Mega bridge P3 – the Detroit River International Crossing (DRIC)/New International Trade Crossing (NITC)

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It is estimated a quarter of all Canadian trade to the US passes through the Windsor-Detroit border. To facilitate travel and create sufficient capacity for future trade at this, Canada’s busiest commercial border crossing, a new bridge will be built to link Windsor, Ontario, and Detroit, Michigan.*

The procurement process is gearing up with the Windsor-Detroit Bridge Authority preparing to issue a request for qualifications in 2014, and the Canadian government announcing in its most recent budget that it will be providing C$631 million over the next two years on a cash basis to advance the construction of the project.

As this project will likely be of great interest to proponents with both Canadian and US capabilities, this briefing will summarize the project’s main components, explain the regulatory approvals in place, and highlight issues worthy of consideration as the project advances.

The four components of the project

The project involves the construction of four components: an international plaza on the Canadian side; an 850-metre suspension or cable-stayed international bridge; an international plaza on the US side; and a direct connection from the US plaza to Interstate 75 (I-75). It is estimated the project will cost $US2.15 billion: $US1.3 billion related to assets to be built on the US side, and $US850 million to those on the Canadian side. Almost all government funding for the project is in place, with the only remaining unfunded expense being the international plaza on the US side, which carries an estimated cost of $US250 million.

The project’s four components will be overseen by the Windsor-Detroit Bridge Authority, a Canadian Crown corporation created under the terms of the Canada-Michigan Crossing Agreement signed in June 2012.

* This project is referred to in the US as the New International Trade Crossing (NITC), and in Canada as the Detroit River International Crossing (DRIC). A permanent name has not been decided upon.
The four components of the project

Under the Crossing Agreement’s terms, Canada will assume responsibility for the entire project, including the provision of an additional investment of up to $US550 million to cover costs that would normally have been incurred by Michigan for the project’s US portion.

**The public-private partnership**

All four construction components will be undertaken as one project procured by the Windsor-Detroit Bridge Authority, which will approve both the procurement process and the final agreement.

The international plazas and the bridge will be constructed under a design-build-finance-operate-maintain framework. The concessionaire will not, however, be responsible for operating and maintaining the I-75 interchange. This responsibility will be retained by Michigan.

Construction risk will be assumed by the private sector with the Canadian federal government assuming all risk for traffic and toll revenue.

Performance payments will be made to private partners over an anticipated 30-year concession period, beginning upon completion of all four project components.

**Permitting and approvals**

Under US law, environmental impact statements are required for major federal actions that significantly affect the quality of the human environment. In early 2009, the Federal Highway Administration issued a Record of Decision for the project, thereby completing the final step in the environmental impact statement process.

All major permits required for the project have been granted, including two high-priority permits required in the US, namely the Presidential Permit and the Coast Guard Permit. The Presidential Permit, required for all construction and maintenance of facilities at the US border or connecting the US with a foreign country, was obtained in April 2013. US federal law also requires that the location and plans of bridges and causeways across navigable US waters be submitted to and approved by the commandant of the US Coast Guard (under a delegation from the Secretary of Transportation) prior to construction. The Coast Guard Permit was issued in June 2014.

Transport Canada has completed traffic forecasting, preliminary engineering and environmental assessments, which will be updated every two years. At-risk plant and animal species found at the Canadian plaza have been relocated, and bird and plant surveys have also been completed.

Canada has also proactively enacted the *Bridge to Strengthen Trade Act*, providing, in advance, all Canadian approvals necessary to construct the project, such as environmental, navigation and construction approvals.

**Issues for consideration**

**Property acquisition**

Transport Canada is working to acquire the remainder of properties in Canada for the Canadian inspection plaza, which is currently being designed with the Canada Border Services Agency. In February 2014, the Canadian government announced that much of a C$631 million budget allocation would be dedicated towards property acquisition required in Michigan. Some utility relocation in Canada has begun, and geotechnical studies, such as soil testing, are ongoing. The Windsor-Detroit Bridge Authority is currently recruiting management; once recruitment is complete, the Windsor-Detroit Bridge Authority will obtain control of the project and the procurement process will begin.
Currency risk
The project is being procured in Canada, thus it is likely payments by the Windsor-Detroit Bridge Authority will be made in Canadian dollars. The project’s largest cost components are located in the US and consequently, currency risk may be a factor for potential proponents.

Buy America requirements
Under US federal law, a number of requirements must be met in order for expenditures on a project to be eligible as the “non-federal share” for federal aid matching purposes under the Federal Highway Administration’s Federal Aid Highway Program.

The Crossing Agreement requires successful proponents to meet all these requirements. Further, under the Crossing Agreement, the “Buy America” provisions otherwise applicable under the Federal Highway Administration's Federal Aid Highway Program are replaced with a requirement that all iron and steel used in US elements of the project must be produced in the US and Canada. The Crossing Agreement further stipulates that there shall be no discrimination in favour of US or Canadian parties with respect to any products, materials, supplies, labour or services purchased under this requirement.

US tax-exempt bonds
In certain circumstances, US federal law allows state and local governments to finance projects using bonds the interest on which is excluded from gross income for federal income tax purposes. This allows state and local governments to finance eligible projects at reduced interest rates.

In general, so-called tax-exempt financing is available only for projects owned and operated by a state or local government. However, in limited circumstances, tax-exempt “private activity bonds” are authorized for projects that benefit private businesses. One such authorized project is a “qualified highway or surface freight transfer facility.” Such a facility includes an international bridge or tunnel project for which an international entity authorized under US federal or state law is responsible, and that receives assistance under the US federal highway laws (title 23 of the United States Code). To utilize tax-exempt financing for such a project, a project beneficiary must apply for and receive an allocation of bond authority from the US Department of Transportation.