particular concerns at this stage; we would reiterate our recommendation of seeking to achieve NEPA and other required environmental clearance at the earliest possible stage, and conducting a feasibility analysis (in particular a traffic and revenue study) for more detailed feedback from InfraRed and the private sector.

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.

MDOT can require minimum standards for participation by Minority Business Enterprise/Disadvantaged Business Enterprise firms and local workforce in the development of the Projects, and we are very familiar with meeting those standards as we have on other projects. InfraRed has a longstanding strong commitment to local communities, as well as to promoting best practice in Environmental, Social and Governance aspects. In 2017, InfraRed achieved the maximum PRI (Principles for Responsible Investment) rating of A+, both for its Infrastructure practice and the wider business. InfraRed has been a signatory to PRI since 2011.

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

As stated earlier in this letter, we are eager to participate in any one-on-one meeting with MDOT to discuss the Projects.

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

We have no other comments at this stage. We thank you for the opportunity to submit this letter.