

Hawkins
Delafield & Wood LLP

Houston, Texas
Justice Complex Project
Presentation to City Council
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**PUBLIC-PRIVATE PARTNERSHIP
(P3) PROJECT DELIVERY
FOR THE JUSTICE COMPLEX**

Eric S. Petersen
Partner
Hawkins Delafield & Wood LLP
New York, NY

2328046

DESIGN-BID-BUILD (DBB)

TRADITIONAL DELIVERY

Design-Bid-Build (DBB)

Two Contracts

Design Completed Before Bidding

Full Owner Control

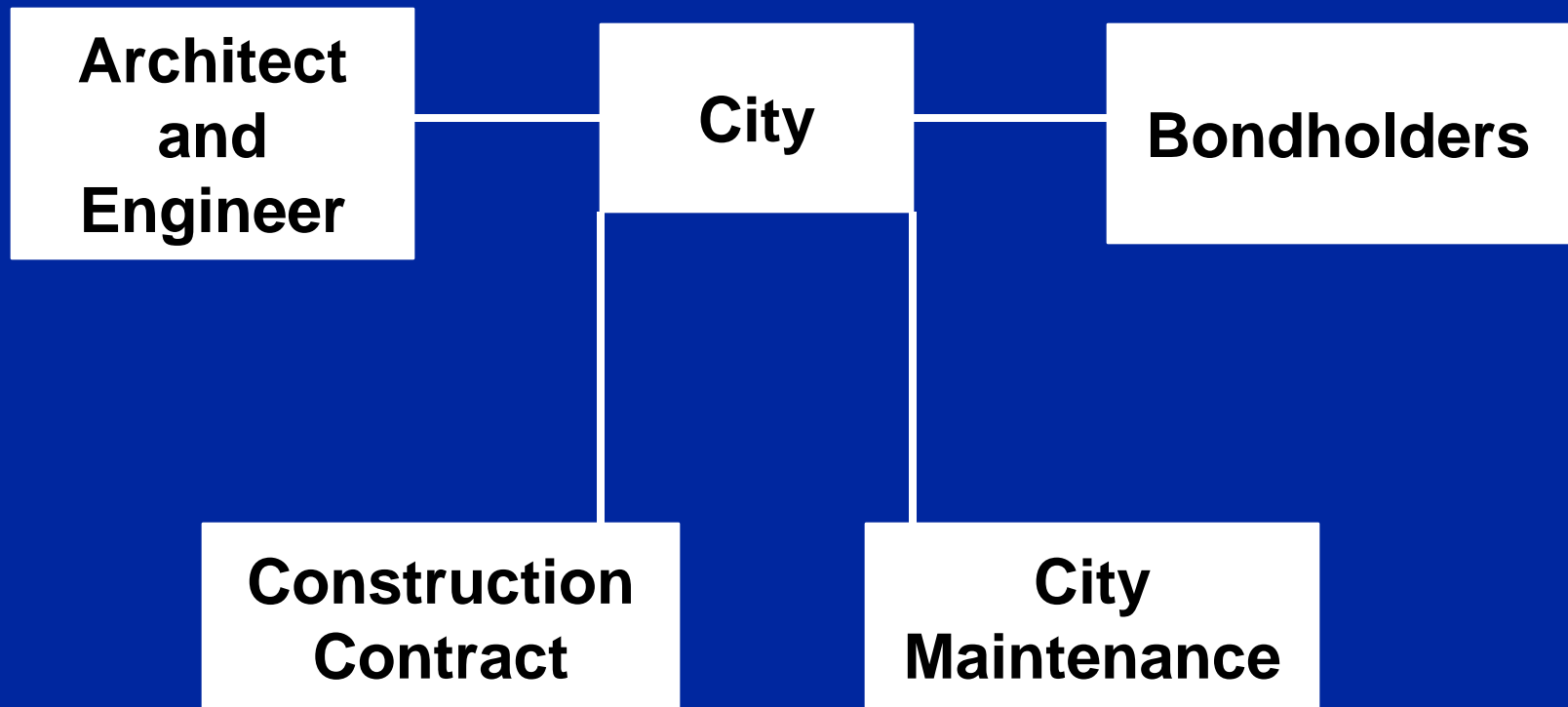
Intense Construction Price Competition

**Legally Mandated To Avoid Favoritism In
Contractor Selection**

Deep Market, Prevalent Method

Well Understood, Proven Over Time

DBB STRUCTURE



DBB DRAWBACKS

Not Qualifications Based

Forced Marriage of Designer, Builder

**Construction Price Is Only Selection
Factor**

Slower Delivery

Higher Cost

Can Be Dispute Prone

CONSTRUCTION-MANAGER- AT-RISK (CMAR)

CMAR DESCRIPTION

Separate Contracts for Design and Construction

Select Both on Qualifications Basis

Specialized CM Firms or General

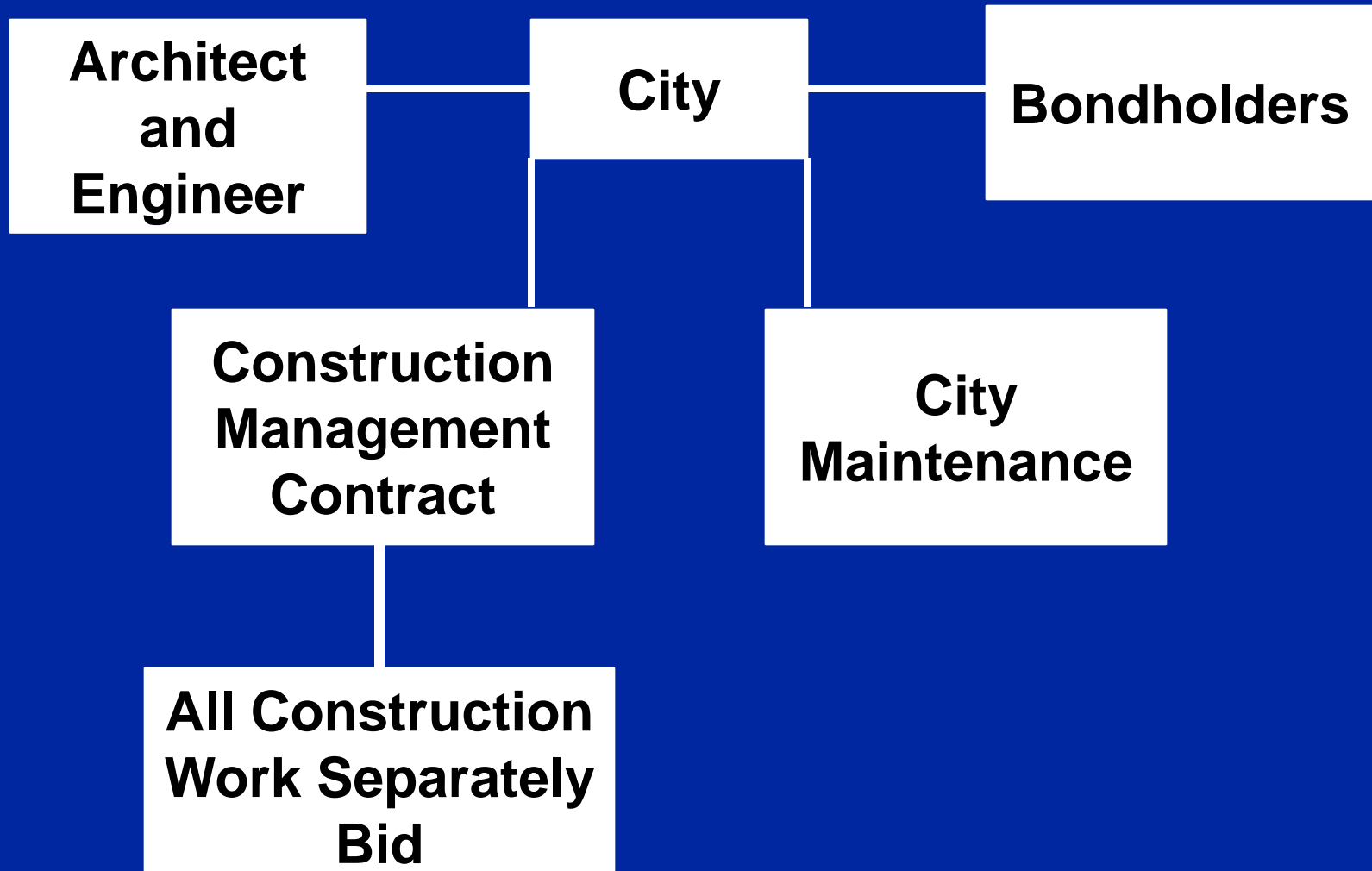
Contractors with CM Experience

Price Not Involved Unless GMP Offered Later

CM is Construction Contractor

CM Prepares Bid Packages and Supervises Construction Performance

CMAR STRUCTURE



CMAR BENEFITS

Professional Selection of Construction Interface

Higher Confidence in Cost Estimates

Guaranteed Maximum Price Possible

Design Phase Assistance

Complete Control of Design

Less Need for Contingencies for Uncompleted Design Work

CMAR CHALLENGES

**Designer and Builder Are Teamed By
Owner, Not Voluntarily
Multiple Points of Responsibility
Owner Retention of Design Liability
No Design Competition
No Constructability Competition
Limited Life Cycle Cost Considerations
Degree of Design Conservatism**

DESIGN-BUILD (DB)

DESIGN-BUILD DESCRIPTION

Single Entity Contracts For Both Design and Construction: One Contract

Competitive Proposal Process

Multiple Evaluation Factors (other than Price or Design)

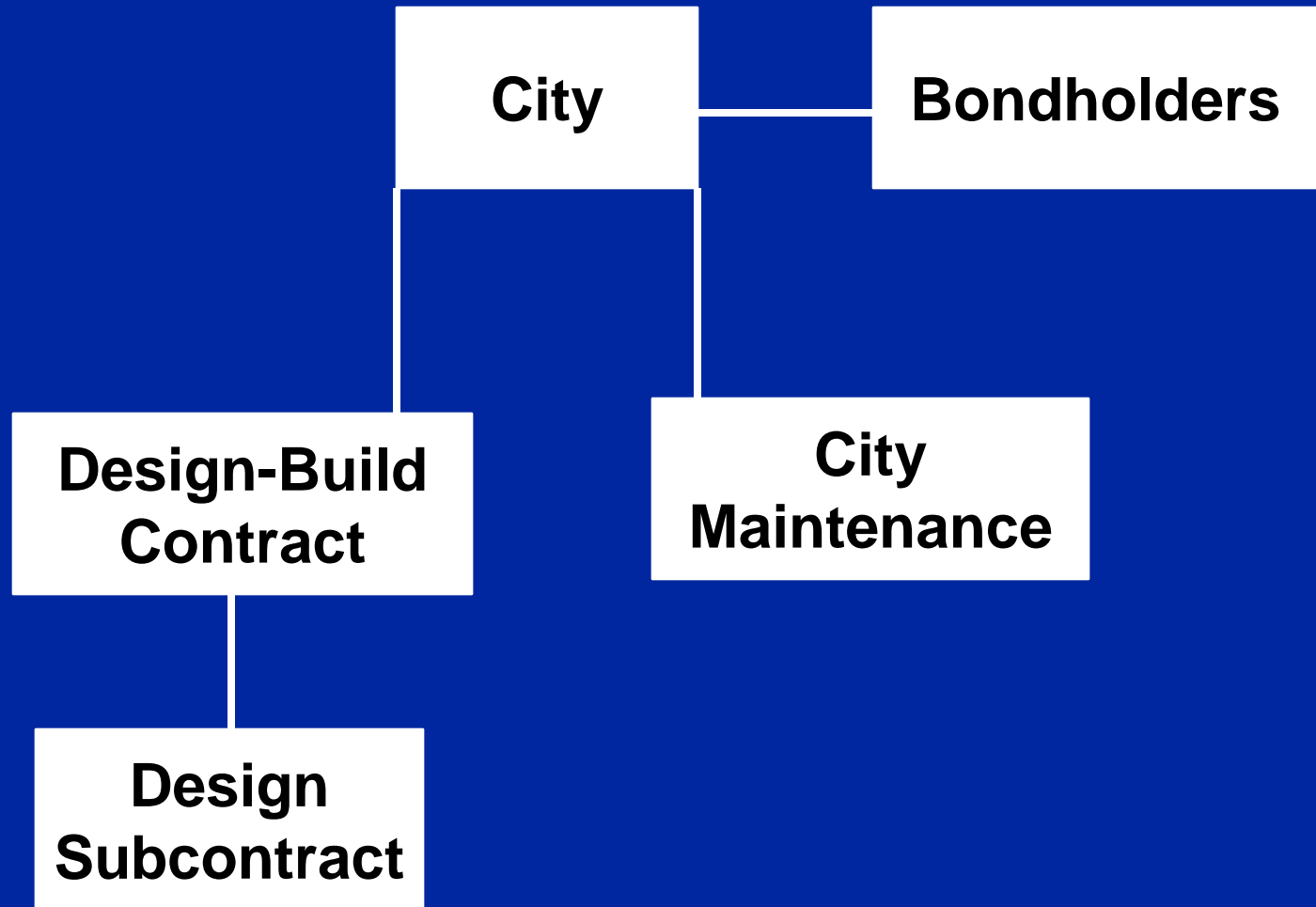
Fixed Design-Build Price or Guaranteed Maximum Price Negotiated After Selection

Design Requirements

Performance Standards

Acceptance Test

DB STRUCTURE



DESIGN-BUILD BENEFITS

Prequalification

Shortens Project Delivery Time

Increases Collaboration

Competition on Non-Price Factors

Cuts Capital Costs

Transfers Performance Risk

Promotes Innovation

One Point of Responsibility

Minimization of Change Orders

DB CHALLENGES

Less Control Over Design Details

Less Familiarity

**Possibility of Smaller Number of
Competitors**

More Complex Selection

More Involved Negotiations

DISPUTES AND MONITORING

DBB

- Bid protests can be common
- Higher Construction Monitoring Costs
- Change orders are prevalent
- Litigation often results (BB-L)

DB

- Bid protests are uncommon
- Lower Construction monitoring costs
- Change orders are rare
- Litigation is rare

PUBLIC-PRIVATE PARTNERSHIP (P3)

INTEGRATED DELIVERY

Public-Private Partnership (P3)

**Also Called Design-Build-Finance-
Operate-Maintain (DBFOM)**

One Contract, Multiple Services

Conceptual Design Before Proposals

Substantial Owner Control

**Intense “Best Value” Competition
(Price and Non-Price Factors)**

P3 – INTERNATIONAL NORM

Australia, UK, Canada

Partnerships BC, Infrastructure Ontario

Dozens of Projects

**DBFOM Consistently Chosen Over the
Traditional Delivery Method**

Disciplined Analysis of Risk Transfer

**Small Difference Internationally in Cost of
Capital (All Debt is Taxable)**

P3 ADVANTAGES

Qualifications Based Selection (QBS)

Expedites Project Delivery

Creates Lifecycle Focus

Cuts Design and Construction Costs

Cuts Facility Management Costs

Transfers Performance Risk

Promotes Innovation

SOURCE OF COMPARATIVE ADVANTAGES

Integrated Asset Development and Delivery

Participants Self-Select

**Business Interests Aligned in Selection,
Execution**

**Collaboration Among Designer, Builder and
Facilities Manager**

**Competition On Design, Constructability
and Operation, Not Just Construction
Price**

Negotiated Transaction

RISKS TRANSFERRED (1)

Design and Construction Risks

- **Design Liability (Spearin Doctrine)**
- **Completion Risk (Delay and Efficacy)**
- **Construction Cost Overruns**
- **Disputes Between Designer, Builder and Facilities Manager**

RISKS TRANSFERRED (2)

Operation and Maintenance Risks

- O&M Cost Overruns
- Regulatory Compliance
- Capital Maintenance
- Technological Obsolescence
- Excess Electricity Consumption
- Labor Relations

RISKS RETAINED

Owner's Risk Under Any Delivery Method

- **Changes In Law**
- **Uninsurable Force Majeure Events**
- **Pre-existing Site and Environmental Conditions**
- **Such Uncontrollable Circumstances Are “Relief Events”**
- **Inflation (Service Fee Is Partially “Index Linked”)**

HOW THE FINANCING WORKS

“Project Finance” For Public Infrastructure
DBFOM Contractor Forms Special Purpose Entity
Entity Issues Debt For Construction
Debt Is Non-Recourse To Owner, Project
Company
Owner Makes No Construction Payments
Service Fee Payable Only Upon Completion
Deductions Imposed For Unavailability
Equity and Debt At Risk For Performance Failure

PROJECT DEBT STRUCTURE

“Project Agreement” Is Pledged To Secure Debt

**“Service Fee” Contains Debt Component and
O+M Component**

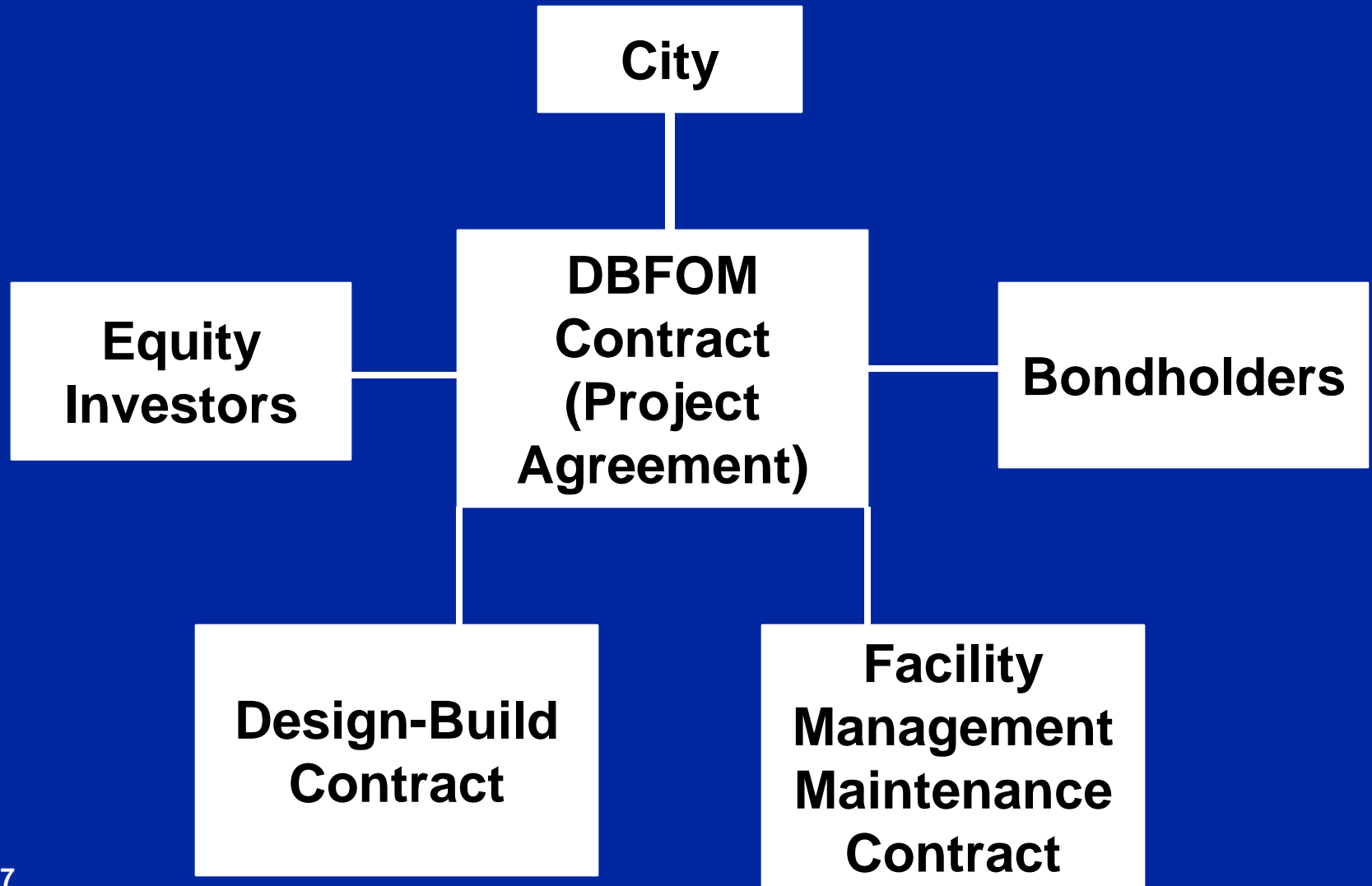
**Project Company Invests 10-20% Equity
(With 10-15% Return)**

**Equity is Cushion Against Subcontractor Non-
performance and Government Non-payment**

**Project Debt Rating (BBB) is Generally Lower
than Municipal or Corporate “Recourse Debt”
(AA)**

²⁶Dual Financing (Some Owner Debt) Possible

P3 DBFOM STRUCTURE



THE DOWNSIDE

Higher Interest Rate Debt Due To Taxable Project Financing (A U.S. Tax Code Amendment is Being Pursued)

Less Familiar to the Owner

Possible Narrower Debt Market

Greater Transactional Complexity

PROCUREMENT PROCESS (1)

**GC 2267 – Comprehensive P3
Procurement Authority**

Public Buildings and Other Infrastructure

**Extensive TXDOT Experience with Similar
P3 Legal Authority**

Statutory Objectives

- Increased Procurement Flexibility**
- Leveraging Private Investment**

PROCUREMENT PROCESS (2)

City Resolution Required to Use GC 2267

**City Must Also Adopt and Publicize
General Procurement Guidelines**

Competitive Proposal (RFP) Process

**Prequalification Expected to be Authorized
Under Procurement Guidelines**

PROCUREMENT PROCESS (3)

“Best Value” Selection

Price and Non-Price Factors

**(Qualifications, Design, Timeline, Public
Comments and Local Benefits)**

**Accepted Proposal Made Publicly
Available Within 10 Days**

Negotiations With Selected Proposer

PROCUREMENT PROCESS (4)

**P3 Comprehensive Agreement Includes
Design, Construction, Financing and
Facilities Maintenance Services**

**Public Notice of Tentative P3 Comprehensive
Agreement Within 10 Days**

**Public Hearing at Least 30 Days Prior to
Entering into P3 Comprehensive Agreement**

THANK YOU

Eric S. Petersen
Hawkins Delafield & Wood LLP
One Chase Manhattan Plaza
New York, NY 10005
(212) 820-9401
epetersen@hawkins.com
www.hawkins.com