

The ARTI of the Deal: Illustrating Why Local Can Be Better



Fredric Kessler (Nossaman LLP), Photo by John Livzey, 2014

Think globally; initiate locally. With that as doctrine, Metro and the California Department of Transportation (Caltrans) have created the Accelerated Regional Transportation Improvements (ARTI) project, a prime illustration of the growing movement of locally initiated and funded major infrastructure projects.

“The ARTI is an excellent example of how transportation is being transformed through innovation measures propelled at the local level. This project never would happen—never would have been conceived—except at the local level,” explains Fredric W. Kessler, a partner at Nossaman, LLP, a Los Angeles-based national law firm with expertise in alternative delivery, particularly public-private partnerships (P3). “ARTI is a product of Metro’s P3 program, drawn from a number of different elements in their long-range transportation plan. It’s a new way to bring them all together and package them to improve the efficiency of financing, overall cost, the use of different local sources of financing, and to accelerate project delivery by 20 years.”

The \$725 million ARTI project will be procured as an availability payment P3, a P3 where a public entity compensates a private entity based on achieving particular project milestones and keeping the facility up to operating and maintenance performance standards. A combination of several smaller projects, the ARTI includes the resurfacing of the general-purpose lanes and the addition of two managed lanes for approximately 10 miles of the I-5 north in Los Angeles County, the expansion of the SR-71 gap connector in Pomona, and the construction of several sound walls. By grouping these projects together in a P3 procurement, Metro looks to improve significantly the benefit-to-cost ratio through economies of scale. But the procurement choice saves more than money. Had Metro pursued these projects traditionally, they could not have been completed until 2040. With the P3 methodology, the projects can be built and available for public use as early as 2019. Kessler sees ARTI as a bellwether for the nation.

“The federal government is not the impetus or funding source for moving these projects forward. Most of the money for ARTI is local money: Measure R, Proposition C, a little bit of Regional Surface Transportation Program funds, and some Congestion Mitigation Air Quality Management money. There is also tolling of the I-5 HOT lanes, which is critical to the financing package. But even if there is a little federal money, as there is in ARTI, that invokes an entire overlay of federal laws and regulations on procurement, contract document elements, and certain approval rights over the whole project.

“One of the things we’re starting to see because of this change in the sources of funding is a push to remove the federal regulatory overlay when the majority of funding on a project is non-federal, like ARTI. Tolling faces a similar federal issue. In general, federal law prohibits tolling of interstates or any other highways funded with federal gas taxes. MAP-21 (the Moving Ahead for Progress in the 21st Century Act) introduced a number of significant exceptions to this tolling ban on federally funded projects. And that

makes sense. Tolling is a quintessentially state and local decision. Local users pay the bulk of tolls. So political accountability should be at the state and local levels. Many want to see federal law further changed to remove all federal controls over tolling, other than requirements to use the tolls for transportation purposes, and leave this decision to state and local governments. This is where the money is coming from for many projects, particularly here in Los Angeles. So the movement to initiate and fund things locally is having growing national effects.”

Think globally; initiate locally. With the Accelerated Regional Transportation Improvements project, Metro and Caltrans have done just that.

This article first appeared in the Fall 2013 edition of our WTS Los Angeles newsletter and was subsequently published in Metro magazine. This article was written by Arthur Schurr. Schurr is a Brooklyn-based writer who reports on infrastructure. He can be reached at ArthurSchurr@aol.com.