



PARTNERSHIPS IN TRANSIT

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Legislative Perspective

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Is Legislation Needed? If So, What Should It Say?

- Authority to contract
- Procurement issues
- Payment/performance bond requirements
- Funding issues
- Other issues



Authority to Contract

Agency may have ability to proceed without need for new legislation

- New Jersey Transit
- Portland Airport MAX
- JFK Airtrain



Authority to Contract

- Ability to bundle:
 - Design
 - Construction
 - Operations
 - Maintenance
 - Finance
- Authority to enter into multi-year contracts
- Authority to enter into leases
- Limitations on “contracting out”



Procurement Issues

Requirements for procurement of different aspects of contract may be incompatible

- Design contracts based on qualifications
- Construction contracts based on price and complete plans
- Leases based on price



Procurement Issues

- Is prequalification/short-listing allowed?
(not contemplated by Model Procurement Code)
- Are pre-proposal one-on-one meetings allowed?
- Competitive sealed proposals vs. bid?
- Best value selection vs. low bid?
- Are pre-award negotiations allowed? (not under Model Procurement Code)
- Requirement to list subcontractors in bid?

Procurement Issues

- Are required evaluation criteria consistent with desired approach?
- Must the project go to the legislature for approval?
- Do local agencies have approval rights?



Payment/Performance Bond Requirements

- Market limitations on large bonds
 - Typical requirement 100% of contract value
 - Model Procurement Code allows reduction to 50% but that may also be too high
 - Consider allowing reduction to amount determined reasonable by agency
- Some potential participants may not have relationships with sureties
 - Consider allowing alternative security

Funding Issues

- How/when will payments be made? Does payment obligation constitute long-term debt subject to legal constraints?
- Who receives farebox? Who has rate setting authority? When/how can rates be changed?
- What restrictions are tied to identified sources of funds?

Funding Issues

- Who can issue debt? (Washington statute requires indebtedness to be issued by state treasurer)
- Can agency issue revenue bonds?
- Can you create a non-profit to sponsor?
- Authority to access TIFIA?
- Authority to issue private activity bonds?



Where to Look for Legislative Precedent (if needed)

- Project-specific statutes (LAX/Palmdale)
- Agency-specific statutes
 - Louisiana Transportation Authority
 - Los Angeles Metro
 - Maryland Transportation Authority
- Statutes applicable to multiple agencies (CA, DE, NV, VA, WA)
- ABA Model Code (ABA, HI, MD)
- Nossaman

Other Issues to Consider in Drafting Legislation

- Property and local sales/excise tax exemption
- Labor protection (union contracts and Section 13(c) issues)
- Transit-oriented development (legislative provisions that allow/encourage/discourage)
- Condemnation/eminent domain
- Other business opportunities
- Stipends to unsuccessful proposers

Other Issues to Consider in Drafting Legislation

- State Public Records laws – ability to protect confidentiality of proposals, evaluations and negotiations prior to award
- Protection against subsequent legislative action
- Restrictions on use of right of way
- Sovereign immunity



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