

Alternative Project Delivery Procurement: Counseling for Government and Public Owners

Whether it's improving legacy infrastructure—or building the future from scratch—Ballard Spahr has the experience and know-how to successfully guide public sector clients from procurement through implementation. Ballard Spahr is a national leader with decades of experience in advising clients on alternative project delivery and, in particular, public-private partnership (P3) infrastructure and progressive design-build projects.

Attorneys in the firm's P3/Infrastructure Group negotiate and close some of the nation's largest and most advanced P3 and other alternative project delivery transactions. These can be complicated and daunting arrangements, particularly if an agency or authority is most familiar with design-bid-build. Ballard Spahr can help provide a clear roadmap to navigate through it all.

Ballard Spahr lawyers have wide experience with a project delivery methods, including:

- Design-Build (D-B)
- Progressive Design-Build (PD-B)
- Pre-Development Agreements (PDA)
- Construction Management at Risk (CMGC)
- Design-Build-Finance (DBF)
- Design-Build-Finance-Operate-Maintain (DBFOM)
- Construction Manager / General Contractor (CM/GC)
- Construction Manager at Risk (CM at Risk / CMAR)
- Public-Private Partnerships (P3)

We advise a wide range of public-sector clients—from those just getting started to the most sophisticated governmental entities. And we have an acute sense of agency needs, drawing upon our members' private practices and intra-agency experience. For clients needing assistance in moving from traditional low bidding to qualifications-based construction procurements, we offer help in a variety of ways:

- Drafting Departmental Programmatic Manuals (e.g. D-B, P3, etc.);
- Conducting in-person trainings to introduce the concepts of alternative project delivery;
- Drafting and reviewing legislation, implementing regulations, policies, processes, and procedures;
- Drafting briefing materials, handbooks, and procurement documents;
- Creating project-specific manuals and trainings for specific procurement audiences (e.g. procurement, legal, executive, board members or selection committees).

As seasoned procurement counsel, we advise clients at every step of the procurement on how to avoid costly—and time-consuming—administrative and legal challenges. Equally as important, we are keenly aware of current market terms and trends. Educating and deliberating with our clients on risk allocation is a hallmark of a Ballard Spahr deal. Shifting too much risk onto commercial partners can have dire results to a procurement, resulting in too few respondents—or none at all. But giving away too much can cost far more in money and time. Ballard Spahr works with public sector clients on the planning, structuring, and financing of complex projects spanning transportation, social infrastructure, transit, energy-generating facilities, water/wastewater treatment plants, and municipal infrastructure.

REPRESENTATIVE CLIENTS AND TRANSACTIONS

Indiana DOT/Indiana Finance Authority (East End Crossing / Lewis & Clark Bridge) (DBFOM). Ballard Spahr served as P3 counsel, which included drafting and in-person negotiation of RFQ, and RFP documents; financing documents; and evaluation of qualifications statements and proposals.

Georgia Department of Transportation (P3-DBF). We served as P3 counsel to the Georgia DOT for its I-285/SR400 interchange project. We drafted the design-build-finance agreement and negotiated real estate and construction-related matters.

Kansas DOT (PD-B). Ballard Spahr represented the Kansas DOT, with its project management consultant GarverUSA, in the preparation of procurement documents and progressive design-build template for the East Kellogg progressive design-build project—an elevated highway project in greater Wichita, Kansas.

The New York Climate Exchange (PD-B; PDA). Ballard Spahr served as counsel during the proposal stage and negotiation of a Pre-Development Agreement and Lease to design, build, finance, operate, and maintain a 700,000 sq. ft. campus dedicated to climate solutions on Governors Island in the New York harbor.

Delaware State University (PD-B; PDA). We assisted Delaware State University in closing a public-private partnership for the development of a new student housing facility and dining facility on its campus.

Lehigh University (PD-B; PDA). Ballard Spahr represented Lehigh University in connection with a P3 student housing development project on its campus.

Drexel University (PD-B; PDA). Ballard Spahr represented Drexel University in the development of a \$100 million-plus student housing project that includes a 361,200-square-foot mixed-use student housing and retail project along Drexel's Chestnut Street corridor.

Indiana DOT (CMGC). A Ballard Spahr attorney served as co-lead counsel to INDOT in two design-build procurements with a total value of nearly \$2 billion. The North Split project involves reconfiguration of Indiana's most congested interchange. The I-69 Section 6 (Segment 6.5) project completes work on I-69 linking Bloomington and Indianapolis.

Nebraska DOT (CMGC). A Ballard Spahr attorney served as co-counsel to the Nebraska DOT in the procurement of the state's first design-build project—a \$110 million contract for the U.S. Scribner-West Point project which includes a road, bypass, and levee reconfiguration.

Maryland Transit Administration and Maryland Department of Transportation (P3). A Ballard Spahr partner served as part of the primary legal team for the MTA and MDOT, advising on procurement, financing, and contract administration for Maryland's first transit P3 project, the Purple Line Light Rail Availability Payment P3.

Pennsylvania Department of Transportation (P3). We serve as P3 counsel in the Major Bridges Project, which will consist of the delivery of nine bridges throughout the Commonwealth. Ballard Spahr is drafting all of the procurement and project documents.

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