

## NCP PP HELD ITS ANNUAL A-76 WORKSHOP

This year's edition of the annual event on the use of the Office of Management and Budget's (OMB's) Circular A-76 was held on May 3 in Washington, D.C. Again this meeting was cosponsored by the American Bar Association. Over 80 participants heard presentations by leaders in this area of federal competitive sourcing.

**Mathew Blum** of the Office of Federal Procurement Policy (OFPP), OMB led off the program by summarizing his office's latest report on the results of competitive sourcing through A-76. The timing of his comments was ideal, in that the report was being issued simultaneously with the NCP PP meeting.



Joann Kansier (Grant Thornton) and Mathew Blum (Office of Federal Procurement Policy) discuss the new OMB report on A-76 performance.

**Cathleen Garman** (House Armed Services Committee) provided a less than positive outlook for legislation impacting the use of the Circular, noting that there is increasing emphasis among Members of Congress for protection of federal employees' positions. While Garman has had extensive experience in the use of A-76 competitions (as a former employee of the Contract Services Association), she noted that a great deal of education needs to be done among the legislators. Apparently, misconceptions abound.

Many of the speakers offered specific examples of information of which Congress should be more aware. **Joe Sikes** (Department of Defense) noted that competition is key in driving the re-engineering of government operations. This message was repeated often by speakers that included public sector leaders such as **Dennis O'Brien** (Department of Energy), **Robert Miller** (Department of Justice), **Annie Andrews** (Department of Defense) and **Tony Palladino** (Federal Aviation Administration).

Another underlying theme throughout the day was the concern that the cumbersome nature of the process and the small percentage of awards to the private sector was strongly discouraging submissions of private sector proposals in competitions. **Stan Soloway** (Professional Services Council) commented that A-76 competitions are shifting toward more technical functions with higher transaction costs and greater risks. He, and others throughout the day, noted the increased tendency for the private sector to team with the public sector's Most Efficient Organization in a competition, thereby substantially increasing the possibility of participation on the final outcome of the competition.

Special appreciation goes to the program planning committee that included **Art Smith** (Management Analysis, Inc.), **Diane Shute** and **Joann Kansier** (Grant Thornton), and **Sandy Hoe** (McKenna Long and Aldridge).

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## KANSAS CITY WORKSHOP SEES NEAR RECORD ATTENDANCE

The May 15 Partnerships in Transportation Workshop had the second largest turnout for any workshop in recent history – 180 attendees, a number exceeded only by the Transportation workshop held in St. Louis in 2005, which saw just over 200 participants.

The high turnout was in large part the result of the efforts made by two key people – **Pete Rahn** (Missouri Department of Transportation) and **Joe Kneib** (Herzog and an NCPPP Board Member). Through their efforts, the DOT's of Kansas, Iowa and Missouri all sponsored the meeting, promoted attendance, provided leaders for the program committee and recruited speakers for the workshop.

Equally important was the financial underwriting received for this workshop from a number of companies (since this was the first of the transportation workshops not to be underwritten by the US Department of Transportation). Significant support was provided by **CAPITAL PARTNERSHIPS, Granite, HDR, Herzog, HNTB, the Kansas Asphalt Pavement Association, Kiewit, the Missouri Asphalt Pavement Association, Team United, Thomas McGee, and United Contractors**. Much of this support was the result of Joe Kneib's personal efforts.

While the agenda followed much of what has been outlined in previous workshops, there was an often repeated underlying theme about the need for clear legislation authorizing the use of PPPs. While Missouri has limited legislation in support of PPPs, neither Kansas nor Iowa do. This was particularly emphasized by **Joe Erskine** (General Counsel of Kansas DOT) who commented that while Kansas is currently managing its transportation demands, "there are clear signals on the horizon that a storm of increased demands is approaching and that public-private partnerships will be needed to address these problems."

Another underlying theme was the impact of PPPs on smaller contractors. **Vicki Kitchin** (Build Indiana Council, the state chapter of the Associated General Contractors) noted how her group had moved from opposition to the Indiana Tollway concession to aggressive support, following the realization of the impact the concession would have on local contractors. This thought was repeated by the former presidents of both the Kansas

and Missouri AGC chapters with comments that the method of transportation system development was changing and that they needed to adapt to the emerging environment.

One highlight of the meeting was a luncheon presentation by **Phil Russell** of the Texas Department of Transportation. He outlined the experience of Texas in the extensive use of public-private partnerships, noting how they have adapted to local concerns, unsolicited proposals and long-term project management.



*Phil Russell of the Texas DOT caught everyone's attention with his luncheon address covering PPPs for transportation.*

The meeting evaluations had extraordinarily strong ratings. Several comments from public officials noted that they had been unaware of the scope of applications of PPPs – one legislator even commented that he now understood the need for authorizing legislation. Equally rewarding was the high percentage of the evaluations that said the meeting should be repeated in 2008.

## NEW INTERNATIONAL ACTIVITIES FOR THE NCPPP

The United Nations' Special Unit for South/South Cooperation has extended its contract with the NCPPP for another year. NCPPP will continue to develop case studies on the use of PPPs in emerging economies, for inclusion on the Web site administered for the UN by the NCPPP. In addition to providing a significant income source for the NCPPP, this continues to raise the credibility of the Council not only on the international scene but also among public officials in the United States (a valuable asset in recruiting cosponsors for our workshops).

Related to this UN contract, NCPPP Executive Director **Rick Norment** will travel to Burkina Faso, Africa to conduct an hour-long session with senior UN staff and local development agencies, about how they can help create a more positive environment for partnerships in developing countries. The Burkina Faso meeting will focus heavily on transportation projects in developing countries.

Unrelated to the UN work, Toyo University (Tokyo, Japan) has asked NCPPP President **Art Smith** and **Rick Norment** to participate in a September conference on PPPs. The request is a follow-up to Smith's participation in last year's conference. There also is strong interest of the Japanese in the Sandy Spring, Georgia partnership that won recognition with a 2006 Public Private Partnership Award.

Finally, the Japanese Cabinet Office for Private Finance Initiatives (PFIs) has requested that the Council and its members participate in a Web interactive conference (a series of focused "chat room" discussions) to be held this fall. Details on the conference will be available within the next few weeks and will be included in an upcoming **Updates** to NCPPP members.

If you would like to participate in some of the NCPPP's international activities, consider becoming a member of the International Institute now being formed. Contact Rick Norment at [rnorment@ncppp.org](mailto:rnorment@ncppp.org) if interested.

# THE GREAT DEBATE

By: Richard Norment, Executive Director, National Council for Public-Private Partnerships

In recent months, the level of debate about public-private partnerships (PPPs) has significantly increased. In the press and in Congress, there has been a rising clamor about the validity of use of PPPs. The intensity of the debate has even reach *Business Week*, with the May 7 issue's cover touting "Hey Buddy, You Wanna Buy a Bridge?"

Most notorious in recent weeks has been the letter issued by Congressmen Oberstar (D-MN) and DeFazio (D-OR), two key leaders in the House Transportation and Infrastructure committee. They issued a warning letter on May 10 to state officials with the first paragraph in bold italics type that . . . well, read what they said!

We write to strongly discourage you from entering into public-private partnership (PPP) agreements that are not in the long-term public interest in a safe, integrated national transportation system that can meeting the needs of the 21<sup>st</sup> Century. Although Bush administration officials have lauded PPPs at every turn, the Committee on Transportation and Infrastructure of the U.S. House of Representatives believes that many of the arrangements that have been proposed do not adequately protect the public interest. The committee will work to undo any state PPP agreements that do not fully protect the public interest and the integrity of the national system.

The letter goes on to reference a number of concerns raised at their series of hearings. Throughout these hearings both Members of Congress and carefully selected witnesses repeated a number of inaccuracies, misconceptions and egregious errors in understanding of PPPs. Since a number of these same mistaken views had been aired at the National Surface Transportation Policy And Revenue Study Commission hearings, the NCPPP issued a statement to counter the most common errors being heard (the statement is on the NCPPP Web site with a link on the home page).

All of this noise may in the long run prove to be helpful to the cause of

PPPs. The Oberstar/DeFazio letter has sparked a significant backlash from a number of Governors and State Secretaries of Transportation, noting that the two Congressmen may have crossed a Constitutional line about

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the separation of state and federal powers, and not having their facts in order. One example was heard from fellow Democrat and Governor of Pennsylvania Ed Rendell, who told a T&I hearing that if the federal government can not provide the financial means to meet his state's transportation needs, he has a responsibility to use appropriate methods – specifically including PPPs and concession agreements – to address his citizen's concerns.

There is a positive point to all this shouting and turmoil. Through this debate, many of the facts about the value of PPPs (not just for transportation projects, but for all types of PPPs) are being aired. This very public debate has the distinct possibility of being a positive influence for future use of this tool.

But key to this opportunity is our willingness to enter that debate and counter the erroneous comments from our opponents. NCPPP will continue to respond in the press, at our workshops, and with other appropriate tools, but we are only one voice. More voices must be added to the chorus – other associations, educational groups and individuals are all needed.

We are already seeing House leaders moderating their position and softening their rhetoric. Hopefully we will see this trend continue. By raising the "volume" from our side, the truth about PPPs can be better understood, and ultimately this debate will prove to be of value to everyone.

## UPCOMING MEETINGS

Planning is already well underway for a number of Council meetings for the remainder of 2007.

**The Transportation Institute (TI)** will hold a full membership meeting on **July 12** in Washington D.C. The agenda will include preparations for several workshops (including one at the Annual Meeting), the proposed contract with the Federal Transit Administration, the recent reactions to the House Transportation & Infrastructure hearings and transmittals, and recent developments in a number of states. Following the pattern of recent TI meetings, a luncheon speaker is included in the program. For this meeting, the speaker will be **Mike Saunders**, Program Manager of PPPs for the Federal Highway Administration. The registration materials are available on NCPPP's Web site.

In response to expressions of interest from a number of NCPPP members, an **Energy Partnerships Meeting** is being organized for **September 14** at the Westin Washington Town Center. Leader of this effort is **Anita Molino** (Bostonia Partners and a member of the NCPPP Executive Committee).

The registration information and sponsorship opportunities are now available on the NCPPP Web site. If you plan on attending, you may wish to make your hotel sleeping room reservations early since space may be limited – hotel reservation information is also available on the Web site.

This year's **Annual Meeting and Award Banquet** will be held at the Omni Houston on **November 8<sup>th</sup> and 9<sup>th</sup>**. The Association of Water Board Directors –Texas (AWBD-TX) is a cosponsor of the meeting which predicts a significant turnout for the meeting, based on this year's format which will include two concurrent workshops (one on water partnerships and a second one on transportation oriented development). Registration and sponsorship information is also available on the NCPPP Web site.

Last year's extremely successful **PPPs for Federal Properties** will be updated and expanded, with plans to hold the meeting in Washington, D.C. during the first or second week of **December**. Check the NCPPP Web site for details, as they become available.

**6/11/07 – Families and Work Institute today presented Deloitte & Touche USA LLP** with its 2007 Work Life Legacy Corporate Partnership Award, its highest honors, while also awarding individual honors to Sharon L. Allen, Chairman of the Board, Deloitte & Touche USA LLP, and W. Stanton Smith, Director of Next Generation Initiatives, Deloitte & Touche USA LLP.

**6/8/07 – NCPPP President Art Smith (Management Analysis Inc.)** moderated a drafting committee session on good governance in PPPs at the United Nations Economic Commission for Europe meeting, held in Tel Aviv, Israel on June 5 – 8. The meeting included a number of tours of operating PPPs for transportation, water (a desalination plant operated by Veolia) and technology development.

**6/6/07 – HNTB Corporation has been awarded a three-year contract** for construction engineering and inspection (CEI) services for the Florida Department of Transportation District 6 Miami Intermodal Center (MIC), across Le Jeune Road just east of the Miami International Airport (MIA). When completed, the MIC will serve as a transportation gateway from MIA to the Miami metropolitan area. HNTB will oversee construction on several projects under the contract, including the MIC rental car facility and exit ramp, MIC terminal access roadway and the MIC/MIA Connector Station.

**6/5/07 – Responding to a growing need for private investment in public works** at the local, state and federal levels, leading financial services law firm **Chapman and Cutler LLP** has formed a Public Infrastructure Working Group to harness the firm's deep pool of knowledge and experience with public-private partnerships.

**6/5/07 – Kilpatrick Stockton announced that Intellectual Property** Today ranked the firm among the top 20 trademark firms in the nation. The firm ranked 13<sup>th</sup> out of a total of 172 law firms in the publication's list of Top Trademark Firms in its May 2007 issue. The ranking is based on U.S. Trademark registrations issued in 2006 for law firms and individuals listed as the legal representatives.

**6/4/07 – AECOM Technology Corporation acquired of HLA-Envirosciences (HLA)**, an environmental health and safety consulting and engineering firm with 250 staff and nine offices across Australia.

**6/4/07 – Bechtel announced that its Savannah River, Inc. (BSRI)** construction employees have set a new U.S. Department of Energy (DOE) standard as well as a U.S. corporate record by working 20 million consecutive hours without a lost-time accident. This record-breaking accomplishment means Savannah River Site construction workers have been free of serious industrial illness and injury since 1998.

**6/4/07 – Kirkpatrick & Lockhart Preston Gates Ellis LLP has been** selected to receive *CIO* magazine's annual CIO 100 Award, given to 100 companies that exemplify the highest level of operational and strategic excellence in information technology (IT). The firm was selected as a CIO 100 winner for its creation and use of client-facing technology solutions through which K&L Gates' lawyers can share legal knowledge and products, relevant industry information, and outside counsel's expertise all through

a platform that allows for anywhere / anytime access.

**5/25/07 – Earth Tech Inc. received the 2007 "Build Hawaii" Award of Excellence** from the General Contractors Association of Hawaii for work it performed at the Wake Island Air Field on behalf of the Air Force Center for Environmental Excellence. Earth Tech was recognized in the Specialty Construction More than \$3 Million category for leading a team of contractors working on the Wake Island Aviation Fuels System Restoration Program to design and construct the restoration and upgrade of the aboveground aviation fuel tank farm and hydrant fueling system.

**5/21/07 – Fluor Corporation was named one of the World's Most Ethical Companies** by Ethisphere Magazine, a national publication dedicated to illuminating the important correlation between ethics and profit. This elite list of companies were recognized for their strong leadership in ethics and compliance, advancement of industry discourse on social and ethical issues, and positive engagement in the communities in which they operate.

**5/16/07 – ACS was recognized by the Outsourcing Center, Everest Group, and Forbes magazine**, as the best business process outsourcing (BPO) services provider in 2007 for its work with the Louisiana Department of Social Services (DSS). Specifically, those services included the collection, disbursement, and management of child support payments distributed by ACS after the devastation of Hurricane Katrina. More than 1.2 million people were displaced when Katrina struck Louisiana in 2005 and the performance of ACS' child support customer service center in Baton Rouge contributed to its nomination. ACS also won the Best BPO Services Provider award in 2006 for its relationship with another client.

**5/16/07 – Dykema has been named a "Top Patent Firm" by IP Today**, a publication designed to serve professionals, attorneys, executives and agents in the patent, copyright, trademark and litigation community. Dykema ranked number 164 out of 353 law firms/individuals, having issued 164 utility patents and 23 design patents in 2006. Firms are ranked by the number of utility patents issued in 2006 where the firm or individual is listed as the legal representative on the face of the patent.

**5/14/07 – First Industrial Realty Trust, Inc. announced that David Carreiro** has been named regional director of its new Toronto office. Mr. Carreiro will be responsible for delivering industrial real estate supply chain solutions to customers and identifying investment opportunities in the Toronto market.

**5/4/07 – HDR, Inc. received a 2007 Champions for Change award** at the annual Environmental Excellence Summit hosted by Hospitals for a Healthy Environment (H2E). H2E's Champions for Change Award recognized HDR for improvements in its own environmental performance and for leadership in environmentally responsible healthcare.

**5/4/07 – Southwest Water Company has acquired Diamond Water Company and Water Services, Inc.**, consisting of 14 water systems that serve approximately 7500 residents northwest of San Antonio. This expands

*Member Notes, continued on page 5*

their existing operations in that area.

**4/30/07 – United Water announced the completion of its acquisition** of Aquarion Water Company's New York subsidiary for \$28 million. Aquarion is a subsidiary of Kelda Group. The acquisition will expand United Water's service area and customer base in Westchester County, New York and is a key component of the company's managed growth strategy.

**4/19/07 – Six employers were recognized as the Best Places To Work** in Pasco and Hernando Counties at the 1st annual awards breakfast sponsored by Pasco Hernando Jobs and Education Partnership Regional Board, Inc. **The Southwest Florida Water Management District** won the category for Best Employer in Hernando County in the "Over 125 Employees" category. The District is a public sector agency responsible for regulation, management, conservation and development of Florida's water resources in a 16-county area of West Central Florida.

**4/16/07 – Venable LLP announced that attorney Derick P. Berlage,** an experienced player in high profile public-private partnerships and most recently the Chairman of the Maryland-National Capital Park and Planning Commission, has joined the firm's Rockville, Maryland office. He is a partner in the State and Local Government Practice group. Mr. Berlage,

will counsel the firm's public and private-sector clients on complex public-private partnerships in urban redevelopment, sports/recreation, transportation, and other development projects.

**4/3/07 – Veolia Water North America has posted the best employee** safety statistics in its history for a calendar year, beating the Bureau of Labor Statistics (BLS) for private-industry water, wastewater and other systems by more than 200 percent. Veolia Water's recordable-incident rate (RIR), which reflects the number of individuals involved in a work-related injury or illness per 100 full-time employees, was 4.1, compared to the BLS average of 7.6.

## NCPPP AWARD NOMINATIONS

NCPPP is now accepting nominations for its Annual Public-Private Partnerships Award to be presented at its Annual Awards Banquet on November 8, 2007 in Houston, TX. The deadline for submissions is September 21, 2007. All information is available at [www.ncppp.org](http://www.ncppp.org).

## NEW MEMBERS

**Balfour Beatty Construction** became a general private member. The official representative is David Birtwistle, Vice President. With over 70 years of experience and leadership in the construction industry, Balfour Beatty Construction (formerly Centex Construction) provides general contracting, at-risk construction management, design-build, preconstruction and turnkey services. Balfour Beatty Construction operates four full-service divisions across the United States, focusing on regional market delivery and client service. Locally, Balfour Beatty Construction operates a full-service division based in Fairfax, Virginia, serving the Washington, D.C. metropolitan area and the Mid-Atlantic region.

**Deloitte** became a general private member. The official representative is Mark Pighini, Principal. In the U.S., Deloitte & Touche USA LLP is the member firm of Deloitte Touche Tohmatsu, and services are provided by the subsidiaries of Deloitte & Touche USA LLP. The subsidiaries of the U.S. member firm are among the nation's leading professional services firms, providing audit, tax, consulting, and financial advisory services through nearly 30,000 people in more than 80 cities. Known as employers of choice for innovative human resources programs, they are dedicated to helping their clients and their people excel.

**Douglas County, CO** became a general public member. The official representative is Melanie A. Worley, Commissioner. The county is located between Denver and Colorado Springs with a population of 260,000.

**Lunar Transportation Systems, Inc.** became a general private member. The official representative is Thomas C. Taylor, Vice President. They are an entrepreneurial start-up providing logistics transportation services.

**Peckar & Abramson, P.C.** became a general private member. The official

representative is Jacques Cook, Partner. Peckar & Abramson, P.C. is a leading law firm in the fields of construction law and government contracts. We represent some of the largest construction contractors in these fields.

**Pillsbury Winthrop Shaw Pittman LLP** became a general private member. The official representative is Yann Van Geertruyden, Associate. With influence and presence on both U.S. coasts and abroad, Pillsbury Winthrop Shaw Pittman enjoys an expansive international platform. We have 15 offices in global centers for capital markets, energy and technology and provide our clients with the strength of this reach and a commitment to cross-border service and responsiveness. Pillsbury is a leader in our core areas of focus - Capital Markets and Finance, Energy, Global Sourcing, Litigation, Intellectual Property, Real Estate, Technology, Life Sciences and Communications.

**David Ready** became an individual public member. He is an Urban Planner in Curtis Bay, MD.

**Sundt Construction, Inc.** became a general private member. The official representative is John Carlson, Vice President. Sundt provides general contracting, construction management and design-build services for private and public sector clients with budgets ranging from \$50,000 to more than \$200 million.

**Zachry American Infrastructure** became a general private member. The official representative is Bob Heitmann. Zachry is the first U.S.-owned company with the capabilities to develop and invest in private sector solutions to public infrastructure needs. Ability to privately finance, build and operate highways, water systems, freight rail and power lines for public entities.

## partnerships in the news

### California's Governor Impressed by Privatization He Sees in Canada

In a trip across Canada this week, as local leaders jostled one another to praise him as a statesman they could learn from, there was a moment when Gov. Arnold Schwarzenegger might have taken some notes of his own.

At a Vancouver construction site that he dropped by, workers were busily boring a tunnel for the type of public works project that the governor has been unable to get off the ground at home: one owned and operated entirely by a private company.

A 12-mile rail line that will connect Vancouver's waterfront to its airport is one of dozens of ventures like it in Canada. Provinces are turning to private companies to build and operate trains, roads, public hospitals, university facilities — even local schools.

"The way they do it is, I think, the right way to go," Schwarzenegger said in an interview. "We don't have to exactly copy it, but we can learn from those ideas."

He said that Wall Street is clamoring to invest in private infrastructure projects and that California must examine ways to "benefit from all the private money that is out there."

*June 2, 2007, Evan Halper, Los Angeles Times*

### Public School Students Benefit From Private Managers

The Philadelphia School Reform Commission soon will be voting on a budget for the school district. Facing a projected budget deficit, the commission is looking for ways to reduce costs, which may include reducing or eliminating contracts for the district's privately managed schools. Such a cut would be a costly mistake - both financially and academically.

A more thorough analysis of Philadelphia's privately managed schools by Harvard University's Dr. Paul Peterson found something different. In comparing "apples to apples," Peterson's research found that privately managed schools in Philadelphia had generally greater gains in PSSA scores than district schools as a whole and the ORS schools particularly, which serve similar student populations.

Peterson looked at gains in the percentage of students at or above "basic" and "proficient" levels in reading and math. He compared scores on fifth-grade and eighth-grade PSSA scores for two cohorts (those that went from 5th-grade to 8th-grade between 2002-2005 and 2003-2006). The findings were significant (see table at right).

Yet vested interests continue to attack the private managers. A recent Philadelphia Inquirer article cites a "confidential study" by the district concluding that the public-private partnerships have failed. This conclusion ignored improvements in these schools and did not compare them to schools with similar student demographics. Additionally, the "confidential study" relied heavily on teachers - rather than parents - and "consulted with" the Philadelphia Federation of Teachers (PFT)." Public school employee labor unions, including the PFT, have consistently and vehemently opposed private managers in education, regardless of their value or performance credentials.

The evidence reveals that privately managed schools in Philadelphia have helped improve test scores in the city's public schools. There is still a long way to go, as too many school children are still not receiving the quality education they deserve. But rather than eliminate private managers in the district - a proven program producing tangible results-the Philadelphia School Reform Commission should remove counter-productive restrictions on these schools and give them - and the parents choosing them - more freedom to develop the schools Philadelphia children need.

*May 30, 2007, Nathan A. Benefield, The Evening Bulletin*

### Privately-Funded Public Park Proposed for Northbank

When the idea for a new public park was presented last January at a meeting of the Jacksonville Economic Development Commission's Downtown Pedestrian, Open Space & the River Task Force, it marked the beginning of what may be a way for the city to maintain its distinction for having more parks than any other municipality in the United States.

For years, creating new parks and maintaining them has been a line item in the City's budget. Unless you've been living under a rock, you understand that's one of the things that is about to change thanks to the loss of property tax revenue about to be implemented by the State.

[JCCI Forward] felt the space would be a great place for a park and a chance to create a public-private partnership. They are proposing that if the City would donate the land, the private sector could donate the money to design and build the park.

Ehas pointed out, "All great cities have parks that were built as public-private partnerships."

The site is unique in that it is bordered by a shopping center, a live entertainment venue, the Northbank Riverwalk and a high-density commercial area.

*May 29, 2007, Max Marbut, Staff Writer, Financial News and Daily Record*