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**A Forum on P3s: What Are the Lessons Learned?**

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LEGAL AND REGULATORY CONSIDERATIONS**

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# FEDERAL LAW AND REGULATIONS: OVERVIEW

- Importance of FAA Grant Assurance 25 re revenue diversion: airport-generated funds from any source to be reinvested in airport operations and development, and not used for other unrelated purposes
- Airport P3s without violating the FAA revenue diversion rule:
- Full private operation of an airport is possible under Airport Investment Partnership Program (“AIPP”) with P3 party becoming airport operator for FAA Part 139
- Selected airport facilities, such as terminals, ground transportation, parking, energy facilities, cargo, etc. developed and operated as a P3 outside of the AIPP, so long as any transaction proceeds are used for airport purposes and public owner remains Part 139 airport operator

# FEDERAL LAW AND REGULATIONS: AIPP OVERVIEW

- Formerly known until 2018 as Airport Privatization Pilot Program
- Currently no limit on number of participating airports or limit on hub airports
- Airport sponsors seek to improve airport operations and management or enhance capital expenditures at the airport that could not otherwise be funded by a public sponsor.
- P3 lease proceeds (or for GA airport, sale) can be used for non-airport purposes if approved by 65% of scheduled air carriers

# FEDERAL LAW AND REGULATIONS: AIPP STATUTORY REQUIREMENTS

- P3 operator's ability to assume the public operator's grant obligations
- Ensure continued access to the airport on reasonable terms
- P3 operator must ensure the airport is operated safely, maintain and improve the airport, charge reasonable fees, provide security, mitigate noise and environmental impacts
- Existing collective bargaining agreements covering airport employees may not be repealed
- P3 lease agreement must provide a plan for continued operation of the airport in case of bankruptcy of the private operator
- Private operator access to PFCs/AIP grants

# FEDERAL LAW AND REGULATIONS: P3s AND GRANT ASSURANCES

- Applicable for all P3s—under AIPP or otherwise and with or without airline approval
- Access to aeronautical users on reasonable terms without unjust discrimination.
- Users who are similarly situated must be treated in the same manner
- Air carriers making similar use of similar facilities must be subject to comparable rules, regulations, conditions and rate
- Sponsor may make reasonable classifications such as signatory/nonsignatory or tenant/non-tenant and treat the classes differently.



# STATE AND LOCAL LAWS: OVERVIEW

- Applicable to airport and other infrastructure P3s
- State/local laws govern available project delivery methods and processes for implementing a project under the available methods
- Glory and challenge of US federal system
- Scope of capital projects eligible for P3 project delivery varies widely across jurisdictions
- Legal landscape for P3 procurement is rapidly changing--numerous states have adopted P3 authorization legislation—but still inconsistent

# STATE AND LOCAL LAWS: LOCAL P3 AUTHORIZATION

- Subdivisions of the state, such as municipalities and counties, may have separate P3 authority via home rule powers or state statutes.
- Cities and counties may have P3 authority even where a state or state-level agency does not—e.g, City of Chicago vs. State of Illinois.
- Even with home rule P3 authorization, state authorization may be needed for certain aspects of the transaction--property or excise tax exemptions, etc.

# STATE AND LOCAL LAWS: LOCAL GOVERNANCE STRUCTURE

- Governance structure and corresponding procurement authorization are important determining factor for the regulatory authority to execute airport P3s
  - **Port Authority of New York and New Jersey:**
    - Interstate compact with jurisdiction over certain regional transportation projects and not restricted by State law.
    - Delivering LGA Central Terminal, new Terminals at JFK and Capital Projects at EWR;
  - **Los Angeles World Airports:**
    - Implementing CONRAC and Automated People Mover Projects under City Charter/Muni Code Airport P3 provisions – in the absence of any state enabling statute for P3



# STATE AND LOCAL LAWS: GENERALLY APPLICABLE TERMS

- Highlighted considerations:
  - procurement methods including transparency
  - selection criteria and scoring methodology
  - degree of risk transfer
  - financing options
  - funding sources

## STATE AND LOCAL LAWS: GENERALLY APPLICABLE TERMS

- Highlighted considerations:
  - term length
  - performance security
  - right of way responsibility
  - data protection
  - actions or authority that must remain with the government agency



## STATE AND LOCAL LAWS: PUBLIC POLICY CONSIDERATIONS

- Open records laws
- Competitive bidding
- Non-compete requirements and restrictions
- State and Local taxes to which the P3 counter party may be subject
- Dispute resolution
- Adverse Actions by government sponsor and/or other governments

# STATE AND LOCAL LAWS: WORKFORCE POLICY CONSIDERATIONS

- Prevailing wage/living wage
- MWBE/ACDBE/DBE compliance
- Local hiring
- Project labor agreements and labor protections
- Requirements intended to protect jobs or levels of wages and benefits for current employees
- Limitations on employee non-compete agreements
- Generally limited impact on P3 project implementation



# COMPLIANCE WITH OUTSTANDING AIRPORT AGREEMENTS

- Potential limitations imposed by bond covenants
- Potential limitations imposed by airline use agreements



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