

Market Update: A Review of the US Public Private Partnership (P3) Sector in 2014

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This Article analyzes the state of the US public private partnership (P3) sector in 2014, including market and industry trends and notable federal and local legislative and regulatory developments. This Article also describes P3 projects currently in procurement or in the pipeline and the outlook for the US P3 sector in 2015.

2014 was a robust year for the US public private partnership (P3) market. Building on the momentum gained in 2013, several significant projects reached commercial or financial close, with many projects in active procurement across a wide range of industry sectors.

The five P3 projects that reached financial close in 2014 were:

- Florida's \$2.3 billion I-4 Ultimate project (see *I-4 Ultimate Project*).
- Indiana's \$370 million I-69 project (see *I-69 (Section 5)*).
- Texas's \$847.6 million SH 183 managed lane project (see *SH 183 Managed Lanes Project*).
- Texas's \$104 million Texas A&M University student accommodation project (see *Texas A&M University Student Accommodation Phase I*).
- Colorado's \$120 million US 36 project (see *US 36 Project*).

There were, however, a few issues and setbacks. These issues included the financial difficulties faced by the State Highway 130 toll concession project in Texas, where toll revenues were significantly below projected figures and the cancellation of several P3 procurements, including:

- The Nevada Department of Transportation's cancellation of Project Neon in August 2014.
- Los Angeles County Metropolitan Transit Authority's cancellation of the Accelerated Regional Transportation Improvements (ARTI) project in April 2014.
- Alaska's cancellation of the Knik Arm Bridge P3 project in March 2014. This project may be reintroduced as a design-build-maintain (DBM) P3 project, however.

The bankruptcy and ongoing sale of the Indiana Toll Road project, while not advancing the cause of P3s, has been absorbed by the market with relatively little anxiety. The general consensus is that the project's issues are attributable to an overly leveraged financing structure, combined with inaccurate traffic forecasts and changing traffic patterns, rather than any flaw with the P3 model itself.

Notwithstanding these setbacks, the private sector's interest in P3s has not diminished.

This Article:

- Analyzes the state of the US P3 sector in 2014.
- Discusses significant federal and legislative developments in this sector.
- Describes major P3 projects that closed or were in procurement in 2014.
- Discusses the US P3 sector in 2015.

US P3 SECTOR IN 2014

Historically, US states and local authorities have funded the construction of public infrastructure projects using public funds generated by those subsovereign entities, either through special assessments, taxation or user charges, or a combination of these mechanisms, and those authorities, acting through public employees, have taken responsibility for ongoing operation and maintenance (O&M) of those projects. However, widening recognition of the long-term "life cycle" benefits of the P3 model, together with declining tax revenues, increased infrastructure demand and limited federal transportation funding, are causing public authorities to look increasingly to P3s as a procurement method for their projects.

Even so, there continues to be a patchwork of state and local laws, of varying scope and utility, that can confound the use of the P3 model and diminish its benefits. There also remains in many communities a long-standing bias in favor of public control of infrastructure that is financed by taxpayers and ratepayers and managed by their elected representatives.

For more information on the benefits and challenges of P3s, see *Practice Note, Public Private Partnerships: Issues and Considerations: Advantages of PPPs* (<http://us.practicallaw.com/3-504-9995#a805456>) and *Disadvantages of PPPs* (<http://us.practicallaw.com/3-504-9995#a978147>).

MORE SOCIAL INFRASTRUCTURE PROJECTS

P3s are now being used to procure a wide variety of social infrastructure projects in the US, including courthouses, civic buildings, university housing and facilities, water and wastewater projects. Social infrastructure projects in active procurement or under consideration include:

- The Long Beach Civic Center in California (see *Long Beach Civic Center*).
- The Consolidated Justice Facility project in Indianapolis, Indiana (see *Indianapolis Consolidated Justice Facility Project*).
- Miami-Dade Water and Sewer Department's water treatment plant expansion (see *South Miami Heights Water Treatment Plant*).
- Prince George County's Storm Water project in Maryland (see *Prince George's County Storm Water Project*).
- The University of California, Merced Campus project (see *University of California, Merced Campus*).

Social infrastructure P3 projects in the US are, however, hampered by the fact that federally tax-exempt bond financing is generally unavailable. This is in part because no one thought that the private sector would be interested in developing or financing buildings. In contrast, the expanded use of P3s in the US transportation sector can be attributed, in part, to the enactment by the US Congress in 2005 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (*PL Public 109-59, 119 Stat. 1144 (2005)*), which amended the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects that can be financed by tax-exempt bonds.

Federally tax-exempt bond financing produces a lower financing cost than the taxable financing generally required to be used for social infrastructure projects when the P3 model is employed. This additional cost offsets some of the "life-cycle" benefits that a P3 model can deliver. The Performance Based Building Coalition, a private sector industry group, is actively pressing for the playing field to be leveled by the creation of a new category of federally tax-exempt facility bonds, to further encourage private development, financing, and O&M of public buildings.

AVAILABILITY PAYMENTS P3 CONTINUE TO BE POPULAR

Availability payments are increasingly being used to compensate private sector parties under the P3 agreements. (The private sector party is typically a consortium consisting of three to four members.) Many of the projects that have reached financial close or that are in active procurement incorporate this mechanism, including:

- The I-4 Ultimate project in Florida (see *I-4 Ultimate Project*).
- The I-69 (Section 5) project in Indiana (see *I-69 (Section 5)*).
- The Rapid Bridge project in Pennsylvania (see *Rapid Bridge Replacement Project*).
- The Long Beach Civic Center project in California (see *Long Beach Civic Center*).

- The Consolidated Justice Facility project in Indianapolis, Indiana (see *Indianapolis Consolidated Justice Facility Project*).
- The University of California, Merced Campus project (see *University of California, Merced Campus*).

Under this structure, the consortium receives pre-agreed periodic payments from the public authority during the O&M phase, so long as the asset or facility is "available" for use in accordance with detailed standards and performance levels set out in the P3 agreement. Availability payments can be reduced or suspended if these standards and performance levels are not met by the private consortium. Insofar as these availability payments are obligations of public authorities, which are typically subject to statutory and constitutional limits on debt incurrence, they are usually subject to annual appropriation at the discretion of the public authority, giving rise to the so-called "appropriations risk" issue.

Availability payments are attractive to the private sector because the consortium does not take any risk with respect to the revenue generated by the project. Instead, the consortium's payments will, by and large, be dependent only on its performance. From the public sector perspective, availability payments allow for fixed and predictable payment obligations over the long term, as well as opening up the possibility of using P3s for non-revenue generating projects.

Although the availability payment structure has clear benefits for the appropriate project, there is a practical limit on how widely it can be used by a procuring authority. The head of Indiana's Department of Transportation has expressed caution about the state's use of availability payment P3s, in part due to the strain it puts on the department's budget and the limits it places on the department's ability to undertake other projects. Indiana currently uses 10% of its transportation budget to make these payments. This percentage will increase to 15% by 2018 and there is political sensitivity to exceeding it. Other states have included provisions in their P3 enabling legislation to limit or otherwise manage the use of availability payments in P3 structures (see, for example, *State Q&A, Public Private Partnership Legislation: Ohio* (<http://us.practicallaw.com/8-519-1948>)).

GROWTH OF THE DESIGN-BUILD-MAINTAIN AND DESIGN-BUILD-OPERATE-MAINTAIN MODELS

The majority of the P3s consummated to date in the US have followed the design-build-finance-operate-maintain (DBFOM) model, with the consortium being responsible for the design, building, financing and O&M of the asset. However, there have been an increasing number of DBM and design-build-operate-maintain (DBOM) projects in recent years, notably in Texas. A DBM or DBOM approach is currently being considered for:

- Arizona's South Mountain Freeway project (see *South Mountain Freeway*).
- Florida's SR54/SR56 project (see *SR 54/SR 56 Project (Pasco County)*).
- Maryland's Waste-To-Energy Project (see *Prince George's County Waste-To-Energy Project*).
- The District of Columbia's Streetcar project (see *DC Streetcar Program and the Integrated Premium Transit (IPT) System*).
- Alaska's Knik Arm Crossing, including a bridge toll bridge of at least 8200 feet and 18 miles of two lane approach and connector roads.

There are a number of factors giving rise to this trend:

- It is in part a reaction against the availability payment P3 structure, where the public sector party is locked into a long-term payment obligation that can only be terminated at great cost (as the termination payment must reflect the consortium's outstanding debt and breakage costs, as well as providing a return on its equity investment). The financial impact on a public sector party's terminating a DBM or DBOM agreement is less significant. The DBM or DBOM approach is thus seen by some as providing the public sector with more flexibility.
- By avoiding private sector financing and equity investments, and instead using lower cost public funds and tax-exempt bond financing, a DBM or DBOM project may initially be procured on a more cost effective basis. However, these capital cost saving may come at the expense of long-term life cycle savings and efficiencies that can only be achieved with a well-motivated private sector consortium that has financial "skin-in-the-game."

For more information on DBM, DBOM and other project delivery mechanisms, see *Practice Note, Public Private Partnerships: Issues and Considerations: Types of PPPs* (<http://us.practicallaw.com/3-504-9995#a894952>).

FEDERAL LEGISLATIVE AND REGULATORY DEVELOPMENTS

Infrastructure, which since the 1950s has rarely been a federal priority, received heightened attention in 2014, with a number of important federal developments, including:

- The Build America Investment Initiative.
- The enactment of the Water Infrastructure Finance and Innovation Act (WIFIA).
- The launch of the Rural Infrastructure Opportunity Fund.

There were also disappointments, however, including the failure by Congress to address the long-term funding of the Highway Trust Fund (HTF). The following section examines these federal developments.

BUILD AMERICA INVESTMENT INITIATIVE

In July 2014, President Obama announced the launch of the "Build America Investment Initiative," a government-wide initiative that aims, among other things, to increase infrastructure investment by engaging with state and local governments as well as private sector investors to encourage collaboration, expand the market for P3s and get more out of existing federal financing programs. This initiative includes the establishment of the Build America Transportation Investment Center (BATIC), housed within the US Department of Transportation (USDOT). BATIC will:

- Serve as a one-stop shop for state and local governments, public and private developers and investors seeking to use innovative financing strategies for transportation infrastructure projects.
- Provide hands-on support, advice and expertise to states and local governments to make USDOT credit programs more understandable and accessible.
- Provide private sector developers and infrastructure investors with tools and resources to identify and execute successful P3s.
- Develop and make available tools useful to the establishment of innovatively financed and delivered projects, including case studies, best practices, and analytical tools.

The initiative also gave rise to the Build America Interagency Working Group, co-chaired by Transportation Secretary Anthony Foxx and Treasury Secretary Jack Lew, which aims to bring together state and local governments, project developers, investors, and others to address barriers to private investments and partnerships in the provision of public infrastructure. On September 9, 2014, the USDOT and the Treasury Department co-hosted an infrastructure investment summit to discuss opportunities for private investment in public infrastructure. It was attended by a broad cross section of public and private sector leaders.

For more information on this initiative, see *Fact Sheet: Building a 21st Century Infrastructure: Increasing Public and Private Collaboration with the Build America Investment Initiative and Presidential Memorandum: Expanding Public-Private Collaboration on Infrastructure Development and Financing*.

WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)

On June 10, 2014, President Obama signed the Water Resources Reform and Development Act of 2014 (WRRDA) (*PL 113-121, 128 Stat 1193 (2014)*). WRRDA, which passed with broad bipartisan support, contains the long awaited Water Infrastructure Finance and Innovation Act (WIFIA). The WIFIA program, which is modeled on the highly successful Transportation Infrastructure Finance and Innovation Act (TIFIA) program, will make available low interest rate federal loans to partially fund vital water and wastewater infrastructure.

The Environmental Protection Agency (EPA) will administer the WIFIA program for water, wastewater and desalination projects, and the Army Corps of Engineers will administer the program for water resources projects (for example, flood control and navigation projects), as described in more detail below (see *Eligible Projects*). Eligible applicants include local government entities and instrumentalities, state infrastructure financing authorities and private entities (for public projects).

For the first year of the program (federal fiscal year 2015), \$20 million has been appropriated for each of the EPA and the Army Corps (for an aggregate appropriation of \$40 million). The appropriation increases annually, up to a maximum of \$50 million for each of the EPA and the Army Corps in 2019 (for a total appropriation of \$100 million).

These funds cover the risk of WIFIA project defaults, allowing for significant leverage given the historically low rates of defaults in water and wastewater project financings. Based on Congressional Budget Office projections, each dollar authorized and appropriated for WIFIA projects under EPA administration can support up to 33 times that amount in loans. This expected EPA leverage level is approximately three times greater than the leverage under the TIFIA program.

Terms of WIFIA Credit Support

WIFIA financing is generally limited to 49% of eligible project costs. However, up to 25% of the overall appropriation may be used for loans in excess of 49% of total project costs. There is an overall cap on federal assistance at 80% of project costs.

A key limitation of the WIFIA program is the prohibition on project sponsors combining WIFIA funding with tax-exempt debt. In contrast, TIFIA funding is regularly coupled with tax-exempt debt (for example, private activity bonds (PABs)). This element of the legislation has been subject to much criticism in the market.

Eligible Projects

Generally, a project must have an estimated total cost of at least \$20 million to be WIFIA-eligible. However:

- Smaller projects can be aggregated to meet the minimum cost threshold.
- In communities with fewer than 25,000 residents, the threshold is lowered to \$5 million.

15% of the funding provided under the WIFIA program is set aside for projects in these smaller communities.

Eligible projects under the EPA's administration include:

- Projects that can receive assistance through the Clean Water and Drinking Water State Revolving Funds (SRFs).
- Projects for the repair or rehabilitation of water systems, including treatment plants and transmission lines (which is broader than SRF-eligible projects).
- Water system energy efficiency projects.
- Desalination projects.

Eligible projects under the Army Corps' administration include:

- Flood damage reduction projects.
- Ecosystem restoration projects.
- Inland waterways projects.
- Coastal and harbor navigation projects, including channel deepening.

For more information on WIFIA, see *Legal Update, US Infrastructure Legislative Update* (<http://us.practicallaw.com/7-568-8265>).

RURAL INFRASTRUCTURE OPPORTUNITY FUND

In July 2014, the White House Rural Council held its first Rural Opportunity Investment Conference, at which Department of Agriculture Secretary, Tom Vilsack, announced the creation of the \$10 billion Rural Infrastructure Opportunity Fund. The fund is a P3 among CoBank, Capitol Peak Asset Management (CPAM) and the Department of Agriculture. It aims to provide a new source of capital for rural infrastructure projects, promote financing for infrastructure projects in rural America and create jobs in rural communities.

Its activities include:

- Recruiting new sources of private capital to support rural infrastructure projects.
- Serving as a co-lender for borrowers' financing projects where the government's program limits or resource constraints warrant the fund's involvement.
- Private lending in support of qualifying projects.

CoBank has initially committed \$10 billion of balance sheet capacity to lend alongside fund investments. CPAM will manage the fund and work to recruit more investors to supplement CoBank's initial commitment. The aim of the fund is to encourage investment in rural infrastructure by a wide variety of new participants, including pension funds, endowments, foundations, and other institutional investors. Some projects may be funded entirely through private sector dollars, with other projects using government loan and grant programs to leverage private investment.

The fund's target investments include rural community facilities (including health care and educational facilities), rural water and wastewater systems, rural energy projects, rural broadband expansion efforts, local and regional food systems, and other rural infrastructure.

For more information on this Fund, see *Fact Sheet: Increasing Investment in Rural America*.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE: PANEL ON PUBLIC-PRIVATE PARTNERSHIPS

The Committee on Transportation and Infrastructure of the House of Representatives created the Panel on Public-Private Partnerships in January 2014. The Panel was tasked with examining the state of P3s across all modes of transportation, economic development, public buildings, water, and maritime infrastructure and equipment, and with making recommendations on how to balance the needs of the public and private sectors when considering, developing and implementing P3 projects.

The Panel held two hearings and seven policy roundtable discussions around the US in 2014. In addition, the Panel held numerous briefings with stakeholders from federal, state, and local government agencies, private sector officials, and academia.

On September 17, 2014, the Panel issued a report supporting the expanded use of P3s, noting that "the participation of the private sector in financing a project can bring discipline and efficiency to project delivery." The Panel's recommendations included the following:

- The USDOT should establish a Transportation Procurement Office to develop and implement design-bid-build, design-build, and P3 procurement best practices, including P3 model contracts. The Office should also issue best practices on standardizing state P3 legal authority and practices.
- The USDOT should require State Departments of Transportation (State DOTs) to compile and submit an annual report on project procurement performance (compared to project delivery performance standards developed by the Transportation Procurement Office) for projects receiving federal funds.
- The USDOT should continue to build upon the direction in the Moving Ahead for Progress in the 21st Century Act (MAP-21) (*PL 112-141, 126 Stat 405 (2012)*) to encourage the simplification and standardization of P3 contracts and ensure greater understanding of the contract terms for the public and private sector.
- The USDOT should partner with and provide support to other federal agencies and state and local governments to share lessons learned relative to P3s.
- States interested in pursuing P3s should coordinate to share "lessons learned" by early adopters and consider establishing stand-alone state P3 offices that look beyond transportation and develop regional partnerships.

The Committee will use the Panel's recommendations as a resource when considering possible future legislation.

FHWA'S TOLL CONCESSIONS P3 MODEL CONTRACT GUIDE

MAP-21 required the USDOT to develop standard P3 transaction model contracts and to make these model documents available to state and local governments. In response, the Federal Highway

Administration (FHWA), a division of the USDOT, published its Toll Concessions P3 Model Contract Guide (Guide) on September 10, 2014. Based, however, on a "listening session" conducted with industry representatives on January 16, 2014, and other input from public and private sector parties, the FHWA determined that providing a set of prescriptive, standardized contracts for use in P3 transactions to public authorities interested in using P3s for highway projects would not be desirable. Instead, it adopted an educational approach in its Guide, focusing on the key issues in P3 highway projects and means to protect the traveling public and State and local governments, while continuing to attract needed private investment.

The FHWA intends to issue an Addendum to the Guide addressing, among other things, performance standards, contract length, consumer protections, continuing disclosure, Federal requirements, lenders step-in and cure rights, O&M obligations, developer indemnities, insurance, assignment/transfer of rights, dispute resolution and performance security. The FHWA is also currently working on an Availability Payments Model P3 Contracts Guide.

For more information on the MAP-21 requirements, see *Legal Update, President Obama Signs Comprehensive Infrastructure Bill* (<http://us.practicallaw.com/1-520-1639>).

HIGHWAY AND TRANSPORTATION FUNDING ACT OF 2014

On July 31, 2014, Congress approved a stop gap measure to prevent the insolvency of the Highway Trust Fund (HTF) and to finance federal highway and other transportation projects through May 31, 2015. Among other things, the Highway and Transportation Funding Act of 2014 (PL 113-159, 128 Stat 1839 (2014)):

- Extends federal highway programs authorized under MAP-21, including the TIFIA program. MAP-21 was due to expire on September 30, 2014.
- Funds the HTF with approximately \$10.8 billion.

The HTF is primarily funded with gasoline tax receipts, which have been falling in recent years due to advances in motor fuel efficiency and the lack of any increase in the federal gasoline tax (18.4 cents per gallon since 1993), but funding needs for reconstruction, replacement and new highways have risen. This trend is expected to continue over the next decade as new fuel efficiency standards come into effect.

This short-term funding solution came just hours before the federal government was set to start cutting payments on state transportation construction projects. Many participants in the US infrastructure sector were disappointed that the HTF was only funded through May 2015, predicting that the lack of long-term stability could have a chilling effect on the procurement of vital transportation infrastructure projects, which typically take many years to procure and construct.

For more information on the highway funding bill, see *Legal Updates, Congress Passes Bill to Temporarily Fund the Highway Trust Fund* (<http://us.practicallaw.com/3-576-8985>) and *President Obama Signs Transportation Bill with Pension Funding Provisions* (<http://us.practicallaw.com/4-520-2642>).

The remainder of this article discusses notable projects in the P3 pipeline.

ARIZONA

Arizona adopted a P3 law in 2010, but it is limited to surface transportation projects (*Ariz. Rev. Stat. §§ 28-7701 to 7710*). This legislation, enacted in 2009, authorizes the Arizona Department of Transportation (ADOT) to enter into agreements with private entities to design, build, finance, maintain, operate, manage and/or lease transportation facilities, or for any other project delivery method that the ADOT determines will serve the public interest. The initial statute did not, however, have the toll enforcement mechanisms required for a successful tolled P3 project. This was addressed in a 2012 amendment (see *2012 Ariz. Legis. Serv. Ch. 210 (H.B. 2491)*).

SOUTH MOUNTAIN FREEWAY

On December 10, 2014, the ADOT received five responses to its Request for Qualifications (RFQ) in connection with the \$1.9 billion South Mountain Freeway Project. This project, which is structured as a DBM, entails a 22-mile, eight lane freeway, including two HOV lanes, in the southwest quadrant of the Phoenix metropolitan area. It is the last major highway projects in the Maricopa Association of Governments Regional Transportation Plan. The ADOT is expected to announce a shortlist of qualified teams in early February 2015. The winning bidder will enter into a P3 agreement that includes a maintenance period of up to 30 years. The ADOT will fund the project's capital costs with a combination of available public funds and tax-exempt bonds.

This is the ADOT's first P3 project. The RFQ was issued after the ADOT received an unsolicited proposal for this project in July 2013.

LAKE HAVASU CITY WASTEWATER SYSTEM

On October 27, 2014, Lake Havasu City, Arizona, received 12 responses to a Request for Information (RFI) regarding its wastewater system, which consists of three treatment facilities. The city completed a Wastewater System Expansion Program in 2011, at a cost of approximately \$340 million. The current state financing for these improvements has scheduled annual debt service in excess of \$20 million for the next 10 years, which the city feels will impose "unsustainably high wastewater charges on the City's ratepayers." As a result, Lake Havasu City issued the RFI to seek ideas, approaches, or solutions to mitigate these user charges. A P3, lease or privatization are all options under consideration.

I-11 TRANSPORTATION CORRIDOR

In October 2014, the ADOT and the Nevada Department of Transportation (NDOT) released their joint I-11 and Intermountain West Corridor Study, which was two years in the making. The Study is part of a decades-long effort by Arizona, Nevada and other western states to develop a transportation corridor between the Rocky Mountains and the Cascade Range/Sierra Nevada Mountains. It includes detailed corridor planning of a possible high-capacity transportation link connecting Phoenix and Las Vegas, and high-level visioning for extending the corridor north of Las Vegas to Canada and south of Phoenix to Mexico. The Corridor would include upgraded highway facilities, but could also incorporate rail and other major infrastructure components (such as energy and telecommunications).

The Corridor has the potential to be over 530 miles long between the southern Arizona border and the Las Vegas Metropolitan Area, and double that to the northern Nevada border. The Study contemplates a phased implementation over many years. For some segments existing

facilities could be upgraded or replaced. Other portions would have to be greenfield construction. The Study notes that a number of segments could be procured as P3s. No timeline has been set for the project, the costs of which are estimated to be in the billions.

OTHER PROJECTS

The ADOT is also considering a P3 as one of the options for a new or expanded SR 189 in Nogales near the US-Mexico border. SR 189 is used as a bypass route for commercial truck traffic to and from Mexico. A significant increase in such traffic is expected in 2015 when the Mariposa Port of Entry's \$225 million modernization project is completed. Although the road is short (at approximately three miles), the ADOT contemplates that the project could be relatively expensive given the terrain and the high population density in the area. Costs are estimated at between \$50 million and \$215 million. The ADOT and the FHWA are undertaking an engineering and environmental study to examine alternative ways to handle the projected traffic increase in traffic on SR 189. No traffic and revenue study has been done yet.

In late March 2014, the ADOT indicated that it is considering a P3 for a proposed high speed passenger rail system between Phoenix and Tucson. A high-level feasibility study is currently being conducted by the ADOT. Depending on the route, the costs of the project are estimated at between \$3.6 billion and \$7.9 billion.

CALIFORNIA

California continues to be a leader in the P3 sector with some of the most innovative projects. Its P3 statutes authorize:

- The California Department of Transportation (Caltrans) and regional transportation agencies to enter into P3 agreements.
- Local government agencies to use private sector capital to develop specified projects if certain conditions are met.
- The state judiciary to plan, construct, acquire, and operate its court facilities through the use of P3s.

However, California's current P3 statute is due to expire in 2016. Unless definitive steps are taken to renew it in 2015, this could have a chilling effect on private sector interest in P3 projects coming to the market in the state.

In addition, on September 30, 2014, California Governor Edmund G. Brown, Jr. signed California Senate Bill (SB) 785 which authorizes state and local agencies to use design-build for qualifying projects. This bill became effective on January 1, 2015. Prior to this bill, DB authority was spread over multiple statutes.

For more information on California's P3 legislation, see *State Q&A, Public Private Partnership Legislation: California* (<http://us.practicallaw.com/9-554-3318>).

LONG BEACH CIVIC CENTER

On December 9, 2014, the Long Beach City Council approved the Plenary Edgemoor Civic Partners (PECP) consortium as the preferred bidder for the new Long Beach Civic Center. The parties are expected to move forward with an Exclusive Negotiation Agreement (ENA), followed by a public outreach and education period. The winning consortium included Plenary Group, Edgemoor Infrastructure and Clark Construction. The project, which is structured as an availability

payment P3, calls for the design, construction, financing, operation and maintenance of a new city hall and main library for the City of Long Beach, and certain enhancements to Lincoln Park. The project is expected to be operational by 2019.

The costs of the project have been estimated at \$200 million. The project will be financed with long-term bonds and is expected to reach financial close by May 2015.

UNIVERSITY OF CALIFORNIA, MERCED

On October 24, 2014, six bidding teams responded to the reissued RFQ from the University of California, Merced for the proposed expansion of its campus. The expansion, which would support projected growth in student numbers from 6,200 to 10,000 by 2020, is to be located on 219 acres (including the current 104-acre campus) and will entail up to 1.85 million square feet of new facilities. These facilities will include academic, administrative, research, recreational, student residence and student services buildings, utilities and infrastructure, outdoor recreation and open space areas, as well as associated roadways and parking.

The costs of the DBFOM project have been estimated at \$1 billion. The shortlist of bidders is expected to be announced shortly with the winning bidder being selected by the end of 2015. Construction is expected to begin in 2016.

HIGHWAY 156 WEST CORRIDOR PROJECT

In the fall of 2014, the Transportation Agency for Monterey County (TAMC) in central California selected Ernst & Young Infrastructure Advisors to assist in the preparation of P3 documents for the SR-156 P3 project. The project entails the widening of the highway US Route 101 and west of Castroville Boulevard and the rebuilding of the US Route 101/SR 156 interchange in Monterey County, at an estimated cost of approximately \$270 million. The TAMC and Caltrans announced a two-step procurement at a workshop in August, with an initial pre-development agreement being followed by a full DBFOM P3 agreement.

Such a two-step procurement is unusual in the US, although it was successfully used on the North Tarrant Expressway Project in Texas. Legislative approval from the California Transportation Commission (CTC) would be required before the project could proceed. No timeline has been set, although TAMC and CTC are expected to consider the project at their respective meetings in the spring of 2015.

CALIFORNIA HIGH-SPEED RAIL PROJECT

In October 2014, the California High-Speed Rail Authority (CHSRA) received letters of interest from nine private developers interested in building a high-speed rail network. CHSRA is considering a P3 procurement. The network, which could potentially extend from San Francisco to Los Angeles, would be procured in segments over a multi-year period.

CHSRA issued an RFQ for consultant services for the Palmdale-to-Burbank and the Burbank-to-Los Angeles sections on October 20, 2014. The consultant would provide planning, preliminary engineering, alternatives development and environmental services for these two sections, as well as financial and programming analysis. In 2013, voters approved a \$8.6 billion bond issuance to partially fund the project, the full cost of which has been estimated at \$68 billion. No timeline has been set for the project.

HIGH DESERT CORRIDOR

On October 1, 2014, Caltrans and the Los Angeles Metropolitan Transportation Authority (LA Metro) released the draft environmental impact report/ environmental impact statement (EIR/EIS) for the proposed High Desert Corridor. This greenfield project would entail the construction of a 63-mile multi-modal link from SR-14 in Los Angeles County to SR-18 in San Bernardino, including possible "green energy" components.

The EIR/EIS considers many possible permutations of the project, some including a tolled road facility and some a high speed rail feeder service. P3 options are under consideration. The estimated cost of the roadway component is approximately \$3.6 billion. The estimated cost of the rail component is between \$2.63 billion and \$4.53 billion, depending on which of the various options is pursued. The 60 day EIR/EIS public comments period has now ended. The project faces an unusually complex and potentially time-consuming permitting and approval process, involving up to six separate federal agencies and at least five state authorities.

HUNTINGTON BEACH DESALINATION PLANT

The long gestating Huntington Beach desalination plant continues to move forward. A panel appointed by the California Coastal Commission (CCC) and Poseidon Water the private sponsor to look at the potential subsurface sea water intakes for the project issued a report on October 9, 2014. The Report found that two of these water intakes were technically feasible. The Panel was formed to address some issues raised by CCC in November 2013.

The project entails building and operating a seawater desalination facility capable of producing 50 million gallons per day. It would include pre-treatment facilities, a reverse osmosis seawater desalination facility, post-treatment facilities, product water storage, electrical substation and booster pump stations, as well as water transmission facilities in Huntington Beach and Costa Mesa. Under one scenario, the Orange County Water District would purchase the project's entire output under a long-term contract. The costs of the project have been estimated to be up to \$400 million.

The project received a setback in November 2014 when the CCC again deferred a decision on issuing a coastal development permit to Poseidon Water for the project, after a lengthy and contentious public meeting. Poseidon has indicated that it intends to resubmit its permit application and continue to push ahead with the project.

COLORADO

Colorado has adopted P3 legislation which authorizes the Colorado Department of Transportation (CDOT)'s High Performance Transportation Enterprise (HPTE) to pursue any available means of financing for a surface transportation infrastructure project that allows the efficient completion of the project (*Colo. Rev. Stat. Ann. §§ 43-4-801 to 813*). In early 2014, the governor vetoed an amendment to the P3 legislation, citing a possible chilling effect on the ability of the state to consummate projects.

The HPTE, was created in 2009 to facilitate P3s at the state level and to provide P3 guidance to local and regional entities. While the P3 legislation has been in place for several years, it has not been used extensively. The CDOT signed its first P3 agreement in February 2014

(see *US 36 Project*). Other Colorado agencies are also authorized to enter into P3s but under different authority. For example, regional transportation districts (RTDs) are authorized to enter into DBFOM agreements under the Regional Transportation District Act (*Colo. Rev. Stat. Ann. §§ 32-9-101 to 164*).

For more information on Colorado's P3 legislation, see *State Q&A, Public Private Partnership Legislation: Colorado* (<http://us.practicallaw.com/0-578-8008>).

The HPTE in November 2014 decided to procure the C-470 Express Lanes project as a publicly-funded, DB project and not a P3. HPTE's value-for-money (VfM) study favored a DB procurement method as being less expensive than a DBFOM approach. It is unclear if this VfM analysis focused only on the costs of procurement and construction, or took into account the potential life cycle benefits of a DBFOM structure. According to the study, toll revenue projections and the size of the potential equity investment under a DBFOM structure would likely make the project less attractive to potential bidders. CDOT had previously noted that a lack of potential for design innovation also argued against using a P3 structure for the C-470 project.

The HPTE and the CDOT remain committed to P3s, however, and have several projects in active procurement.

I-70 EAST PROJECT

The CDOT is moving ahead with its I-70 East Project which covers a 12.5 mile section of I-70 East in the Denver metro area. The CDOT's preferred design entails adding lanes (including two express lanes in each direction) and removing a viaduct and calls for a portion of the highway to be reconstructed below grade and to be partially covered with a park or other public amenity. 150,000 vehicles per day currently use the corridor, with the number projected to increase to 250,000 per day. The costs of the project have been estimated to be up to \$1.5 billion. The CDOT and the HPTE are expected to issue an RFQ for the project in the near future.

US 36 PROJECT

The CDOT's first P3, US 36 Express Lanes, reached financial close in February 2014. The project involves approximately 24 miles of managed lanes on US 36 between Boulder and Denver, including the I-25 Express Lanes. The consortium, Plenary Roads Denver, which consists of the Plenary Group, Ames Construction, Granite Construction, HDR, Transfield Services, and Goldman Sachs, was awarded a 50 year DBFOM toll concession under which it is taking traffic revenue risk. Colorado will potentially share in the upside if toll receipts exceed certain specified levels.

The project, which is estimated to have cost \$120 million, was financed in part by tax-exempt PABs, TIFIA loans, a subordinate loan and private sponsor equity.

DISTRICT OF COLUMBIA

In December 2014, the City Council passed the Public-Private Partnership Act of 2014 to allow for P3s in the District of Columbia. The legislation also established the Office of Public-Private Partnerships. While DC has undertaken P3s in the past, it was done under special authorizing legislation.

DC STREETCAR PROGRAM AND THE INTEGRATED PREMIUM TRANSIT (IPT) SYSTEM

On October 23, 2014, DC shortlisted three teams for a scaled down version of its streetcar project. Originally conceived as a 22-mile streetcar system and the operation of a non-regional bus service within the District, this project is now about 8 miles, following budget cuts.

The project is structured as a DBOM. The city is expected to issue a request for proposals (RFP) to shortlisted teams in January 2016, with proposals due by May 2016. DC hopes to select a winning team by December 2016.

FLORIDA

Florida has been a leader in the P3 sector, with some of the most significant P3 transactions in the US, including the Port of Miami Tunnel and the I-595 Corridor projects. Florida's initial P3 legislation was limited to transportation projects. But on May 3, 2013, the Florida legislature passed House Bill 85 (HB85), expanding Florida's P3 statute to allow the P3s to be used in other sectors. The new law, which became effective July 1, 2013, allows any responsible public entity (including counties, municipalities, school boards, regional entities, and other state subdivisions) to use the P3 structure to develop any project that serves a public purpose. It also created a Public-Private Partnership Guidelines Task Force to establish uniform procedures for implementing P3s. For more information on Florida's P3 enabling legislation, see *State Q&A, Public Private Partnership Legislation: Florida* (<http://us.practicallaw.com/w-000-2449>).

I-4 ULTIMATE PROJECT

On September 4, 2014, the I-4 Mobility Partners consortium (owned by Skanska Infrastructure Development and John Laing Investments) reached financial close on Florida's I-4 Ultimate P3 project in Florida. The project covers approximately 21 miles of I-4, from Kirkman Road in Orange County to SR 434 in Seminole County, and entails adding four tolled express lanes (two in each direction), reconstructing 15 interchanges, replacing or reconstructing/widening 140 bridges and rebuilding the general use lanes along the entire corridor. The express lanes will use variable tolls to improve and facilitate traffic flow. The cost of the project is \$2.3 billion.

I-4 Mobility Partners was selected by the FDOT as the preferred bidder for the 40-year DBFOM project in April 2014. It will receive payments from the FDOT during construction and annual performance-based availability payments thereafter. The financing included two TIFIA loans, a construction loans (with Société Generale as the syndication agent, CIBC was the documentation agent and BTMU was the administrative agent). The TIFIA loans, at approximately \$950 million, were the largest ever TIFIA loans to a P3 project.

SOUTH MIAMI HEIGHTS WATER TREATMENT PLANT

Miami-Dade Water and Sewer Department (MDWASD) issued a draft RFQ for its South Miami Heights Water Treatment Plant project in December 2014. It was released as a working draft, with MDWASD seeking industry input by March 18, 2015.

MDWASD is the largest water and sewer utility in the southeastern United States, serving nearly 2.3 million residents and providing direct service to more than 440,000 customers. The South Miami

Heights Water Treatment Plant project would improve reliability in water service and quality by allowing for the decommissioning of certain satellite plants with over 40 years of service. MDWASD and the South Florida Water Management District have entered into an agreement allowing MDWASD to incorporate the use of the Upper Floridan Aquifer (UFA) raw water into Miami-Dade County's water supply. The new plant will treat water drawn from the UFA, as well as the Biscayne Aquifer currently used by MDWASD.

MDWASD issued a Request for Expressions of Interest (REOI) for a variety of infrastructure projects in November 2013 and received over 30 responses. MDWASD selected the South Miami Heights Water Treatment Plant project as the first of many potential P3 projects that it would procure. MDWASD has indicated that a biosolids project will likely be its next P3 project.

"ALL ABOARD FLORIDA" RAIL LINK

All Aboard Florida (AAF) has commenced preliminary construction work on a privately-funded passenger rail line connecting Orlando and Miami, with stops in Fort Lauderdale and West Palm Beach, including work on the 7 acre downtown Miami station. In November 2014, a groundbreaking ceremony was also held for the West Palm Beach station. Key parts of the project are, however, still subject to local and federal approval.

The first segment of this express rail service, between Miami and West Palm Beach, is scheduled to start operations in 2016, with the second segment, from West Palm Beach Miami to Orlando, following in 2017. The service will use 195 miles of the existing Florida East Coast Railway Corridor (between Miami and Cocoa). 40 miles of new rail infrastructure will also be constructed adjacent to SR 528 (between Cocoa and Orlando International Airport). The entire 235 mile trip is expected to take under three hours. The total cost of the project are estimated at \$2.5 billion.

AAF is a private consortium owned by Florida East Coast Industries (a subsidiary of Fortress Investment Group). It applied for \$1.6 billion in federal funds through the Railroad Rehabilitation and Improvement Financing (RRIF) program, administered by Federal Railroad Administration (FRA). As a result, FRA must conduct an analysis of the potential environmental impacts of the project. The FRA released its draft EIS with respect to the project on September 19, 2014, which found that the overall environmental impact of the project will be minimal.

SR 54/SR 56 PROJECT (PASCO COUNTY)

On January 13, 2014, the FDOT selected a consortium comprising of OHL, International Infrastructure Partners, Guggenheim and Parsons Brinckerhoff as the winning bidder for the SR 54/SR 56 toll project. The consortium was the sole team to submit a bid in response to the RFP, having originally submitted an unsolicited bid for the project in June 2013. The project calls for the DBOM of a 33-mile toll road (including elevated roadway) connecting New Port Richey/US-19 to Zephyrhills/US-301 through east, west and central Pasco County. The FDOT will lease the required rights-of-way to the consortium. Once completed, the project will have a significant impact on Tampa Bay motorists. It has been strongly endorsed by the Tampa Bay Area Regional Transportation Authority and has the potential to accelerate the development of several planned communities along the corridor.

The timetable for the project is uncertain. The next step is for the FDOT and the consortium to negotiate the details of the lease agreement.

ORLANDO MAGLEV PROJECT

In May 2014, the FDOT began negotiations with a private consortium for the lease of rights-of-way and other property required build a "fixed-guideway" magnetic levitation (maglev) rail system in Orlando. The consortium, which includes ACS and American Maglev Technology (AMT), was the only respondent to an RFP issued by the FDOT. The RFP was in response to an unsolicited proposal from AMT to build the project, with an initial 15-mile link between Orlando International Airport and the Orange County Convention Center. AMT has indicated its desire to construct an additional 25-mile stretch, in two phases. AMT has proposed to privately finance the project, which has a total estimated price tag of \$800 million. The required right-of-way is owned by the FDOT, the Orlando Orange County Expressway Authority and other public entities. The construction schedule has not yet been announced.

FT. LAUDERDALE FEDERAL COURTHOUSE

Broward County and the City of Fort Lauderdale, with the assistance of KPMG, are considering a possible P3 for a new federal courthouse in Fort Lauderdale, with the Fort Lauderdale Downtown Development Authority taking a central role in assessing the viability of the project. A P3 option has the potential to significantly cut the time to complete the project. Discussions are underway with the Federal General Services Administration (GSA). No procurement schedule has yet been set.

MIAMI DADE CONSOLIDATED JUSTICE FACILITY

In November 2014, voters in Miami Dade rejected a ballot measure that would have raised taxes to pay for a new \$390 million consolidated justice facility. In early January 2015, Miami Dade County Commissioner Juan C. Zapata continued to push for a P3 for the new facility, stating that he would introduce a supporting resolution before a committee of the Board of County Commissioners on January 14, 2015. The resolution would direct the Miami-Dade County Mayor to seek proposals for the design, construction, financing, operation and maintenance of the facility, which would include a new courthouse and detention facilities.

EMERALD COAST UTILITIES AUTHORITY WASTE PROCESSING FACILITY

The Emerald Coast Utilities Authority (ECUA) issued an RFQ on November 18, 2014, with respect to the design, construction, financing and operation of a mixed waste processing facility. The costs of the project have been estimated at \$35 million to \$70 million, depending on the technology used. Four teams were shortlisted in early January 2015. The negotiations of a final contract are scheduled to be completed by April 2015.

GEORGIA

Georgia passed limited P3 legislation in 2009, empowering the Georgia Department of Transportation (GDOT) to undertake P3s (*Ga. Code Ann. §32-2-41(b)(6)*). The GDOT is authorized to solicit and accept proposals for projects that are funded or financed in part or in whole by private sources (*Ga. Code Ann. §§32-2-78 to 80*). Georgia has only consummated one P3 to date, the Northwest Corridor design-build-finance (DBF) P3 that reached financial close in November 2013.

I-285/SR 400 IMPROVEMENTS PROJECT

The GDOT issued an RFQ for the design, construction and partial financing of the I-285 and SR 400 Improvement Project on November 3, 2014. The project entails rebuilding the I-285/SR 400 Interchange, a collector-distribution system north of SR 400 to Spalding Drive, and modifications of the existing north-facing ramps and Hammond Drive and reconstruction of the Abernathy Road interchange. The proposed project is expected to be constructed by DBF P3. The design-build cost of the project is estimated at \$725.9 million, which includes the cost of preliminary design, environmental approval, right of way acquisition, final design, construction, utility relocations, construction engineering and inspection (CEI), and insurance.

The GDOT anticipates that approximately \$235 million of funding from public sources will be available for the project for payment by GDOT to the winning bidder during the construction period, although such amount is subject to change. A DBF agreement is contemplated for the project, with the State Road and Tollway Authority (SRTA) making payments to the winning consortium post-construction (with funds made available by the GDOT). The GDOT extended the deadline to respond to the RFQ from December 15, 2014 to December 15, 2015. A shortlist of bidders is expected to be announced in mid-February 2015. The GDOT currently anticipates awarding the DBF agreement for the project in the first quarter of 2016.

UNIVERSITY SYSTEM OF GEORGIA – STUDENT HOUSING P3

In November 2014, the Board of Regents (BOR) of the University System of Georgia (USG) selected the Corvias Campus Living consortium as the winning bidder to develop, construct, manage and maintain certain student housing. The project covers 3,683 new beds and 6,195 existing beds, totaling over 3 million square feet across nine campuses. The operations period is 65 years, which is long by US standards. This is the first time a US state university system has use a P3 for student housing covering multiple campuses. It has been used for a single campus (see *Texas A&M University Student Accommodation Phase I*).

The P3 contract includes:

- Performance-based fees paid to Corvias, which tie compensation to performance.
- A reinvestment account that is projected to exceed \$2 billion over the life of the contract (to cover capital repairs and upkeep).
- \$5.6 million of up-front funding by Corvias for capital repairs and renovations to existing housing to in the first year.

The costs of the project are approximately \$517 million. The funding is expected to come from private sector institutional lenders. Financial close is expected to occur in the spring of 2015.

ILLINOIS

Illinois has P3 enabling legislation in place (*605 Ill Comp. Stat. 5/5 to 605 Ill Comp. Stat. 5/90*). However, many of P3 projects in the state were consummated under:

- Special legislation. For example, the Illiana P3 project is authorized under the Public Private Agreements for the Illiana Expressway Act (see *605 Ill. Comp. Stat. 130/1 to 605 Ill. Comp. Stat. 130/135*). For more information on this project, see *Illiana Expressway Project*.
- Home rule authority.

P3 projects in Illinois have faced significant criticism over the years. In 2009, the City of Chicago entered into a 75-year concession agreement with a private consortium under which it leased the city's 36,000 parking meters for \$1.2 billion. This agreement has been criticized by some for undervaluing the concession and increasing parking fees.

The city has also been required to make payments of approximately \$61 to the private consortium to compensate it for certain city actions that impacted the consortium's revenues (including closing streets and allowing the construction of a parking garage that competed with the meters).

The City of Chicago has also brought the Midway Airport P3 to the market twice but has failed to consummate the transaction. However, despite these setbacks, Illinois remains active in the P3 sector and has several projects in procurement.

SOUTH SUBURBAN AIRPORT PROJECT

In September 2014, the Illinois Department of Transportation (ILLDOT) received eight responses to its P3 RFI regarding the new South Suburban Airport proposed for Peotone. This new airport, located south of Chicago, would potentially provide for commercial passenger service, cargo operations, as well as corporate and general aviation activities. The ILLDOT is producing an Airport Master Plan for the approval by the US Federal Aviation Administration (FAA). Several key elements of the plan have already received FAA approval. The ILLDOT has acquired over 3,850 acres of land for the project. The airport would be tied into the proposed Illiana Corridor.

CHICAGO SWIMMING POOL RETROFIT

In June 2014, the Chicago Infrastructure Trust approved a P3 to make over 100 city-owned swimming pools more energy efficient. The private team will refurbish the water filtration and heating systems, air ducts and other mechanical improvements, with a view to reducing the electricity and gas consumption. The costs have been estimated at up to \$50 million, with the private party being repaid via the energy savings generated by the project. The project arose from an unsolicited proposal from the winning team.

INDIANA

Indiana has in place broad P3 legislation which authorizes the Indiana Finance Authority (IFA) to enter into P3 agreements with private entities (see *Ind. Code Ann. §§ 8-15.5-1-1 to 8-15.5-13-8*). Under this legislation, the IFA can enter into agreements with a private sector party to, among other things, plan, design, acquire, construct, improve, expand, lease, operate, repair, manage, maintain or finance toll road projects. The Indiana Department of Transportation (IDOT) is also authorized to enter into P3 agreements to develop, finance or operate transportation projects, including toll ways, roads, bridges and some rail projects (see *Ind. Code Ann. §§ 8-15.7-1-1 to 8-15.7-16-8*). Cities and other local jurisdictions are also allowed to enter into P3 agreements (see *Ind. Code Ann. § 5-23-1-3*).

Indiana is becoming a leader in the P3 sector, despite the problems faced by Indiana's first P3 project, the \$3.8 billion Indiana Toll Road Project. Vehicle traffic on the project has been lower than projected, resulting in considerably less revenues than expected. ITR Concession Company Holdings, the parent of the private concession company, filed for Chapter 11 protection on September 22, 2014. A sale process regarding the Indiana

Toll Road concession is currently underway. The issues with this project have not, however, had an impact on Indiana's standing as a P3 state.

I-69 (SECTION 5)

Financial close was reached on the I-69 Section 5 highway project in July 2014. This project will improve 21 miles of State Road 37, as well as adding new interchanges and overpasses, outside of Bloomington. The project is a part of the larger I-69 Corridor Project, which aims to improve connectivity between the north and south of the state. I-69 Development Partners, a consortium led by Isolux Infrastructure, was awarded the 35-year design-build-finance-operate (DBFO) concession by the IFA in February 2014.

Total project capital costs have been estimated at approximately \$370 million. The financing included \$243,845,000 of tax-exempt PABs. The project completion is scheduled for October 2016. The IFA will make periodic availability payments to the private operator post-completion, as consideration for the private operator designing, constructing, financing, operating and maintaining the project. This is Indiana's second availability payment P3 project to close, the first being the Ohio Bridges East End Crossing project, which is also scheduled to open in October 2016.

INDIANAPOLIS CONSOLIDATED JUSTICE FACILITY PROJECT

In December 2014, the City of Indianapolis selected WMB Heartland Justice Partners as the winning consortium on its Indianapolis courthouse P3 project. The consortium is comprised of Walsh Investors, Meridiam Infrastructure Indy Justice and Balfour Beatty Investments. The 35-year DBFOM project includes a new criminal courthouse for the Marion County superior court (28 new courtrooms and 10 hearing rooms), a county detention center with a total of 3,000 beds (plus medical and mental health facilities), a community corrections facility with 960 beds and related office facilities.

The cost of the project is approximately \$408 million. The annual availability payment to the private consortium, for operating and maintaining the facility in accordance with specified levels and services, is just over \$3 million. Commercial close is expected in March 2015, with construction completion scheduled for May 2018. This will be the second courthouse P3 in the US, following on the Long Beach Courthouse in California, which reached financial close in December 2010.

ILLIANA EXPRESSWAY PROJECT

Plans are moving ahead for the Illinois-Indiana Illiana Expressway Project, an approximately 47-mile toll road located in Indiana and Illinois, with both states undertaking separate procurements. The project was first envisaged back in 1909 in a Chicago City Plan that included an "Outer Encircling Highway" serving northeastern Illinois and northwest Indiana. It would provide an east-west connection between I-65 in Indiana and Interstates 57 and 55 in Illinois.

Indiana would cover the construction of an 11.7 mile, four-lane median divided tolled highway, extending from the Illinois/Indiana state line at the west end and connecting to I-65 north of Lowell, Indiana, as well as additional work on I-65 that includes the construction of approximately 12.23 miles of additional non-toll lanes. On February 28, 2014, Indiana shortlisted four teams for its portion of the project, which is expected to be structured as a DBFOM P3. The costs of this portion have been estimated at \$300 million.

The 35-mile Illinois portion includes a four-lane, limited access toll road from I-55 to the state border as well as a bridge over the Kankakee River and other related highway improvements. It is also expected to be procured as a DBFOM P3. Illinois has also shortlisted 4 bidding teams, 3 of which were also shortlisted on the Indiana portion. The costs of this portion have been estimated at \$1 billion.

In December 2014, the FHWA issued its environmental Record of Decision, allowing each state to move forward with their respective RFPs. The USDOT has approved the states to apply for TIFIA financing for the project.

Both states initiated the procurement process for their part of the project in 2013.

KENTUCKY

The Kentucky General Assembly passed P3 legislation in 2014, but it was vetoed by Governor Steve Beshear because it banned the use of tolls on the Brent Spence Bridge project (see *H.B. 407, 222nd Gen. Assemb., 14 Reg. Sess. (Ky. 2014)*). Governor Beshear has indicated that he will push this legislation without this provision in 2015. In the Governor's opinion, tolling on the Brent Spence Bridge is a requirement for consummating the project as a P3. For more information on the Brent Spence Bridge project, see *The Brent Spence Bridge Improvement Project*.

"NEXT GENERATION KENTUCKY INFORMATION HIGHWAY" PROJECT

In December 2014, Kentucky announced that it had selected a team headed by Macquarie Capital to consultate a P3 for the Commonwealth's "Next Generation Kentucky Information Highway" project. The private team will lay over 3,000 miles of fiber optic cable to dramatically Kentucky's internet and cell phone services. The costs of the project are estimated at between \$250 million to \$350 million, with Macquarie being responsible for a significant portion. Macquarie will also operate the network for 30 years.

The P3 will allow the project to be consummated on an accelerated timescale. Stage one of the project will begin in Eastern Kentucky and entails laying the main broadband fiber lines. Once completed, internet service providers, cities and others will be allowed to connect the "last mile" lines to individual businesses and homes. Where available the project will build upon existing infrastructure. Cell phone companies will also be allowed to use the network to broaden coverage and add capacity for areas that have traditionally poor cell phone coverage. The project is scheduled to be complete by end of 2016, with all end point users being connected by mid-2018.

MARYLAND

On April 9, 2013, Maryland Governor Martin O'Malley signed House Bill 560 which extensively revised Maryland's P3 statute. As revised, the statute:

- Streamlines the process of establishing P3s.
- Creates a mechanism for submitting solicited and unsolicited proposals.
- Establishes a review process and associated reporting requirements for oversight of P3s.

(*Md. Code Ann., State Fin. & Proc. §§ 10A-101 to 10A-403*.)

For more information, see *State Q&A, Public Private Partnership Legislation: Maryland* (<http://us.practicallaw.com/1-544-8565>).

The election of new Governor Larry Hogan, who will take office on January 21, 2015, has introduced a degree of uncertainty with respect to the future of P3s in the state. Although the Governor-elect has not taken a firm position on P3s since his election, he was not supportive of the model during his campaign. This could adversely impact the Purple Line rail project, currently in active procurement, and the proposed \$2.9 billion Red Line rail project.

PURPLE LINE

Maryland has pushed the deadline for the shortlisted teams to submit bids on the Purple Line rail project from January 9 to March 12, 2015. The delay is intended to allow Governor-elect Larry Hogan's administration additional time to evaluate the project. The project is a 16-mile passenger rail link between Bethesda in Montgomery County and New Carrollton in Prince George's County, in the Maryland suburbs of Washington, DC. It will connect to Metrorail, the MARC Train, Amtrak and local bus routes. Post-construction, the Maryland Department of Transportation (MDOT) will make availability payments to the winning consortium over the term of the DBFOM P3 agreement. The total capital costs of the project have been estimated at up to \$2.3 billion. The financing could include a TIFIA loan and PABs.

PRINCE GEORGE'S COUNTY STORM WATER PROJECT

In November 2014, Prince George's County approved a P3 agreement with Corvias Solutions for a 30-year, stormwater management project. The County is expected to invest \$100 million in an initial three-year retrofit of its water systems. Corvias will undertake the design, construction and long-term maintenance of stormwater management systems, covering up to 4,000 acres. The Maryland Department of the Environment and the EPA are also taking an active role in the project. The project will initially be funded by stormwater management fees collected by the county, but private financing options are also being explored.

PRINCE GEORGE'S COUNTY WASTE-TO-ENERGY PROJECT

In November 2014, Prince George's County also issued an RFQ for a new waste processing and alternative energy facility. A DBFOM or a DBOM P3 agreement are being considered as possible options. The initial term of the project agreement will not exceed 20 years, with two optional five year extensions (subject to the mutual agreement of the parties). The deadline to respond to the RFQ is March 12, 2015. Due to Maryland's new goals on waste diversion and recycling, the County's existing Brown Station Road Sanitary Landfill is scheduled to close in 2020. The proposed waste-to-energy project would partially replace this landfill.

MICHIGAN

Michigan currently has no authorizing P3 legislation. However, certain public entities in the state can pursue P3s under the state's "home rule" powers.

WINDSOR-DETROIT INTERNATIONAL TRADE CROSSING (NITC)

Michigan and the Windsor-Detroit Bridge Authority (WDBA) are in the pre-procurement stage with respect to the proposed International Trade Crossing. The project covers the development of border crossing facilities linking the US and Canada, including a new bridge over the Detroit River, US and Canadian customs and inspection facilities and

related road infrastructure improvements. The WDBA is a Canadian Crown Corporation, overseen by the International Authority (which includes three members appointed by each of Canada and Michigan). The WDBA issued a notice of intent to hire an engineering consultant for the project on October 30, 2014.

The project is contemplated to be a 50-year DBFOM P3, with tolling. The project was first introduced in 2006 and has strong support from the Canadian government, who view it as a potential key trade corridor with the US. In June 2012, Canada agreed to finance Michigan's \$550 million share of the costs. It is unclear how the US customs and inspection facility would be funded, however.

FREEWAY LIGHTING P3

The Michigan Department of Transportation (MIDOT) also proposed the use of a P3 to deliver upgrades to the state's freeway streetlighting infrastructure. The MIDOT announced its shortlist of four bidding teams in June 2014. The DBFOM contract is expected to have a 15 year term and cover the existing freeway and tunnel lighting systems in the Detroit Metro region, which makes up approximately 80% of the state's system.

NEVADA

Nevada enacted P3 enabling legislation in 2011 (*Nev. Rev. Stat. §§ 338.161 to 338.168*). The legislation allows certain public sector agencies to enter into an agreement with a private sector party to develop, construct, improve, finance, maintain or operate transportation facilities excluding toll road construction.

Nevada has not undertaken many P3 projects. Its first highway transportation project procured under the state's P3 law, Project Neon, was cancelled in August 2014. This project will now be financed using public funds.

NEW YORK

New York has not yet adopted P3 enabling legislation, although P3 bills have been proposed. Since 2012, certain state entities were permitted to develop projects using a DB structure under the Infrastructure Investment Act (2011 *N.Y. Laws ch. 56, part F*), but this authorization expired in December 2014 (see *Article, Infrastructure Investment Act: New York's Design Build Law* (<http://us.practicallaw.com/4-565-8726>)). In addition, the Port Authority of New York and New Jersey (PANYNJ) is empowered to use P3s.

On December 26, 2014, a report commissioned by New York Governor Andrew Cuomo and New Jersey Governor Chris Christie stated that the PANYNJ should continue to use P3s. The report noted that that P3s have become "an indispensable tool for delivering transportation infrastructure projects," especially in the current environment of constrained public financing.

LAGUARDIA AIRPORT CENTRAL TERMINAL BUILDING REPLACEMENT PROJECT

The PANYNJ is expected to announce the winning bidder for its LaGuardia Airport Central Terminal Building Replacement Project in early 2015. Bids by the three shortlisted teams were submitted in May 2014. The winning bidder for the LaGuardia project will:

- Design and construct a new terminal and other related facilities.
- Provide private sector financing for a portion of the project's costs.

- Operate and maintain the existing facilities during the construction period (and demolish and remove the existing facilities when construction is complete).
- Operate and maintain the new facilities for a specified term.

The costs of the projects have been estimated at between \$1.9 billion and \$2.6 billion. The PANYNJ is not seeking an upfront payment from the winning bidder. Instead, according to the RFQ, it is looking for an equity investment of \$200 million in the project, annual ground rent payments and a negotiated share of the net revenues. In October 2014, Governor Andrew Cuomo and Vice President Joe Biden announced a design completion soliciting ideas to improve the three New York City airports. The outcome of this competition may impact the LaGuardia procurement.

Unlike the Luí Muñoz Marín International Airport P3 in Puerto Rico which reached financial close in February 2013, the LaGuardia project is not being consummated under the Federal Aviation Administration's Airport Privatization Pilot Program.

The project will be the PANYNJ's second airport P3, following the Terminal 4 Project at John F. Kennedy airport (which was designed, built, and operated by a Schiphol-led consortium).

WADSWORTH HEALTH RESEARCH LAB

Governor Andrew Cuomo proposed a possible P3 for a new public health lab in Wadsworth as part of his 2014-2015 budget. Although the proposal was not included in the final budget that was passed in April 2014, this project continues to have the Governor's support. The Dormitory Authority of the State of New York (DASNY), a public agency, would have oversight over the project, which has an estimated price tag of \$600 million. Authorizing legislation would be required before this project could move forward.

NORTH CAROLINA

In August 2013, North Carolina's procurement legislation was amended to authorize state agencies and local municipalities to develop projects using P3s (*N.C. Gen. Stat. §143-128*). The North Carolina Department of Transportation (NCDOT) is also authorized to enter into P3 contracts to develop transportation infrastructure projects using the DBFOM structure, and to finance these projects through tolls and other financing methods authorized by law (*N.C. Gen. Stat. §136-18(39)*).

I-77 HOT LANES P3

In June 2014, the NCDOT signed a P3 agreement for the 27 mile I-77 HOT Lanes project with a private consortium that include Cintra Infraestructuras and Ferrovial Agroman. The project is divided into three portions:

- Southern Section (I-3311-C), requiring two HOT lanes in each direction.
- The Central Section (I-5405), requiring the conversion of the existing High Occupancy Vehicle (HOV) lanes to HOT lanes, providing two HOT lanes in each direction.
- Northern Section (I-4750AA), requiring one HOT lane in each direction.

The project is intended to increase capacity and improve road safety. It will not remove any existing general purpose lanes. The Cintra/Ferrovial consortium will develop, design, build, finance, operate, and maintain the project under a 50-year DBFOM agreement.

The road will have variable toll pricing and the private consortium will take traffic revenue risk. However, the NCDOT will provide a contingent funding "Developer Ratio Adjustment Mechanism," under which payments may be made to the consortium to cover shortfalls in operating costs and/or to make debt service payments if toll revenues are not sufficient to cover such liabilities. These payments are capped at \$75 million in aggregate and at \$12 million in any one year. If, however, toll receipts exceed an agreed amount, the NCDOT is entitled to share in such excess.

The capital costs of the project are approximately \$655 million. The project has not yet reached financial close. A TIFIA loan and PABs financing are under consideration.

OHIO

Ohio has a P3 statute that gives broad authority to the Ohio Department of Transportation (ODOT) to undertake a P3 procurement to develop, finance, maintain or operate transportation facilities (*Ohio Rev. Code Ann. §§ 5501.71(A) and 5501.83*). For more on this statute, see *State Q&A Public Private Partnership Legislation: Ohio* (<http://us.practicallaw.com/8-519-1948>).

No projects have been completed under this statute, but several projects are currently in development.

THE BRENT SPENCE BRIDGE IMPROVEMENT PROJECT

The State of Ohio and the Commonwealth of Kentucky are jointly moving ahead with their plans for the Brent Spence Bridge Project, which calls for improvements to a 7.8-mile corridor of I-75. As well as a major rehabilitation of the existing Brent Spence Bridge, the project contemplates the construction of a new Ohio River crossing adjacent to the existing structure. The total cost of the project is estimated at \$3.56 billion. Ohio and Kentucky are considering a DBFOM P3 approach, with availability payments. The states are operating under a bi-state agreement, which establishes their respective roles and responsibilities and contemplates a Bi-State Management Team (BSMT) to jointly oversee the project.

Certain sections of the project may be maintained by Kentucky outside of the DBFOM concession, in order to facilitate governmental purpose tax-exempt financing. In December 2013, an initial Financial Plan was submitted to the Federal Highway Administration in connection with the project. The plan identified toll revenue as the primary source of funding for the project.

Ohio Governor John Kasich signed legislation in June 2014, allowing electronic tolling on the proposed bridge, a key requirement to progress with the P3 project. However, in April Kentucky Governor Steve Beshear vetoed P3 legislation that would have prevented tolling the bridge. New P3 authorizing bills may be introduced when the Kentucky legislature reconvenes in January 2015. No P3 procurement schedule has yet been proposed.

ROUTE 823 PORTSMOUTH BYPASS PROJECT (ROUTE 823)

In September 2014, the ODOT selected the Portsmouth Gateway Group as preferred bidder for its 30-year DBFOM Portsmouth Bypass project. The winning team included ACS Infrastructure, InfraRed Infrastructure, Star America Fund and Dragados. The project involves the development and long-term maintenance of an approximately

16-mile, four-lane limited access highway (to be designated State Route 823) around the City of Portsmouth in southern Ohio, bypassing approximately 26 miles of US 52 and US 23. It includes construction of 5 new interchanges and other related improvements. The ODOT will make availability payments post-construction.

The cost of the project is \$429 million, making it one of ODOT's largest construction projects to date. The USDOT announced in April 2014 that the project would be eligible for a TIFIA loan at the rural interest rate, which is half of the already low Treasury rate. A provisional allocation for PABs for the project has also been made. Financial close is expected in February 2015.

PENNSYLVANIA

Pennsylvania adopted broad P3 legislation in 2012 (see Act 88 of 2012) (*74 Pa. Stat. Ann. §§ 9101 to 9124*). The State's implementation manual was approved on January 9, 2013.

For more information, see *State Q&A: Public Private Partnership Legislation: Pennsylvania* (<http://us.practicallaw.com/0-539-8127>).

RAPID BRIDGE REPLACEMENT PROJECT

In October 2014, the Pennsylvania Department of Transportation (PennDOT) selected Plenary Walsh Keystone Partners (PWKP) as the preferred bidder for its Rapid Bridge Replacement P3 Project. The PWKP team includes Plenary, Walsh Group, Granite Construction and HDR Engineering. The initial RFP noted that approximately 4,500 (or 18%) of the Commonwealth's bridges were structurally deficient and the average age of the Commonwealth's bridges was more than 50 years. PWKP will be responsible for the design, construction/replacement, financing and maintenance of the bridges, and will receive availability payments from PennDOT. A subset of the dilapidated bridges will require to be replaced on an expedited basis.

PWKP proposed to replace the 558 bridges at an average cost of \$1.6 million per bridge. The PennDOT's pre-bid estimate was more than \$2 million, under traditional procurement methods. PennDOT will pay an average of \$65 million annually during 28-year term. Financial close is expected in March 2015. The financing will include up to \$772 million in PABs. Construction is scheduled to commence in the summer of 2015, with all bridges being replaced within 36 months. PWKP will maintain each bridge for 25 years after construction.

MIDDLETOWN WATER AND SEWER LEASE

The Borough of Middletown agreed to a lease of its water and wastewater systems to a consortium made up of KKR and United Water in October 2014. Middletown received an upfront payment of \$43 million from the consortium in fall 2014, and will also receive annual payments during the term of the contract. The consortium will operate and maintain the systems for 50 years.

COMPRESSED NATURAL GAS FUELING STATIONS

The Pennsylvania P3 Board approved a proposed compressed natural gas (CNG) fueling stations project on September 29, 2014. The project entails a DBFOM P3 for CNG filling stations at up to 37 transit facilities. PennDOT would also enter into a CNG supply contract with the winning team. The stations would service both public transit agency and private vehicles. An RFQ was issued in November 2014

with responses due in December 2014. The PennDOT plans to release a shortlist of qualified bidders in January 2015, and to issue a formal RFP in the spring of 2015. The preferred bidder is expected to be selected as early as the summer of 2015.

SOUTHPORT COMPLEX IN SOUTH PHILADELPHIA

In mid-November 2014, the Philadelphia Regional Port Authority received responses from 16 companies to its REOI for the development of its three Southport waterfront sites, collectively known as the Southport Complex, on the Delaware River in South Philadelphia. The three sites are the 119 acre Southport Marine Terminal, the 75 acre Southport West Terminal and a 1,132 foot long pier (Pier 124 North Berth). PRPA has performed pre-development work at all three locations. Southport has substantial rail, and water access, as well as a newly-built four lane road connecting the sites to Interstate highways I-76 and I-95. The REIO asked for development concepts for the DBFOM of three sites. No timeline has yet been set for the procurement.

AMTRAK STATION IMPROVEMENT PROJECT (KEYSTONE CORRIDOR)

The PennDOT, through its Office of Public Private Partnerships (OPPP), issued an RFI in February, 2014 for an 11-station improvement project along the nearly 350-mile long Keystone Corridor that links Philadelphia and Pittsburgh. The RFI noted that while the existing conditions vary from station to station, there are a number of operations and facility needs to be universally addressed at most, if not all, stations, including routine maintenance, lighting, security, and security technology. In October 2014, the PennDOT delayed the procurement process for its Amtrak Stations Improvement Project. Interface and coordination issues with Amtrak were cited as the key reason for the procurement delay, although PennDOT has indicated that it would still like to move ahead with the project as a P3.

WIRELESS TELECOM PROJECT

In June 2014, eight teams responded to an RFQ issued by the PennDOT P3 Office for the Wireless Telecommunications Partnerships Program. The project entails PennDOT making available commonwealth properties as potential wireless antenna sites, in consideration for a share of the revenue generated from contracts with leaseholders, licensees or permittees. No procurement schedule has been announced.

TEXAS

Texas has in place P3 legislation, the Texas Public Private Infrastructure Act (V.T.C.A., *Government Code T. 10, Subt. F, Ch. 2267.001 to 2267.452*). Texas has implemented several P3 projects, including the North Tarrant Express Segments 3A & 3B Project (which reached financial close in September 2013). Texas remains very active in the space with several projects in the pipeline despite the cancellation or postponement of several P3 procurement in recent years and the financial difficulties faced by certain projects in the state (including SH 130 toll road). The SH 130 concessionaire bears revenue and demand risk, and traffic on the road is significantly lower than forecast.

SH 183 MANAGED LANES PROJECT

The Texas Department of Transportation (TxDOT) reached commercial close on the SH 183 Managed Lanes Project in November 2014. The winning consortium, Southgate Mobility Partners (SMP), is headed by Plenary Group and Kiewit. SMP will design, construct, provide short-

term financing, operate and maintain for a term of 25 years a 14 mile portion of State Highway 183 through the cities of Euless, Irving and Dallas. SH 183 is the primary artery between Dallas and Fort Worth. Without the project, congestion was projected to double in coming decades. The project entails:

- The reconstruction of existing lanes and the addition of managed lanes on 14.8 miles of SH 183.
- The addition of 2.1 miles of eastbound and westbound managed lanes on SH 114.
- The addition of 2.3 miles of westbound managed lanes on Loop 12 from SH 183 to IH 35E.
- The construction of general purpose lanes, frontage roads, ramps and connecting roadways, associated drainage, structures, signing and pavement marking, lighting, landscaping, and right of way acquisition and utility adjustments.

The costs of the project have been estimated at \$847.6 million. The project is structured as a DBFOM, where TxDOT retains toll risk. The O&M period is 25 years, during which TxDOT will make availability payments to the private sector consortium. It is an unusual structure, involving variable scope, short-term private financing, and the bundling of long-term construction and lifecycle risks. Typically, a private consortium will have been paid in full for its construction services shortly after completion of the project. However, under the terms of the agreement between TxDOT and SMP, SMP will receive \$600 million towards the project's construction costs before substantial completion, with the remainder being paid over a period of 5 years after substantial completion. This structure is also being considered for the 181 Harbor Bridge replacement project.

Construction is expected to start in early 2015.

181 HARBOR BRIDGE REPLACEMENT PROJECT

In June 2014, the TxDOT shortlisted four teams for the 181 Harbor Bridge replacement project. The winning team would enter into a Comprehensive Development Agreement to design, construct, and potentially maintain and partially finance the new bridge, located in Corpus Christi. The current bridge, which opened in 1959, is 2.25 miles long and averages 45,000 to 50,000 vehicles per day. It suffers from a number of deficiencies, including safety concerns, lack of capacity to develop additional lanes and issues regarding connectivity to local roadways. The existing bridge also has very high maintenance costs and restricts navigation.

The costs of the new bridge and related infrastructure have been estimated at over \$700 million. The final RFP, issued in November 2014, contemplates the submission of technical proposal by February 17, 2015, with financial proposals due on March 3, 2015. The TxDOT anticipates selecting the winning team in late March 2015.

SH 288 TOLL CONCESSION

The TxDOT is seeking bids from three shortlisted team interested in entering into a toll P3 concession to develop, design, construct, finance, operate, and maintain tolled lanes, general purpose lanes, and associated facilities along an approximately 10.3-mile segment of SH 288. The project is divided into two phases:

- Phase 1 includes the construction of four tolled lanes within the median of SH 288, the construction, of up to eight direct connectors at

Beltway 8 and the maintenance and operation of the general purpose lanes and associated facilities along the 10.3-mile section of SH 288.

- Phase 2 includes the addition of one general purpose lane each direction from Interstate Highway 610 to BW 8 and improvements to the IH 610 interchange.

The costs of the project have been estimated at \$320 million. The winning bidder bears revenue risk.

DALLAS-FORT WORTH CORE EXPRESS PASSENGER RAIL SERVICE

In November 2014, the TxDOT and the Federal Railroad Administration (FRA) held a series of public meetings seeking input on the proposed Dallas-Fort Worth Core Express Passenger Rail Service. Specific focus was given to potential track routes and station locations. These meetings were part of the public comment period mandated by the National Environmental Policy Act (NEPA). FRA is preparing an EIS for project. The related public comment period ended on December 15, 2014.

The service will use an as-yet undetermined technology and will establish links with other transportation services in Dallas and Fort Worth. The final alignment has not been determined, but will likely use one of a number of existing transportation corridors with other existing infrastructure, such as railroads, roads, or utilities. No procurement schedule has been set.

TEXAS-OKLAHOMA PASSENGER RAIL SERVICE

In February 2014, the TxDOT announced that it had commissioned the Texas-Oklahoma Passenger Rail Study to look at how passenger rail could play a role alleviating congestion on the 850 mile IH-35 corridor between Oklahoma and South Texas. The study will look at the corridor as a whole, as well as three discrete portions of the corridor:

- Northern: Oklahoma City to Dallas/Fort Worth.
- Central: Dallas/Fort Worth to San Antonio.
- Southern: San Antonio to Rio Grande Valley/Corpus Christi/Laredo.

It will also consider different levels of rail service, namely conventional, higher speed, and high speed. Funding for the study is being provided by the FRA. The study is anticipated to conclude by the end of 2015 after the completion of a service-level EIS and a service development plan.

SAN ANTONIO WATER PROJECT

On October 30, 2014, the San Antonio City Council approved a P3 agreement for a water delivery project. The project will be built, operated and maintained by the private Vista Ridge Consortium (VRC) (which includes Abengoa and BlueWater Systems) pursuant to a DBFOM contract with the San Antonio Water System (SAWS). The project entails 142-mile pipeline needed deliver water to San Antonio from Bureson County, the construction of a water treatment plant, 18 wells and three pump stations. Blue Water Systems has assembled 3,400 water rights leases with local landowners in connection with the project. The project will support a growing demand of an additional 20,000 San Antonio residents per year.

VRC will assume delivery risk (including regulatory, financial, technical and financial risk) over the contract's 30-year term. It has up to 30

months to arrange financing and a further 42 months to construct the project. It will not receive any payments from SAWS until the project is operational. The costs of the project have been estimated at \$3.4 billion.

TEXAS A&M UNIVERSITY STUDENT ACCOMMODATION PHASE I

In June 2014, Balfour Beatty reached financial close on the Texas A&M University student accommodation project, through the issuance of approximately \$104 million of tax-exempt bonds. This is the first of a two phase project, with an estimated combined value of \$200 million. Balfour Beatty will be responsible for the design, construction and financing for the project. The university will manage the housing.

Phase 1 (at College Station) entails a 1,274 beds in apartment configurations, as well as community areas and other amenities for the University's undergraduate population. Construction has started, with the first students expected to move in during August 2015.

HOUSTON JUSTICE COMPLEX

In May 2014, the City of Houston shortlisted three teams, for its new justice complex project. The project will entail the construction of a new facility to house certain operations of the City's Municipal Courts Department and the Houston Police Department, pursuant to a DB-FOM contract. An RFP is anticipated to be issued in early 2015.

VIRGINIA

Virginia is a leader in the US P3 sector and has completed some of the most significant P3 projects in recent years, including the Mid-town Tunnel Project. Virginia has broad P3 legislation in place:

- The Public-Private Education Facilities and Infrastructure Act of 2002, which allows private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects, including schools, wastewater treatment plants and telecommunications infrastructure (*Va. Code Ann. §§ 56-575.1 to 56-575.18*).
- The Public-Private Transportation Act of 1995 (PPTA) which applies to transportation projects, including roads, rail, transit and aviation (*Va. Code Ann. §§ 56-556 to 56-575*).

On November 12, 2014, the Commonwealth Transportation Board (CTB) approved new P3 guidelines that aim to increase transparency and competition and to better evaluate the public's risk for P3 transportation projects. The new guidelines followed from a six-month long public outreach program by CTB. Virginia Governor Terry McAuliffe announced in December 2014 that he plans to introduce a P3 reform bill when the state legislature convenes for its 2015 session, with a focus on increasing transparency, minimizing risk for taxpayers, and drawing clear lines of accountability.

NEW THIMBLE SHOAL CHANNEL TUNNEL PROJECT

In November 2013, the Chesapeake Bridge and Tunnel District (CBTD) received an unsolicited proposal from a consortium comprising of Skanska, Kiewit, Philip A Shucet, Weeks Marine and Parsons Brinckerhoff to design, build, finance and maintain a new parallel Thimble Shoal Channel Tunnel, which would connect Cape Charles and Virginia Beach. Under the PPTA, after receipt of an unsolicited proposal, the applicable agency must seek competing proposals.

The CBTB began accepting competing proposals on January 15, 2014. One estimate puts the costs of the project in the \$644 million to \$883 million range. In March 2014, the CBTB issued an RFP for a financial advisor in connection with the project.

VDOT OFFICE CAMPUS

The Virginia Department of Transportation (VDOT) issued an RFI in April 2014 in connection with the potential development of a new campus-style office for the VDOT's Hampton Roads District. The project would bring together three separate current facilities. The VDOT is examining the possible project in coordination with the Office of Transportation Public-Private Partnerships and the City of Suffolk, with a DBF structure being a possible option. If the VDOT elects to move forward, an RFP could be released in early 2015.

WEST VIRGINIA

West Virginia recently enacted P3 legislation, the Public-Private Transportation Facilities Act which authorizes P3s in the state. (*W.Va. Code §§17-27-5 and 17-27-9*). This legislation became effective in July 2014. The West Virginia Department of Transportation (WVDOT) lists the following projects as potential P3s:

- US 35 between WV 859 in Putnam County and CR 40 in Mason County.
- Coalfields Expressway (Slab Fork to Mullens) Wyoming/Raleigh County.
- Corridor H Kerens to Parsons Randolph & Tucker (Segment 1: Kerens to 219 Connector).
- Wellsburg Bridge Brooke.
- US 340 Jefferson County (VA Line to Charles Town).
- Buildings and Grounds Project (nine highway maintenance facilities across the state)

COALFIELDS EXPRESSWAY

The WVDOT released an RFQ for the Coalfields Expressway project in August 2014. The RFQ solicited solicited letters of interest and qualifications from consortia interested in providing P3 design, construction and financial services necessary for the construction of a four lane section of US Route 121 (known as the Coalfields Expressway) on new location between East County Route 12/1 and Mullens including the Mullens Connector road all in Wyoming County. The deadline for responding was September 12, 2014. In late December 2014, the WVDOT awarded this project to Bizzack Construction, LLC. Construction on the project should begin in the Spring of 2015 with an anticipated completion date in the Fall of 2018.

THE US P3 SECTOR IN 2015

While 2014 was a very healthy year for the US P3 sector, there are a number of factors that could adversely impact the sector in 2015:

- **A change in political will:** Following the 2014 November elections, many supporters of P3 projects at the state level lost their offices. It is too soon to tell whether the newly elected officials will postpone or cancel P3 projects in the pipeline, but some were less than enthusiastic about P3s during their campaigns (including the new elected Governors of Illinois, Maryland and Texas). In addition, while the President and the last Congress frequently

reiterated their support for the P3 model in 2014, it remains to be seen what impact a Republican controlled Congress will have.

- **The upcoming expiration of MAP-21:** The federal transportation bill that passed in July 2014 only provides federal transportation funding through May 31, 2015. Congress and the President will need to pass comprehensive legislation or another stopgap measure by that date to keep the HTF and other federal transportation programs funded. As noted above, another short-term extension could have a chilling effect on the procurement of vital transportation infrastructure projects, which can take many years to procure and construct.
- **Tighter credit markets:** There has been significant liquidity in the credit markets over the past 24 months, making it easier for P3 projects to achieve financial close. A tightening of the credit markets in 2015 could make it more difficult to consummate P3 transactions in 2015.

Notwithstanding these potential issues, the US P3 market is likely to remain very active in 2015. Many P3 projects were in active procurement in 2014, laying the groundwork for significant activity in 2015. The capital investment needs with respect to US infrastructure are significant (see *Legal Update, The American Society of Civil Engineers Releases 2013 Report Card on US Infrastructure* (<http://us.practicallaw.com/5-525-3278>)). In a recent report, Moody's Investors Services noted that "the US has the potential of becoming the largest market for public-private partnerships (P3s) in the world, given the sheer size of its infrastructure" (see *Moody's Global P3 Landscape, 2014*).

As more P3 projects have been consummated over recent years in the US, there has been a growing recognition of the benefits of the model at the local, state and federal levels. While the P3 model is not right for every project, when compared to traditional procurement methods it can deliver vital public infrastructure and related services in an expedited and cost-effective manner, bringing private sector innovation and efficiencies to bear for the public good.

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