

Long Beach Courthouse: Social leader

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The Long Beach Courthouse replacement public-private partnership (PPP) is the first availability-based non-transport concession in the US. It took more than four years and the approval of the California state legislature to reach close, but the states Administrative Office of the Courts, the grantor, succeeded at putting together a groundbreaking deal that could open the door to a new wave of availability-based concessions in the US.

Meridiam Infrastructure-led Long Beach Judicial Partners won the 35-year design-build-finance-operate-maintain (DBFOM) concession in June 2010. Between then and close, on 20 December 2010, the sponsor worked closely with the AOC to finalise the commercial agreement and transfer of risk from the state to the private sector. One element of this contract, which addresses concerns over the projects appropriations risk, is a stipulation that if the annual availability payment is not appropriated by the California legislature in the states notably contentious budgeting process, ownership of the facility and the lease on the underlying ground reverts to the concessionaire.

Mandated lead arrangers BBVA Compass, BNP Paribas, Credit Agricole, Deutsche Bank, Royal Bank of Canada and Scotia put together a \$442 million club loan for the project. The financing is structured as a seven-year miniperm that priced at 275bp over Libor during construction with step-ups to 375bp during operations. The sponsor contributed \$49 million in equity. The debt has an annual debt service coverage ratio of 1.2x.

Stuart Marks, senior investment director at Meridiam, who led the project, says that both bank and bond options were considered for the courthouse but that the miniperm bank loan was selected because it was the most cost-effective solution and because it had less execution risk than a project bond. A tax-exempt bond structure would have required the project company to be a non-profit and limited risk transfer.

The AOC will make regular availability payments referred to as service payments in the request for proposals (RFP) to the project company once construction is complete. There are no milestone or substantial completion payments, though the City of Long Beach is providing \$7 million for on-site and off-site improvements and off-site utility relocations. The availability funds come out of the grantors annual budget, which the state legislature appropriated annually.

The \$498 million courthouse replacement project involves construction of a new 49,332 square metre building on an urban site in the centre of Long Beach, south of Los Angeles. It includes 31 courtrooms for the state supreme court, roughly 5,853 square metres of office space for Los Angeles County, 855 square metres of retail space, a basement with a controlled-entry space and an in-custody holding facility. The project company will also renovate a parking structure next door. Construction on the courthouse begins this year with completion expected in 2013.

The AOC and California Judicial Council first decided that the existing courthouse needed replacing in 2004, but California does not have the money to pay for either the Long Beach or 500 other courthouse projects in the state. It was not until the state faced a \$2.4 billion shortfall in its fiscal year 2007-2008 budget that a PPP agreement could be reached. The grantor worked directly with then-governor Arnold Schwarzenegger and the state legislature to get language authorising the development of a PPP framework, which it dubbed performance-based infrastructure, for the Long Beach project in the budget and accompanying Senate Bill 82.

Implementing a cost-effective model for an availability-based PPP was not simple. In addition to the states well-documented budgetary issues, groups such as the Professional Engineers in California Government are outspoken opponents of availability-based concessions and the cost of a project under a new procurement method is held to a higher value-for-money, or cost effectiveness, standard. No one has sued yet to stop the courthouse, but the AOC did have to engage Ernst & Young to conduct an independent cost effectiveness survey before the project could be tendered as a PPP, beginning in November 2008.

Lankford-Phelps Long Beach Developers (Lankford & Associates, HOK, Hensel Phelps, Piper Jaffray and Grubb & Ellis) and Balfour Beatty Capital (Balfour Beatty, Perkins & Will, Heery/Barnhart, Barclays Capital and Linc Facilities) were shortlisted alongside Long Beach Judicial Partners in May 2009. The grantor received bids that December and selected the preferred bidder in June 2010.

US-based Clark Construction holds the 32.5-month fixed-price and schedule design-build contract with design sub-contracted to AECOM. Johnson Controls, which has extensive experience with social PPPs in Canada, has a 35-year operations and maintenance contract with the concessionaire.

All eyes in the US, and especially California, are now on Long Beach to see if the project works whether the courthouse is turned over on time, meets state quality standards and succeeds in achieving the cost savings promised under the PPP procurement method. If it passes this test, California alone has hundreds of additional courthouse replacements that could be modelled on the deal, and after that there are schools and other government buildings. Officials in Colorado, Indiana, Louisiana, Michigan, New Jersey, Texas and Virginia are known to be watching the project.

Long Beach Judicial Partners

Status: Closed 20 December 2010

Size: \$498 million

Location: Long Beach, California

Description: 35-year DBFOM courthouse replacement

Awarding authority: Administrative Office of the Courts

Government contribution: \$7 million from the City of Long Beach

Sponsor: Meridiam Infrastructure

Equity: \$49 million

Debt: \$442 million miniperm

Lenders: BBVA Compass, BNP Paribas, Credit Agricole, Deutsche Bank, Royal Bank of Canada and Scotiabank

Financial advisers: BNP Paribas and KPMG (sponsor), Ernst & Young (grantor)

Legal counsel: Fulbright & Jaworski (sponsor), Milbank and DLA Piper (lenders), Hawkins Delafield & Wood (grantor)

Technical adviser: Arup

Insurance adviser: Marsh (sponsor), Moore-McNeil (lenders)

Tax adviser: KPMG

Design-build contractor: Clark Construction

Operations contractor: Johnson Controls

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