

Rutan & Tucker presents

# Local and Global Trends

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## Evolution and Revolution in Public-Private Partnerships

A revolution of collaboration and innovation is happening in the world of public-private partnerships. Rutan & Tucker's fourth annual Design-Build Symposium explored this exciting concept, and many more, on September 11 at Pebble Beach's Inn at Spanish Bay. The event included speaker Phil Blanchard, Partner, Construction Law Group, Rutan & Tucker. It was co-hosted and co-moderated by Steve Nichols, Managing Partner, Rutan & Tucker; and William Eliopoulos, Partner and Palo Alto office Managing Partner, Rutan & Tucker. Cutting-edge construction issues, from challenges in legislation to triumphs of design, were discussed by a panel of leading industry experts: Michael Marasco, CEO Plenary Concessions, Plenary Group; Mark Kempton, Project Director, Skanska; and Sam Gilmore, Vice President and General Counsel, Kiewit Development Company.



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**Q: Public-private partnerships, design-build, integrated project delivery and lean construction are trending in U.S. construction. What are you seeing in today's market?**

**Michael Marasco:** Looking at U.S. trends, industry members – from procurement authorities to construction firms and financiers – believe infrastructure is going toward PPP. With values of U.S. deals in active procurement at about \$16.6 billion, 2014 is shaping up to be a big year for P3s. An increasing number of states are developing social infrastructure legislation. And we're seeing a shift toward availability payment structure versus toll or user fee.

**Mark Kempton:** We're seeing projects with a strong, unique vision. Skanska is on a respondent team for the new UC Merced project, which may turn out to be a hybrid between a concession-type and development-type deal, rather than a pure P3 solution.

**Q: Talk more about the UC Merced 2020 project, Mark.**

**Mark Kempton:** UC Merced has a current enrollment of 6,000 but plans to expand to 10,000 by 2020, necessitating the design and construction of a mixed-use solution. Although the University is interested in PPP, they've opted to leave the delivery mechanism open, allowing teams to submit potential solutions and explain the value of their plans to the Regents. It's \$1 billion-plus in esti-

ated capital expenditure, and everybody in the P3 world is watching the project. This would be the largest social infrastructure PPP in U.S. history – one of the largest in the world.

**Q: On the transportation side, Sam, talk about Kiewit's involvement in the Goethals Bridge project.**

**Sam Gilmore:** The Goethals Bridge links Elizabeth, New Jersey to Staten Island; the replacement project is about \$1 billion. We've done quite a few P3 projects as a design-builder but this was our first project injecting equity into the deal: we have 10 percent of the Goethals Bridge on the equity side. An operations and maintenance component is present because there's a long-term portion of the P3 process. The financing portion included TIFIA (Transportation Infrastructure Finance and Innovation Act) and PAB (Private Activity Bond) funding. This project is for the Port Authority of New York and New Jersey, an A-plus rated agency. We've just started the process but so far, so good.

**Q: Mike, how does the P3 marketplace differ between Canada and the United States?**

**Michael Marasco:** One difference is not really needing enabling legislation in Canada, because there are regulations requiring public entities to explore P3 as an option for procurements. In the early 2000s, the province of Ontario renewed its entire hospital inventory and did \$35 billion in

hospitals in five years, put out into the market as PPPs. Announcing those projects created a global marketplace of immense capacity, sharpened pricing and attracted private sector investment. That's what P3s can do.

**Q: How do PPPs drive innovation?**

**Sam Gilmore:** If you want to win a P3 project, you know going in that you have to find that innovation, to be competitive. Everyone knows that if you're going to make a difference, it has to be in innovation.

**Mark Kempton:** I think one of the benefits of public-private partnerships is the ability, as an agency, to say: "This is what I want to be in five years – I want you to work with me to get there." That leaves the door open to a lot of potential innovation in a collaborative effort between public and private sectors.

**Q: What challenges does the PPP process face in the U.S? Do you think people are confused by the P3 concept?**

**Michael Marasco:** I think the biggest challenge is the lack of a homogeneous market – unlike Australia, Canada and the U.K., which for the most part follow the International P3 Model. And one reason P3s haven't advanced further here is that many people think they're simply a financing vehicle rather than driving a strong value proposition and delivery.

**Mark Kempton:** One of the biggest roadblocks to success is when agencies aren't knowledgeable before entering into a P3 procurement for a concession-type deal. We're beginning to see the level of understanding and expertise rise, depending on the agency and where and how many times they've tried this before, but it still needs to improve.

**Q: How is the need for P3 legislative infrastructure in the U.S. being addressed?**

**William Eliopoulos & Steve Nichols:** President Obama recently announced a new panel that will explore P3s in transportation and other sectors, hopefully the next move toward dealing with the infrastructure deficit. California is one of 36 states, plus Puerto Rico, with some form of P3 legislation, although it needs expansion and improvement. Once the necessary legislation is created and roadblocks are removed, we think the U.S. will dwarf its P3 competition. Moody's has just published a report projecting that the U.S. will soon become the largest P3 market in the world.

**Phil Blanchard:** We also need to be aware of sunset provisions coming up that would stop the authority of some of California's key P3 enabling statutes. After December 31, 2016, California Street & Highways Code Section 143 will sunset; without extension of that legislation, transportation P3s and concession deals in California will stop. A working group is developing draft legislation to replace this statute before the current authorization ends.

**Q: Talk about P3 projects being canceled or drastically changed during procurement.**

**Sam Gilmore:** Imagine three or four shortlisted teams going through the process, each team spending millions of dollars chasing these projects, when suddenly the rug is pulled out from under you in the middle of procurement. You start losing faith in that governmental agency.

**Michael Marasco:** We've had projects that decided to change the model midway through the procurement. You're well into the design, developing your strategy, spending money – and they decide to do something different. In Canada or the U.K., that public sector entity would completely lose credibility.

**Mark Kempton:** We were involved with ARTI (Accelerated Regional Transportation Initiative), a P3 originally proposed by L.A. Metro in conjunction with Caltrans, several projects bundled together as a long-term concession. Prior to Request For Proposals, they decided to proceed in a different direction; the project was broken up, the delivery mechanism changed. It was disappointing to our shortlisted team that had put time and effort into the project. But both these agencies say they're committed to P3s in the future, and they probably learned from this experience about working together on these kinds of deals.

**Q: In addition to those discussed here, what other social infrastructure projects are in progress?**

**Michael Marasco:** There are many, many projects spread across the U.S. and attracting international players – transit facilities, light rail expansion, HOT/HOV lane expansion. Long Beach Civic Center should announce the preferred proponent soon. There are DOT facilities in Arizona and a series of Michigan projects ready to launch. And Houston's Justice Complex, the Indy Justice Center, PennDOT's dual transit facility and Florida's University Park & Northwest Village Project.

**Q: Any last comments pertaining to the past, present or future of P3s?**

**Mark Kempton:** We need a solid framework for managing procurement. It's not enough just to have the authority; you need to know what to do with the authority.

**Sam Gilmore:** If you're dealing with the state of California, you've got nothing but good credit. But with some of the sub-tier agencies you have to look a little bit harder at their financial capacity.

**Michael Marasco:** People don't really care how they get their infrastructure delivered; they just care that it takes them 10 minutes to get to work instead of 60. They don't care who built that hospital as long as they get the treatment they need when they need it. ■

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