

ALTERNATIVE PROJECT DELIVERY

DESIGN BUILD: DRIVING EFFICIENCY AND PROJECT MOMENTUM

New thinking can address our increasingly complex infrastructure needs. Alternative project delivery strategies for high-stakes development require careful planning and proper allocation of risk. The first step is to consider design-build project delivery.

Design-build project delivery focuses on the crucial transition from concept and specifications to contracting for performance. It's a creative approach to faster, more efficient project delivery—and it can make projects possible that otherwise might not be. The attorneys in Ballard Spahr's Infrastructure Group can help.

We have experience—nationally and internationally—in navigating the varied and complex legal issues that arise during the negotiation and implementation of design-build and other alternative project delivery structures.

Our Group brings together attorneys from various legal disciplines, to tap their diverse experience and skills to complete projects. We draw on our core strengths in procurement, contracting, and public finance to help project owners, developers, lenders, and other stakeholders form strong partnerships. And because we are part of a national, multipractice firm, we are backed by a talented team of lawyers with skills in crucial areas such as government relations, environmental law, and dispute resolution.

Our team has represented participants on every side of the transaction, giving us perspective that can smooth negotiations, efficiently allocate risks, and keep projects moving. Our clients range from federal, state, and local government entities to domestic and international businesses across industries—from transportation/transit to energy to social infrastructure, such as hospitals and schools. We understand the unique nature of different project types, we've overcome obstacles, and we know design-build.

REPRESENTATIVE CLIENTS AND TRANSACTIONS

Indiana Finance Authority/Indiana Department of Transportation. A Ballard Spahr attorney served as co-lead counsel to the public-sector owner in two procurements, run largely in parallel with a third, in Indianapolis and Louisville. Total value: nearly \$2 billion. The North Split project involved reconfiguration of Indiana's most congested interchange. The I-69 Section 6 (Segment 6.5) project completed work on I-69 linking Bloomington and Indianapolis.

Nebraska Dept. of Transportation. A Ballard Spahr attorney was one of two counsel to the public owner in the procurement of Nebraska's first design-build project, a contract for the U.S. 275 Scribner-West Point project. The project features a road, bypass, and levee reconfiguration, and the design-build contract included lump-sum pricing with options for the rehabilitation of existing roadway.

Virginia Dept. of Transportation. A Ballard Spahr attorney was co-lead counsel to the public owner on the:

- procurement for a \$108 million “coal synergy” design-build strategy to deliver, at rough grade, a 6.2-mile, four-lane, limited-access highway for U.S. 460 Connector Phase II. Then-Governor Bob McDonnell called it the “key connection” to opening southwestern Virginia to more job and business opportunities. The design-build contract included lump-sum price reductions tied to revenue-sharing from mined coal and reduced costs through other coal synergies;
- procurement for a \$167 million “coal synergy” design-build strategy to deliver, at rough grade, a 2.9-mile, four-lane, limited access highway for the Poplar Creek Phase A portion of the U.S. 460 Connector project; and
- renegotiation and restatement of concession for seven remaining sections of future U.S. Highway 121, from Wise to Buchanan Counties. Each project has a contract value ranging from \$10 million into the eight figures.

Philadelphia Phillies. Ballard Spahr represented the Phillies and the Philadelphia Authority for Industrial Development (PAID) in contracting for the design and construction of Citizens Bank Park, as well as the sublease and development agreement between the Phillies and PAID. The contract addressed complex state and local tax issues and requirements the Commonwealth of Pennsylvania and the City of Philadelphia imposed as a condition for public funds.

Georgia Department of Transportation. Ballard Spahr served as P3 counsel to the Georgia DOT for its I-285/SR 400 project. Ballard Spahr lawyers drafted the design-build-finance (DBF) agreement with the winning proposer and negotiated real estate- and construction-related matters with pre-qualified bidders. Construction-related provisions included a DBF-specific compensation-event and delay-event regime that complied with state law.

Harvard University. Ballard Spahr represented the University’s Allston Development Group in Harvard’s campus expansion in the Allston section of Boston and in the renovation and expansion of its Fogg Museum. We advised on design and construction contracts, as well as labor, insurance, and other construction-related issues.

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