



**CONSIDERATIONS FOR POTENTIAL HYBRID MODELS  
OCTOBER 21, 2013**

	OPTION 1	OPTION 2	OPTION 3
	<b>Ohio/Kentucky Joint Administration One Integrated Procurement Two Contracts</b>	<b>Two Separate State Procurements Two State Contracts</b>	<b>Two Separate State Procurements Two State Contracts</b>
<b>SUMMARY: Allocation of Project Elements (BY PROCUREMENT &amp; CONTRACT)</b>	<u><b>CONTRACT ONE (DBFOM)</b></u> OH approaches New bridge construction  <u><b>CONTRACT TWO (DB)</b></u> Existing bridge rehabilitation KY approaches	<u><b>PROCUREMENT ONE / CONTRACT ONE (DBFOM)</b></u> OH approaches New bridge construction  <u><b>PROCUREMENT TWO / CONTRACT TWO (DB)</b></u> Existing bridge rehabilitation KY approaches	<u><b>PROCUREMENT ONE / CONTRACT ONE (DBFOM)</b></u> OH approaches New bridge construction Existing bridge rehabilitation  <u><b>PROCUREMENT TWO / CONTRACT TWO (DB)</b></u> KY approaches
<b>I. PRE-CONTRACTING</b>			
<b>A. Allocation of Project Element Costs</b>	Bi-State Development Agreement/Inter-Local Cooperation Agreement	Bi-State Development Agreement/Inter-Local Cooperation Agreement	Bi-State Development Agreement/Inter-Local Cooperation Agreement
<b>B. Funding Structure</b>	Joint Administrative Entity develops and implements	Revenue sources allocated to specific discrete project elements by State	Revenue sources allocated to specific discrete project elements by State
<b>C. Toll Policy - Development &amp; Implementation</b>	Joint Administrative Entity develops and implements	Joint Administrative Entity develops and implements	Joint Administrative Entity develops and implements
<b>D. Financing Structure</b>	Joint Administrative Entity develops and implements:	DB package – via public municipal financing (toll revenue bonds)	DB package – via public municipal financing (toll revenue bonds)

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	DB package – via public municipal financing (toll revenue bonds)  DBFOM package – via availability payment backed financing	DBFOM package – via availability payment backed financing	DBFOM package – via availability payment backed financing
<b>II. PROCUREMENT</b>			
<b>A. Procurement Structure Responsibility</b> 1. <i>Technical</i> 2. <i>Inclusion/Workforce goals</i>  3. <i>State/Local Tax Applicability</i>	Opportunity for development of common technical requirements and standards across both contracts  Toll collection systems /integrator -> ALLOCATION TO BE DISCUSSED	Develop methodology for determining standards, project requirements, etc  Toll collection systems /integrator -> ALLOCATION TO BE DISCUSSED	Develop methodology for determining standards, project requirements, etc.  Toll collection systems /integrator -> ALLOCATION TO BE DISCUSSED
<b>B. Contracting Entity for Procurement/Oversight</b>	Bi-State Entity Administer (e.g., Joint ODOT/KyTC Controlling Board)	Kentucky entity: DB contract  Ohio entity: DBFOM contract	Kentucky entity: DB contract  Ohio entity: DBFOM contract
<b>C. Management of Utility Relocation/Installation</b>	Joint Body allocates responsibility to contractor; coordination with responsible state agency	Each state has separate contracts but potential scope, work coordination and schedule impacts based on separate administration	Each state has separate contracts but potential scope, work coordination and schedule impacts based on separate administration
<b>III. PROJECT REVENUES</b>			
<b>A. Project Revenue Allocation Methodology</b> 1. <i>Toll Revenue</i> 2. <i>Federal Funds</i> 3. <i>State Funds</i> 4. <i>Other Funds</i>	Allocation of Project Revenues to each state based on percentage of Project Scope (e.g., capital expenditures, life cycle cost estimates or number of lane miles)	Allocating separate revenue sources (toll vs. federal highways vs. state highway or other funds) to each discrete Project element within each state may be problematic	Allocating separate revenue sources (toll vs. federal highways vs. state highway or other funds) to each discrete Project element within each State may be difficult

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<b>IV. PROPERTY ISSUES</b>			
<b>A. Real Property Issues</b> 1. <i>Acquisition/Eminent Domain</i> 2. <i>Ownership</i> 3. <i>Disposition at termination</i>	Property interests as currently aligned; eminent domain powers reside with each state; Bi-State Development and Inter-Local Cooperation Agreement required (revisions to ORC 5501.44; KRS 65.290) Joint administration process	Each state responsible for property acquisition based on project scope  Determination necessary on property ownership during and following project completion	Each state responsible for property acquisition based on project scope  Determination necessary on property ownership during and following project completion
<b>V. POST PROJECT DELIVERY</b>			
<b>A. Management of Operations</b>	Joint Administrative Body - determination and allocation of responsibility, save elements incorporated into DBFOM package	Determined contractually based on project scope/limits <i>KRS &amp; ORC revisions necessary</i>	Determined contractually based on project scope/limits <i>KRS &amp; ORC revisions necessary</i>
<b>B. Management of Maintenance</b>	Work within DBFOM limits maintained by DBFOM contractor  Remaining Work elements maintained by Joint Administrative Body - determination and allocation of responsibility.	Work within DBFOM limits maintained by DBFOM contractor  Maintenance of remaining work elements determined contractually based on project scope/limits  <i>KRS &amp; ORC revisions necessary</i>	Work within DBFOM limits maintained by DBFOM contractor  Maintenance of remaining work elements determined contractually based on project scope/limits  <i>KRS &amp; ORC revisions necessary</i>
<b>C. Management of Toll Facilities/Operations</b>	Joint Tolling Body established to implement policies pursuant to Development Agreement  <i>KRS &amp; ORC revisions necessary</i>	Joint Tolling Body established to implement policies pursuant to Development Agreement  <i>KRS &amp; ORC revisions necessary</i>	Joint Tolling Body established to implement policies pursuant to Development Agreement  <i>KRS &amp; ORC revisions necessary</i>

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<i>D. Capital Repair/Replacement - Allocation of Responsibility</i>	Responsibility allocated based contract structure  ORC & KRS Legislative amendments necessary <u>See Section VII. below</u>	Capital replacement based on project scope responsibility  ORC & KRS Legislative amendments necessary <u>See Section VII. below</u>	Capital replacement based on project scope responsibility  ORC & KRS Legislative amendments necessary <u>See Section VII. below</u>
<b>VI. KEY TERMS OF OVERALL STRUCTURE</b>	Milestone Payments for DB portion with Kentucky responsible for funding/ financing.  Availability Payments by Ohio from appropriations in years after Substantial Completion.  O&M allocation for Kentucky elements?	Milestone payments for DB contract by Kentucky (from State funding and proceeds of public municipal financing toll revenue bonds)  Availability Payments by Ohio from appropriations in years after Substantial Completion	Milestone payments for DB contract by Kentucky (from State funding and proceeds of public municipal financing (toll revenue bonds)  Availability Payments by Ohio from appropriations in years after Substantial Completion
<b>VII. LEGISLATIVE MODIFICATIONS FOR OPTION IMPLEMENTATION</b>	Revisions to KRS Chapter 175.05 re: KyPTIA authority; agreements with adjoining states; and permitting P3 related provisions  Revisions to ORC 5501.44	Amendments necessary ORC 5501.44 & KRS 175.05 re: allocation of funds; contracting authority; revisions to KRS 45 et seq. & ORC 5525 et seq. re: public bidding constraints	Amendments necessary ORC 5501.44 & KRS 175.05 re: allocation of funds; contracting authority; revisions to KRS 45 et seq. & ORC re: public bidding constraints
<b>VIII. POTENTIAL BENEFITS OF OPTIONS</b>	Single procurement would allow a coordinated approach to industry.  Single point responsibility for procurement by one entity for meeting project and delivery revenue service deadline	Simple split of procurement responsibilities between state agencies by appetite for risk transfer  Each State can develop its commercial terms and contract procedures as it wishes (but must still coordinate on a number of key provisions and schedule constraints)	Simple split of procurement responsibilities between state agencies by appetite for risk transfer  Each State can develop its commercial terms and contract procedures as it wishes (but must still coordinate on a number of key provisions and schedule constraints)

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	Access to two discrete financing markets (public financing and private financing )  Alignment of contract risk allocation with market expectations and appetite for respective contract structures	Access to two discrete financing markets (public financing and private financing )  Alignment of contract risk allocation with market expectations and appetite for respective contract structures	Access to two discrete financing markets (public financing and private financing )  Alignment of contract risk allocation with market expectations and appetite for respective contract structures
<b><i>IX. PROJECT RISKS/ISSUES</i></b>	Delays in procurement for one contract could cause delay in for entire Project; threaten the basis upon which the States will meet their project delivery and payment obligations  Agreement between states needed on all aspects of procurement process. Risk that states not agree all points.  Simpler interfaces with tolling integrator (single contracting agency)  Market may not have confidence in ability of States to make timely decisions absent appointment of a Joint Administrative Body  Default by one contractor would adversely affect project delivery revenue service of entire Project.  Late completion by DB Contract would delay entire Project with significant	Delays in procurement for one contract could cause delay in for entire Project; threaten the basis upon which the States will meet their project delivery and payment obligations     Tolling integrator interfaces across contracts and states    Default by one contractor would adversely affect project delivery revenue service of entire Project.  Late completion by DB Contract would delay entire Project with significant	Delays in procurement for one contract could cause delay in for entire Project; threaten the basis upon which the States will meet their project delivery and payment obligations.     Tolling integrator interfaces across contracts and states    Default by one contractor would adversely affect project delivery revenue service of entire Project.  Late completion by DB Contract would delay entire Project with significant

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	<p>cost and revenue implications.</p> <p>Earlier completion by DBFOM contractor could initiate availability payment obligation by Ohio but this may be prior to Revenue Service if DB Contract not yet complete.</p> <p>Two separate contracts will likely have some critical interfaces and overlap such as maintenance and protection of traffic during construction (need to coordinate lane closure restrictions), drainage, design concepts, shared access to site, competition for labor and other resources</p>	<p>cost and revenue implications.</p> <p>Earlier completion by DBFOM contractor could initiate availability payment obligation by Ohio but this may be prior to Revenue Service if DB Contract not yet complete.</p> <p>Two separate contracts will likely have some critical interfaces and overlap such as maintenance and protection of traffic during construction (need to coordinate lane closure restrictions), drainage, design concepts, shared access to site, competition for labor and other resources.</p>	<p>cost and revenue implications.</p> <p>Earlier completion by DBFOM contractor could initiate availability payment obligation by Ohio but this may be prior to Revenue Service if DB Contract not yet complete.</p> <p>Two separate contracts will likely have some critical interfaces and overlap such as maintenance and protection of traffic during construction (need to coordinate lane closure restrictions), drainage, design concepts, shared access to site, competition for labor and other resources.</p>

**Additional Issues for Review and Consideration**

1. To assist in determining between options 2 and 3, review life cycle issues for existing BSB, and whether there is a case for not including within a DBFOM due to latent defect risk. Information needed on condition of the existing BSB and whether performance and handback conditions could be predicted by Developer.
2. For all options, there may be challenges in accurately assigning various revenues between the States. A pro-rata allocation to Life Cycle cost would be one method, but the States may not agree on what the life-cycle costs should be. If revenues assigned on capital cost, Ohio may not know what the capital cost is following the award of contract because DB pricing is not known accurately under a DBFOM contract.
3. In all cases there are both DB and OM interfaces that would need to be explored. For example, for assets maintained by Kentucky, what would happen if a very different approach is taken to maintain asset conditions, snow and ice clearance, incident response etc.?