

Rutan & Tucker presents

# Public-Private Partnerships

## 2015 and Beyond

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A revolution of collaboration and innovation is happening in the world of public-private partnerships. Rutan & Tucker's fifth annual Design-Build Symposium explored this exciting concept, and many more, on September 17 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 & Co-Chair, Construction Law Group, Rutan & Tucker; and William Eliopoulos, Partner & Co-Chair, Construction Law Group, Rutan & Tucker. Cutting-edge construction issues, from challenges in legislation to triumphs of design, were discussed by a panel of leading industry experts: Sam Barend, Sr. V.P., Development Director, AECOM Capital; Geoffrey Stricker, Managing Director, Edgemoor; Frank Baltz, Sr. V.P., Chief Legal Officer, Clark Construction Group LLC; Michael Marasco, CEO Plenary Concessions, Plenary Group.

**Q to Sam Barend:** There has been a lot of "buzz" around P3's in the U.S. the past several years—How does the reality of their use match that "buzz"?

**A:** The reality has surpassed the buzz—more than \$6 billion worth of P3 projects were awarded in 2014 and another \$19 billion will likely be awarded and begin procurement in 2015. But for the P3 delivery approach, many of these projects would never have moved forward in our lifetime.

**Q to Sam Barend:** You are at the forefront of lobbying efforts for new federal legislation to help expand the use of P3 by the federal government. What new legislation is needed and how are the lobbying efforts going?

**A:** The utilization of P3s for U.S. public buildings has been extremely limited because unlike the transportation sector, public buildings are not eligible for



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tax-exempt facility bonds or TIFIA like financing. Since 2008, Exempt Facility bonds have facilitated \$16 billion in transportation P3 projects in this country. And, every U.S. P3 transportation project that has been undertaken has utilized either TIFIA or Exempt Facility Bonds, or a combination of both. In order to advance public building P3s for our states and cities, Congress must create financing tools similar to what exists for the transportation sector. The Performance Based Building Coalition is pushing for new financing tools to be enabled in the upcoming Transportation Reauthorization bill that must be expanded this Fall.

**Q to Mike Marasco and Geoffrey Stricker:** Your development companies are two leaders in P3 development in the U.S. and together are leading the development of the Long Beach Civic Center Project—one of the first American Social Infrastructure P3 projects—what can you tell us about that project?

**A:** Plenary Group and Edgemoor teamed with Clark Construction and Johnson Controls (Plenary Edgemoor Civic Partners—PECP) to design, build, operate, finance and maintain the new City Hall, new Main Library and revitalized Lincoln Park for the City of Long Beach for a 40 year period following construction completion. As part of the same deal, PECP will also develop a new headquarters for the Port of Long Beach on land made available by the City.

**Q to Geoffrey Stricker:** Your company recently landed a P3 project for the University of Kansas—are there traits of colleges and universities that can make P3 a particularly appealing delivery method?

**A:** Today, colleges and universities are looking for ways to differentiate themselves in an effort to attract the best and brightest students and faculty. These institutions have identified that providing new, state-of-the-art housing, dining, and science/technology facilities are a key element to their strategy. For example, at the University of Kansas, Edgemoor was hired to develop, finance, build, and operate 285,000 SF of academic science facilities, a 26,500 SF student union, 1,200 beds for student housing, and 1,900 parking spaces. These assets types are attractive for P3 projects as they have revenue streams to pay the financing and operating costs and do not create significant financial burdens on the college or university.

**Q to Mike Marasco:** You used to be with the agency in British Columbia recommending whether the government should let certain projects using P3 or another delivery method: What advice would you give to a public agency considering whether to use P3 for a new public facility?

**A:** Do your homework! P3 projects are very complex transactions that require a significant

amount of due diligence on behalf of the public sector. My advice would be to hire the most experienced advisors available, follow market-proven best practices for procurement and documentation, and learn from others that have been there before you.

**Q to Frank Baltz:** You are Chief Legal Counsel to a large construction company that works on both P3 projects and other types of commercial construction projects—the construction market seems to be heating up; is that affecting Contractors' appetites to bid on P3 projects?

**A:** Project selection requires a detailed analysis of risk and opportunity. As P3 projects require construction companies to take on design and non-traditional real estate development risk, as well as, often require a substantial monetary investment, we are much more selective when evaluating P3 opportunities.

**Q to Bill Eliopoulos and Phil Blanchard:** Does California have laws in place that are adequate to allow agencies to utilize P3 to build their projects?

**A:** California has P3 Enabling statutes in place that allow public agencies to build

P3 projects. However, new statutes are necessary to allow for the broader use of the P3 delivery method by our public agencies. California's current general P3 Enabling statute for its building infrastructure projects, Gov't Code 5956, for example, requires that the new facility be fee generating. However, many public agencies are interested in building new facilities that are not fee generating using P3. "Availability" model P3 projects do not require that funding for the project be generated by the new facility, itself, but rather may be funded by the agency's general fund or other long term sources. For this reason, several California public agencies who want to undertake P3 projects have obtained their own special P3 enabling legislation (see, e.g., CalTrans, California Judicial Council—courthouses; City and Port of Long Beach—Civic Center, Regents of the University of California). Sts. & Hwy Code Section 143, which enables CalTrans and other select regional transportation agencies to utilize P3, sunsets in January of 2017. Efforts are underway to pass legislation to extend the statute's effectiveness beyond that date.

**Q to Steve Nichols:** P3 seems to include some of the elements of the

**Design-Build delivery method—how are they similar and is Design-Build also gaining in popularity for public infrastructure?**

**A:** P3 projects typically include Design-Build-Finance-Operations-Maintenance ("DBFOM") of the new facility or other infrastructure. The "Design-Build" portion of that is an important part of the program. By combining the design and build phases and putting them under one "tent"—that of the private developer and design-builder—P3, like design-build, tends to get projects completed faster than more traditional construction projects in which the design phase is completed before construction can start. For example, there are aspects of every project where you can begin putting shovels in the ground before electrical and mechanical systems are fully configured. Because of these advantages, Design-Build Construction has steadily gained in popularity over the past 10 years. Statistics over the past several years show that for non-residential projects with a value greater than \$10 million, the majority now use the Design-Build method of delivery. That is a dramatic shift from how things were before the past decade. —◆—

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