

Business Better (Season 3, Episode 2): Spending the \$4.2 Billion in New York's Environmental Bond Act

Speakers: Bill Estes, Julie Tighe, and Ali Chaudhry

Steve Burkhart:

Welcome to Business Better, a podcast designed to help businesses navigate the new normal. I'm your host, Steve Burkhart. After a long career at global consumer products company BIC – where I served as Vice President of Administration, General Counsel, and Secretary – I'm now Of Counsel in the Litigation Department at Ballard Spahr, a law firm with clients across industries and throughout the country.

In this episode, we discuss how the \$4.2 billion authorized in New York's Environmental Bond act will be spent. We talk about the types of projects that will be funded, financial benefits to the State; including short term job creation and the longer term benefits to residents and visitors of improved infrastructure, and the ability to leverage these funds for billions of additional dollars. Leading this discussion is Bill Estes, Of Counsel in Ballard's New York Office. Bill is joined by Ali Chaudhry, Senior Vice-President and Chief Development Officer at AECOM, and Julie Tighe, President of the New York League of Conservation Voters. So now, let's turn the discussion over to Bill Estes.

Bill Estes:

Welcome. I'm Bill Estes, an attorney in the New York office of Ballard Spahr, and I practice in Ballard Spahr's P3/Infrastructure Practice Group. Ballard Spahr advises governments, contractors, and financing parties on all aspects of public projects across a variety of sectors, including transportation, social infrastructure, and water

Today I'm joined by Julie Tighe. She is the President of the New York League of Conservation Voters and the New York League of Conservation Voters Education Fund, which is an environmental advocacy group. Previously, Julie served for more than 11 years at the New York State Department of Environmental Conservation; that's a state agency that protects and enhances the environment. She served both as an Assistant Commissioner of Intergovernmental and Legislative Affairs, and as Chief of Staff.

I'm also joined by Ali Chaudhry. He's the Senior Vice President and Chief Development Officer at AECOM, and he plays a key leadership role in managing all new business strategies in New York. Previously, Ali served as Deputy Secretary for Transportation to a former New York governor. In that role, he oversaw policy operations and funding at all New York state transportation entities. He has also served as an assistant counsel to a former governor and as counsel for the New York State Senate.

Welcome, Julie. Welcome, Ali. Julie, could you just for those listeners who are unfamiliar with the New York League of Conservation Voters, tell us a little bit about your organization and the big issues that you're involved with at the moment?

Julie Tighe:

Sure. So the New York League of Conservation Voters is a statewide environmental advocacy group, the only organization that advocates for clean water, clean air, clean energy, clean transportation, and open space through political action. And we do that through endorsements of candidates as well as holding lawmakers accountable.

On the education fund side, our mission is to educate, engage and empower New Yorkers to be effective advocates for the environment. And we do that through both civic engagements such as candidate forums and get-out-the-vote efforts as well as educational forums and urging people to participate in actions they can take to reduce their environmental footprint.

Bill Estes:

And for full disclosure, the league did support Proposition One or the Environmental Bond Act, is that correct?

Julie Tighe:

We did. We were one of the leading organizations of the Coalition to Advance Passage by the voters. And that's the vote yes for Clean Water and Jobs, the very subtly titled coalition that worked over 300 organizations, labor, environment, environmental justice, business, and local governments who advocated to get secure passage by the voters this past November.

Bill Estes:

Great. Ali, could you for our listeners who might be unfamiliar with the infrastructure sector, tell us a little bit about AECOM and some of the iconic projects that AECOM has been involved in New York State and New York City.

Ali Chaudhry:

Absolutely, thank you, Bill. AECOM is a global premier infrastructure company, primarily involved in the business of design such as engineering, architecture planning, but we're also one of the very few infrastructure companies, especially in North and South America that also provides construction services. Across the globe, if it's infrastructure, we do it, whether it's actually designing, whether it's actually constructing projects or advising clients, even on the equity investment side of the equation, capital investment as well as municipalities and governments on economic benefits of projects.

At AECOM itself, we do so much work specifically in New York; we've developed some of the biggest landmark projects that define New York City in particular, but also all of New York state. So Freedom Tower, Barclay Center, Lincoln Center, the US Open Arenas, Second Avenue Subway are some of the big iconic projects that come to mind. Currently, we are engaged in especially P3 projects, which are historic such as terminals one and six at JFK. Also, the borough-based sales program for the New York City Department design and construction.

Bill Estes:

That's a very impressive list, and I deem you both eminently qualified to discuss the matter at hand, which is in November 2022, the voters of New York voted for the Clean Water, Clean Air and Green Jobs Environmental Bond Act that authorized the state to sell \$4.2 billion worth of bonds to preserve, enhance and restore New York's environmental resources and reduce the impact of climate change.

So Julie, I'm going to ask you if you could describe some of the projects and types of areas that the Bond Act is meant to address.

Julie Tighe:

Sure. Thanks, Bill. The Bond Act really is the first time we've had a bond act here in the state of New York since 1996, and it's a much bigger bond act than we've had in a long time. And frankly, it was overwhelmingly passed by the voters with about 67% of the vote in what was a very partisan election this year. So it was very heartening to see how much support there was. And I think that's in part because of how much the projects that we're talking about that can be funded here resonate with voters in the state of New York. So the Bond Act is broken up into four big buckets.

One is water quality and resilient infrastructure, and the Bond Act allocates \$650 million for that pod. The second is open space conservation and recreation. That's at least \$650 million for that bucket. There's restoration and flood risk reduction. As we know, we've seen a lot of flooding over the last decade. There has been actually an emergency declaration in every county of the state of New York in the last 10 years because of flooding. So there's \$1.1 billion in funding available for that program. And then the biggest bucket of all is there's \$1.5 billion for climate change mitigation.

And then of course within each of these categories, there are more specifics, which I'll get into a second. There's a big overlay on the Bond Act and all climate-related funding going forward that was adopted as part of the Climate Leadership and Community Protection Act, New York's Landmark climate law, that requires that at least 35% with the goal of 40% of the

funds be spent in disadvantaged communities; the Department of Environmental Conservation is working with a task force to help define what that looks like.

But according to the Bond Act, at least \$1.4 billion will need to be spent and invested in those disadvantaged communities. So that's, I think, a really important component of the spending to make sure that we're helping those communities that have been most impacted by climate change and by air pollution and historic environmental racism. So we're really pleased to see that was a key component of this moving forward.

Bill Estes:

It's interesting that you raised that sort of carve out, and I'm just curious, we all know that the Bond Act is trying to address climate change, but with COP27 in Egypt talked about biodiversity and the fact that there are one million planet animal species that could be potentially impacted with extinction. I'm wondering are any of the funds going to be used to address that issue, which is related to climate change on our localized level here in New York?

Julie Tighe:

The category that would be most relevant to dealing with habitat is the open space preservation and recreation category. So funds in that pot would be able to be used by the Department of Environmental Conservation, the Department of Parks, for them to be able to purchase land that's available for open space preservation. When those two agencies buy land there only can be used for recreational purposes. So that would of course enable preservation of habitat, which is really critical for supporting those species as well as there are recreation components of that and making sure that parks are available. But certainly, that's the big pot available for this. And I think the other component where you'll see that is in the flood risk reduction in restoration because a lot of the species we're talking about live in wetlands for example.

And so if you're protecting our wetlands, even if your primary purpose is to make our communities more secure and safe from flooding by letting nature do the work, it will certainly provide the habitat that's necessary to support those various species.

And making sure that we're protecting those lands is really critical because we know... I always said when I was at DEC, water always wins as we see that. And we know that as the climate continues to evolve, while California is this one time getting a whole lot of rain, New York is going to perpetually be getting more intense and more frequent rainstorms as the climate continues to warm. And so we know that we need to be prepared for that. So we get the dual benefits when we use nature-based solutions like protecting our coastal lands and our wetlands that will both better protect our communities from flooding as well as support the habitat necessary to protect the biodiversity of the various species.

Bill Estes:

I want to turn to Ali in a minute to ask him about the impact of spending these billions of dollars in New York. But before I do that, Julie, you had described these four different buckets and I wonder if you could describe who is going to be able to access these funds, and what is it going to take, and how long is it going to take to get these funds ready to go out the door?

Julie Tighe:

Sure. Within each of those categories, there are some more specifics about how the funding can be spent. For example, within the water quality improvement and resilient infrastructure category, the biggest tranche of money is available for drinking water and wastewater infrastructure. By and large, the recipients are going to be local governments and they're going to go through existing programs like the Clean Water Infrastructure Act that it's administered by the Environmental Facilities Corporation in concert with DEC for wastewater and with the health department for drinking water. And so that'll go through sort of the normal process and I would imagine that money will be made available sooner rather than later. But there's also funding in there available for local governments to deal with stormwater projects and that's really important. So again, it's going to be by in large local governments who are the grant recipients.

And I believe all of these are going to go through competitive grant programs, so that'll be something that's available for them. But then there are other categories that allow for funding to be made available for agricultural runoffs; so that'll be for farms for them to be able to do that or for soil and water conservation districts who will be able to do that. There's funding for

replacing lead service lines; that's a hundred percent going to go through municipalities. And those are some of the subcategories within the water infrastructure project.

The Open Space Conservation Program, now again, a bunch of that will be straight up for land acquisition and for easements. So that'll be for the state to acquire those lands. That'll be for local governments to acquire those lands. Could be for not-for-profits to acquire lands that are made available to the public for recreation or for preservation.

We know that there's going to be funding, again available for farmland preservation. So that'll be funds that go through either the soil and water conservation districts or to farms directly to local governments. Interestingly, for the hook-and-bullet crowd, there's some funding for the state's fish hatcheries. And that's certainly something that's going to be managed by the Department of Environmental Conservation, although it is possible that some of the Long Island Shellfish hatcheries could be invested in as well because that is a good part of the local economy on Long Island.

In climate change mitigation, it gets a little bit more interesting. It's not just like state agencies and local governments. There we had a big change. One of the things that Governor Hochul did was she added in \$500 million for electric school buses; so that'll be something that's available to school districts to apply for.

And that actually accompanies a mandate that all school buses in the state of New York will be electric by 2035. So that's going to be sort of the primary recipient there will be school districts, although I believe they're trying to work on how they could get some of that funding to contractors since about half of the school districts in the state do the busing themselves, but others use contractors. There is another about \$400 million available for building decarbonization, and that'll be for the state to do work, including SUNY and CUNY as well as local governments and community colleges and schools. So there's a variety of different programs there as well as more community-based grants. There are funds that will be available for environmental justice organizations to do projects that will reduce air and water pollution as well as other climate change mitigation projects such as urban heat reduction, cooling centers, which we know that's going to be a real issue, urban forestry projects other carbon sinks with nature and working lands.

And then the last bucket is the flood risk reduction where there is \$100 million dollars available for coastal rehabilitation and shoreline restoration; that primarily will be managed by again, the Department of Environmental Conservation, working with local governments and not-for-profits, including there's inland waterway flooding and there's a brand-new program that's very unique to New York. I don't think anywhere else in the country's doing this, where right now it's a new flood buyout program where instead of waiting until there has been a disaster and homes have been devastated and people have lost priceless things like your wedding photos back when they were in all digital, which is what happens now with flood buyouts is after that disaster has occurred, FEMA will allow the state to buy out property.

New York is proposing a new program that would allow for proactive buyouts of structures that are in areas that are very likely to flood with willing sellers that the land would then have to be used for flood protection or passive recreation, something that will not impede future flood waters. And so that's a brand-new program and that's going to require the Department of Environmental Conservation in working with the housing can renew community renewable department to create a brand-new program. So that'll take a bit longer.

So I think some of the programs that already exist, like the state's land acquisition program, support for municipal parks, the water infrastructure funding, I think that money could start to flow in the first or second quarter of this year, at least with RFPs going out for grant applications because they're running through existing programs that already have criteria. Others are going to have to publish criteria that they can then use to assess projects. Overall with limited exceptions, these are going to be programs that go through competitive grant applications.

Bill Estes:

Great. So it seems like there's going to be a lot of money out there for government, whether that's the state government, local government could be counties, towns, villages, cities like New York City to spend, but we know that government can't do it alone and the Bond Act actually was meant also to be a stimulus to the economy. We are fortunate that Ali is here because AECOM actually did an analysis of the financial implications of the Bond Act.

So Ali, I wonder if you could walk us through starting at the high level, what is the direct financial benefits to the state of New York and its residents arising out of the Bond Act?

Ali Chaudhry:

Thank you, Bill. So first, let me give full credit to Julie, her organization and partners like Amy Chester, Rebuild By Design, they really led this effort from the front line then the e-commerce was part of a coalition that supported this effort. We did, as you mentioned, some of the economic backbone business case for the government to invest like Governor Hochul did in the Bond Act to see the economic stimulus that I'll talk about. I want to give a shout at Garrett Harper and Annie DeBoer who are two economic advisors and experts on subjects like this that did the report at AECOM. And this is something that we see as a first-in-the-nation effort that New York is leading; very proud to say that as a New Yorker. But we'd love to see other states and jurisdictions take New York's lead on this, learn from it, and also look at efforts within their own boundaries and jurisdictions to do something similar because this is good for everybody in all the communities that we'll be serving with this.

So overall, as Julie mentioned, very succinctly, \$4.2 billion is authorized by the Bond Act. The AECOM's report shows that this roughly translates to about 9,000 jobs per \$1 billion in spending. For the Bond Act, we anticipate, and the report lays out the case pretty clearly, that while the Bond Act itself authorizes about \$4.2 billion, the state would take on as debt to flow to these projects if properly leveraged with local matches, hopefully, federal monies coming from Congress as well as where possible private sector investment, this could leverage up to more than \$8 billion in spending over the next few years. That is huge. That is unprecedented and we are very proud to support that vision. This roughly can be broken down into 38,000 jobs; that is jobs directly created by the hiring of trades, construction crews, designers, engineers, implementers, and deliverers of these jobs as well as supply chain transportation, goods, commodities such as indirect jobs as well as induced jobs.

All of this comes out to about 38,000 on the low end. And if properly leveraged, we would anticipate the circuit more than 80,000 jobs across the state. I mentioned the last part because I think that's very important. Across New York state you need economic stimulus like this, so it's not just downstate. We do a lot of work downstate, a lot of investment is available and oftentimes accessible in the downstate market in New York, but upstate New York communities that see as much damage if not more from climate change and flooding need this sort of effort and investment not just to protect the environment and the natural resources, but also to create economic stimulus and job opportunities in the upstate economy. Overall about 38,000 jobs on the low end, if properly leveraged about 84,000 jobs across the state of New York, which we'll be very proud to support. I want to also mention one other aspect of this just to give it proper context.

As Julie was talking about what this could mean. If you take a step back, there is ample data and studies out there as to what the cost-benefit analysis of something like this is and I think that's the proper context to think about. At first glance, this sounds obviously like a lot of money for any government to take on and I don't want that to have a chilling effect or scare people away.

The cost of inaction far exceeds the level of investment that we can make to protect our resources and create these jobs and economic opportunities. So for example, AECOM has a study out that shows that the cost of inaction over the next 10 years if we don't take these steps to protect our resources and invest in these communities is about \$10 billion annually, that's backed by an NYSERDA study, but overall \$55 billion over the next 10 years and \$10 billion by mid-century. So if you start doing the math, if by mid-century we are spending \$10 billion just to mitigate the cost of climate change, we are talking about 8 billion here properly leveraged over a term of years, \$10 billion annually is the cost of inaction and \$55 billion literally in the next 10 years. I don't think any government can afford not to do something as we're very proud to see New York take the lead on this.

Julie Tighe:

That's a really good point Ali, and I think that's one of the reasons why the voters, I think, really were supportive of this measure. This is truly a case of an ounce of prevention is worth the pound of cure. We know that this will be a much better way to spend our dollars and it's much less damaging for our friends and our neighbors and our communities to be taking action now to acknowledge and address what we need to do to protect ourselves from the risks associated with climate change to the extent that we can as well as taking actions to reduce it.

I would also just point out this is definitely not going to be solving all the problems. This is a big down payment and there are other proposals that the governor is advancing and the Climate Action Council is advancing that will also take action to help us reduce that. I think we really want to take advantage of all the funds that the federal government is making available

through the Inflation Reduction Act and the Infrastructure Investment and Jobs Act to do as many projects as we can and hopefully do a lot more than the \$8.7 billion that we know that just the Bond Act funds alone will be able to help us leverage.

Ali Chaudhry:

One thing I'll add to this also is again, just to give it proper context, this does not take into account the damage caused by flooding to our hard assets as we develop them and invest in them; the backbone of the American economy and the New York economy. For example, super storm Sandy and what it did to the MTA subway system in the tunnels, both the Hudson River tunnels, which are now hopefully gateway once approved and financed will help replace, right? Fingers crossed.

And the East River tunnels that we haven't even gotten to. The level of investment that we see governments as part of their capital planning, the level of investment we see them put into these projects is wiped away when we have damage that can take years of damage repair to be undertaken. We are working on Eastside access right now to help deliver and finish that up under Grand Central Terminal, a landmark project in the city of New York, but if you can't protect the tunnels and you can't prevent those hard assets, it costs a lot more to maintain them and repair them once we finish them.

So I think there are other costs out there that I don't even think we've wrapped our hands around. So to get ahead of all of that, I think, it's crucial for states and cities and even the federal government to be looking at this example of the Bond Act.

Bill Estes:

Right. And I guess I would add to that, aside from the short-term benefits of job creation, there are long-term benefits for residents and for visitors in terms of the projects that will get built. I mean, I guess Ali you've talked about if you don't... One concept of that would be deferred maintenance. If you don't take care of infrastructure now it's going to be crumbling in the future. But I imagine that there are projects that are going to be funded that will just benefit residents in terms of their daily lives.

Ali Chaudhry:

Bill could not agree more with that statement. I think this is also a great opportunity for a jurisdiction like New York to help diversify its economy and create new job opportunities for different kinds of skilled labor in the ground, on the ground, blue collar, different skills, highly technical jobs in the green economy, but also professional services jobs.

We are in a pretty competitive market across the country, I see this in the region at AECOM on the east, and I see this happening in other states where we are all competing for resources and investment opportunities for the workforce. There is a shortage in the US of folks that can do this kind of work and I think the states that get ahead and create these opportunities and markets will see the workforce move to those jurisdictions to help provide these services. And I think New York is ahead of other states in doing so and we are very happy to see that.

So I think absolutely there are direct benefits and there indirect long-term benefits of creating an economy where people want to come and work and live and put down their roots, start their families, buy their properties, buy their homes, spend their money, and like you said with tourism, I think there is going to be ancillary benefits with the Bond Act for decades to come.

Bill Estes:

So you talked about leveraging, and I'd like to talk about that for a moment just so all the listeners fully understand. There must be many projects out there that can't be built right now sitting here, right? Because they have some funds but not all of them or they need to fill in a gap. Where might that extra money come from to finish a job that this act is going to allow us to leverage and bring to-

Ali Chaudhry:

It's a good question. I think I'll nuance my answer with a blanket statement that one, as we are digesting the water approval in November of the Bond Act, we are looking for more detail and information from the government to see how the program is

actually going to be built out and how it's going to be organized and how a plan materializes in delivering the program itself and all the individual projects that'll be funded by it.

I think in that context there will be obvious opportunities for leveraging of funds from other sources outside of just the Bond Act. So for example, there are existing programs that the state funds that exist already that can leverage an influx of capital money that's going to come from the authorization of the Bond Act that can then be compounded together to move projects forward. Then there are federal sources, there's obviously the Biden infrastructure program, the Inflation Reduction Act.

There are many sources that we want to see the money start flowing that can again be bundled together to get the results that you want. I think there will be local matches at the county level, at the city level, at certain community levels, and some nonprofits, but also most importantly I think there's going to be ample opportunities there for the private sector investors to get involved. Whether it's pool funds, whether it's institutional investors, or whether it's even organizations in this space that would like to support some of these efforts. I think all of those opportunities as they become apparent will show the leverage opportunity for different assets as well as different regions of the state.

One example, just because Julie mentioned it earlier and this was the Governor Hochul act on the electrification of school buses. Just as one example, we are seeing this across the country, not just for schools or school buses, but obviously electrification, decarbonization is an effort that we are all undertaking and working hard to achieve as part of multiple plans across different jurisdictions.

But you can't have electrical buses at schools if you don't have an underlying electrification infrastructure for the buses to be charged, for the buses to be moved for the bus fleet to be housed somewhere and then be deployed. We are doing other companies, just like many other companies, a lot of work underlying that effort towards electrification of rolling stock of fleet with infrastructure work underground with utilities as well as private sector developers as well as school districts. For example, USBS is a client.

So there are many entities that are gearing up for that future, but I think the Bond Act will help school districts and schools get the rolling stock, the bus fleets, but a lot of private sector opportunity exists for the underlying infrastructure, for the charging infrastructure to exist before the buses can be brought on board. So that is just one example, but there are going to be many opportunities like that for the private sector investors especially to get involved.

Bill Estes:

So we are constantly reminded that we are in a climate crisis, which suggests immediate, swift action. Julie, how long do you think it's going to take to get all these projects, the \$4.2 billion or the leveraged \$8 plus billion spent to address this crisis that we're in?

Julie Tighe:

So like all big pots of money and this is a big pot of money for the environment, it's going to take time, right? I think the state is expecting that they're going to spend this money over five or 10 years. My experience when I was in government was that it would take about a year to get into contracts and then more time for the local governments to actually expend the money because typically the way that works is you spend the money and then you get reimbursed for it when you're a local government. I'm expecting that it's going to take them a bit of time to do that, but certainly, they are planning on this taking at least five years to just allocate out and more like 10 years in their ideal world.

We will obviously be advocating for them to advance it more quickly. To your point in this last question that Ali just answered, we can take advantage of all the federal funding that's out there.

New York is excellent at drawing down those federal dollars when we can. And the fact that we are ahead of the game, I think from most other states by having these funds, because you're right, the federal government is going to acquire matching funds, so is the state government. This will now allow those local governments to piece together the federal funds, the state funds, and the local funds to make projects move forward. So I think we're going to urge them to be front loading, at least their allocation of the dollars, knowing that it takes a little bit of time to actually spend the dollars out the door.

Bill Estes:

So the lack of speed in government is always a little disappointing. And Ali, maybe you can describe for us why, particularly when you talk about capital projects, it's so slow and get into a little bit of, in New York, how are we starting to address trying to speed up the construction, the public works construction process, and what more could we be doing to speed up that process, particularly because we're in a crisis?

Ali Chaudhry:

Absolutely. Bill, you and I both served in government as lawyers, so I think we have seen this up close and personal. I say this unfortunately with respect for my lawyer friends, part of this is the lawyers' fault. In government, we slow things down a little bit. It's all about risk and eventually, governments tend to be very risk-averse, especially when they do unprecedented things like this.

They want to take their time as natural custodians of taxpayer dollars. So I think part of this is the philosophy of government. Things move slower because there is one, lack of experience in unprecedented situations as well as a natural desire to be cautious. But functionally speaking, that really comes down to the procurement process for state agencies and governments. And I think New York is a little complicated because we've got public authorities that are semi-public, semi-private and you've got state agencies, there are constitutional requirements, there are legal, legislatively passed requirements that many of our agencies have to abide by.

I find many of them to be obsolete from a different era and a different world where the world has changed. As an example, some agencies have competitive paid mandates at certain thresholds that are very low that does not reflect the pricing of the market we live in today. And so everything above that price has to be competitively paid and that takes time. It's a tender process. So I think in New York and in New York City, both two different governments have that challenge. I think it's recognized by regulators as well as decision-makers and people have tried to come at it from different perspectives and tried to overcome that issue.

As an example, New York City Mayor Adams has now a capital reform working group, a task force of public and private sector leaders that have come together to identify some of these issues that cause a backlog and cause bureaucratic delays.

I'm very proud to be a member of the work working group, particularly chairing streamlining approval process committee on how we can make government work more efficiently better. A lot of it has to do with multiple agencies, which will be the case say too, as Julie was talking about, with multiple agencies that will be in charge of helping deliver the projects under the Bond Act; the key is going to be making sure they work seamlessly together towards the same goal. They have to be shepherded almost. And I think that's part of the government process is that multiple agencies, more and more layers will slow down project approval and capital planning processes. So I think on the one hand the mayor in New York City is working towards that effort, there is a report out of recommendations on how government can be made more efficient in the capital planning process.

I encourage everybody to take a look at it and see some of the recommendations that require legislative changes as well as overall philosophical changes. An example of this would be working with utilities, for example, who own different assets that the government doesn't and how do you get ahead of that in your planning phase rather than when you start basically literally opening in the ground in your construction phase and then encountering utilities and having to go through a whole process there that slows everything down, but also as well as with the private sector on more appropriate and more attractive terms and conditions that incentivize that level of partnership in investment.

I think there are a lot of recommendations there that I encourage people to take a look at. One thing I did want to point out is that I do think on the Bond Act, in particular going to a question that you were asking Julie earlier, I think the next step actually has to be some sort of a larger plan that's unveiled, some sort of a programmatic setup by the government to also attract the level of attention from folks that they want to invest in this program by first laying out a sequential plan, right?

So one, the bonds still have to be issued; this is just the approval. So one, we need to see the schedule of that bond issuance and when the government is actually going to raise the money to pay for those projects. Going to the issue of is this a reimbursement program for individual applicants and grantees, or is it going to be an upright competitive process where

municipalities, jurisdictions, cities, counties apply to the program, get approved, win a certain amount of money for each of the individual projects with some process, and then are able to draw down from that award.

It's all going to be the detail that comes out that is going to be important to get this program off to a successful start. I think we haven't seen that yet. It's obviously early to be fair to the government because it just got approved in November, but hopefully sometime this year we will see a plan laid out that shows a sequence and a schedule of how the money is going to be raised, going to be obligated, and then eventually dispersed.

My own personal, in fairness and full disclosure opinion is that you need almost like a SWAT team for something this big, this unprecedented to keep all the agencies on track and in line with each other towards the same goal to cut some of the bureaucratic reds. So either you need in the governor's office or an agency, but somebody has to be in charge as one team that is also weighing the cost-benefit analysis, all of the individual applications that come in from all across the state because even though this could be \$8 billion, it's still not enough for sure for all of the needs that we have in our community. So I do think that has to happen. Hopefully this year.

Julie Tighe:

The governor's office definitely needs a person who is in charge. I don't know if they're there yet, but certainly, we've been encouraging that to happen because there are so many different agencies involved. It makes a lot of sense for them to make sure that the funds are being used to their best measure and to make sure that the agencies are not inadvertently stepping on each other in their efforts with their own dollars that they're responsible for meeting out.

Bill Estes:

Something that the state and the city have at their disposal are other means of construction. We call them alternative delivery methods, although they're at the very early stages compared to some other progressive states. And we've seen that on the mega projects here in the state and in the city with design-build.

But all the local municipalities in the state can't take advantage of that. They have to build using the design bid build methodology, which is they hire a designer, then they put the design out for bid, then they hire a contractor. And Ali, I wonder if you could just talk a little bit about speeding up schedule and construction and how that could get projects on the local level through the Bond Act to be completed faster if that authority were authorized by legislation.

Ali Chaudhry:

Yeah, Bill, this is one of the frustrating things about New York policy making. As a government lawyer, I was primarily the alternative delivery lead lawyer in the governor's office and worked on all of the design-build projects, legislation, and regulations around out sizing design-build. Where it stands now, it's not generally provided to all state agencies across the board, as you mentioned; it's a few agencies and then specific projects are authorized by law to employ design-build if deemed appropriate. The same is true for New York City as well.

New York City has two mega design-build projects right now, the redevelopment of the Brooklyn Queens Expressway and the Borough-Based Jails Program to close out Rikers and build four new jails. AECOM, in full disclosure, is the [inaudible 00:39:05] in both of those design-build jobs, alternative delivery and design-build in particular is something we do very well nationally and that is something that we are experts in from a national perspective.

It remains a source of frustration that this is not available to more state agencies, city agencies, and authorities to be able to use as a tool in the toolbox. I think alternative delivery methods, whether it's design-build, especially progressive design-build in some cases, which still is not being used in the state of New York, but SIMA... There are many different tools that are available in the space alternative delivery that our agencies can't use. Now, having said that, is it right for every project? Probably not. It has to again, be the right appropriation of risk and reward by the right entities to make it a successful design-build project, especially depending on how the size or scope of each project will turn out to be as details become available. But I think in this context, authorizing it to be available to be then weighed with the right metrics for each project, whether it's appropriate or not, is a good step forward.

Let project designers and owners make the call on whether it's the right tool for their particular projects rather than debaring them or prohibiting them from doing so in the first place. I think that would go a long way toward expediting project delivery. And on average data shows that owners save about 30% on especially significant projects using design-build and traditional design-bid-build procurement that those 30% savings can translate over into more projects and more funding avenues for the future. So I think the savings within the interest of the agencies and the government and the taxpayer, but more importantly, as you said, this is urgent. This is an emergency; expediting that project delivery method is key.

Bill Estes:

And for listeners unfamiliar with the design-build method, could you just briefly describe what it is and what the benefits would be compared to design-bid-build?

Ali Chaudhry:

Sure. Design-bid-build is traditionally the procurement method used by New York agencies as well as New York City agencies. It was the norm basically for the longest time across the United States. As the name suggests, it's a two-part process of contracting to bring on your partners to design and build a project. You bring on a designer, you do a separate procurement for a designer, and they design, once selected, the whole project up to a hundred percent, finish up all the documents, do the design, get everything approved, and then they go out to bid again to bring on a contractor, to bring on a builder who's going to now build the project specific to the designs that has already been procured. So it's a two-step process. Each process takes its own separate procurement competitively and selection, judging, and then eventually bidding and negotiation with contractors and the subcontractors and out on the street.

Especially the bigger the project, the longer that process takes; the design takes longer, the builder takes longer to come on board. But the most troubling part of that for especially particular projects says that the designer and the builder didn't work together to deliver this. And oftentimes you have conflicts there and you have sometimes litigation, but oftentimes delays in project delivery that results in budgeting issues and cost overruns.

Design-build, what it does is it provides a one-step process. You basically as an agency, as an owner, go to market with one competitive process to bring on one team led by the contractor, led by the builder who's going to construct the project. But that builder brings on a designer and all of the subs and everybody in the supply chain with them on the same team. From a risk perspective, the owner has offset or at least actually offloaded the risk onto one team that's accountable; that's being procured to deliver the job from the beginning to the end, working hand in hand theoretically together so that there are less conflicts, less litigious issues, as well as less design construction management problems down the line because they've been working together from day one.

So design-build allows the project to be procured faster than the traditional method, but then also what's key, to me, at least is that you have one design-build team that's accountable to the owner that can then be managed and supervised to get the job done faster and hopefully also avoid cost overruns.

Bill Estes:

Great. I think we've had a really wide-ranging and interesting discussion today and I'd like to ask both Julie and Ali to conclude by telling us what they think the next steps should be in the Bond Act process and getting projects completed. Julie, let's start with you.

Julie Tighe:

Sure. So as both Ali and I suggested, I think the governor's office needs to hire someone to lead the effort on spending all of these dollars to make sure that they're working across all the agencies. The agencies need to be working on and share with the public the criteria they're going to use for the frames of the various funding pots that will be made available. They need to have engagement with the potential recipients, whether that's local governments or not-for-profits, and some of the contracting community to have a better understanding about how the state is thinking about spending the dollars and making sure that they get feedback from the community that's going to be looking for the dollars to spend.

And I want to make sure that this is sort of all in a frame of how can we get the best projects that are going to deliver for our communities, both in terms of providing jobs, but importantly in providing the improvements to the environment that we all need to prepare ourselves for climate change and not just let's get the money out the door.

I think it's more important for them to be strategic in using the dollars because there are not an unlimited amount of dollars than it is to get that money quickly out the door with the only exception really being that water infrastructure money because the state has had a program that has been identified all the projects or a lot of projects and they've been rolling along, so it has been gearing up since 2015. So that one I feel like could kind of continue along their process, but the rest of them really need a much bigger picture evaluation before we just work to get the money out the door.

Ali Chaudhry:

I like process and I like clarity around it. I want to see programmatic details next. I want to see a big macro vision plan of money raised, program eligibility, and criteria around the program itself. Who's eligible? What is eligible do we spend? What is a schedule or sequence of disbursement or obligation around that procurement?

And I think it all starts simply put with two steps.

One, a team, central team, lead team, whether it's in the governor's office or whether it's at one agency in particular, who is going to be in charge, whatever that is, I want to see one team led to over this program in charge. And then two, personally I think this is so unprecedented and it cuts across so many asset classes and sectors and types of infrastructure work that has to happen in different regions and geographies managed by different expertise and skillset that I would like to see the team that is in charge bring on very quickly consultants, experts, whether they're nonprofits, whether they're advocates, whether they're private sector consultants; folks that know how to get this done with innovation, with efficiency, with maximum productivity, and with less politics.

I think if that plan comes out, you would see confidence in the marketplace for folks that do this business that say, "You know what? I see it. It's clear. I know what I can get for this. I know this makes sense and I know it'll get done." And I think we just need to see that here. And then I think that also benefits the country at large because if that happens, you will see this emulate in other parts of the country too. So I would love to see a plan next sometime this year.

Bill Estes:

Ali, Julie, those have both been really insightful and interesting comments. I appreciate you being here today on the podcast. Thank you for your time and we look forward to seeing what happens with the funds from the Bond Act.

Steve Burkhart:

Thanks again to Bill Estes, Ali Chaudhry, and Julie Tighe. Make sure to visit our website, www.ballardspahr.com where you can find the latest news and guidance from our attorneys. Subscribe to the show in Apple Podcasts, Google Play, Spotify, or your favorite podcast platform. If you have any questions or suggestions for the show, please email podcast@ballardspahr.com. Stay tuned for a new episode coming soon. Thank you for listening.