

Simon J. Santiago

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Simon Santiago handles contractual, procurement, development and construction issues for the largest transportation, transit and multi-modal projects in the U.S. Public sector clients seek his guidance in creating successful infrastructure projects through innovative procurement, financing and delivery methods including public-private partnerships (P3s).

Given his broad experience, he often advises industry leaders and policymakers on emerging federal legislative and policy issues involving transportation. At the state level, Simon helped develop P3-enabling legislation, procedures and programs in Maryland, Virginia, North Carolina and Georgia. He also counseled the Pennsylvania Turnpike Commission, the North Carolina Turnpike Authority and Port Authority of New York and New Jersey on state and federal law governing all-electronic toll systems.

Before joining Nossaman in 2006, Simon was a litigator with a construction and government contract law firm in Northern Virginia, where he advised public- and private-sector clients on disputes involving large and complex infrastructure projects. He also served as a judicial clerk with the General Services Board of Contract Appeals, assisting in legal analysis of contract claims and disputes. This collective experience has helped him anticipate potential risks and adjust procurement and contracting strategies accordingly.

EXPERIENCE

Maryland Transit Administration and Maryland Department of Transportation – Purple Line Light Rail. Co-leader of the legal team advising on Maryland's first transit P3 project, an approximately \$2 billion light rail system to facilitate mobility between the Maryland suburbs and Washington, D.C. The project reached commercial close in April 2016 and financial close in June 2016. The Purple Line's financing plan included an \$874 million TIFIA loan, \$313 million in PABs, \$138 million in private equity and approximately \$900 million in federal New Starts funding. We also advise on the implementation of its settlement agreement with the concessionaire and the reprocurement of a design-build contractor to complete the project. Three shortlisted teams were announced in March 2021. Simon has helped to develop procurement and contract documents for the project, including participation in the pre-RFP industry review process.

Massachusetts Bay Transportation Authority – Commuter Rail North Side ATC Project. Key member of the legal team advising on an approximately \$280 million design and installation of an automatic train control overlay of commuter rail lines that are currently undergoing installation of Positive Train Control. Simon is assisting the agency on the commercial terms and conditions of the Project.

Massachusetts Bay Transportation Authority – Green Line Extension Project. Key member of the legal team advising on \$2-3 billion 5-mile extensions of the Green Line light rail service from a relocated Lechmere Station in East Cambridge to Union Square in Somerville and College Avenue in Medford. The transportation agency has

retained the Firm to examine the deployed construction manager/general contractor (CM/GC) delivery method, consider alternatives and make recommendations on the optimal delivery method going forward. The agency terminated several of its existing contracts in December 2015 and conducted a redefinition process of the project. A procurement for a design-build contract for the completion of the project was conducted, on which we worked with the agency developing its RFQ, RFP, and evaluation processes, along with advising the agency regarding other policy-related issues. The procurement included the use of an affordability limit, as well as the identification of six prioritized additive options for scope that could potentially be included back in the design-build scope. In November 2017, the agency awarded a design-build contract to GLX Constructors that was approximately \$237 million below the affordability limit, and included all six additive options in the design-build contract scope.

District of Columbia Department of Transportation – South Capitol Street Corridor Project. Leader of the legal team that advised on the procurement of a \$441 million design-build project that will involve the removal and replacement of the Frederick Douglass Memorial Bridge, construction of bridge approach ovals, reconstruction of adjacent streets and related bridge and interchange infrastructure rebuilding and replacement. Simon assisted the Department on the development of the procurement and contract documents and monitoring of the procurement process.

Chesapeake Bay Bridge and Tunnel District – Parallel Thimble Shoal Tunnel. Co-leader of the legal team advising on the design and construction of a new \$756 million tunnel beneath the Thimble Shoal Channel in Virginia's lower Chesapeake Bay. The second two-lane tunnel will expand capacity and improve safety for travelers utilizing the Chesapeake Bay Bridge-Tunnel, the sole connection between Delmarva Peninsula and the Hampton Roads area.

Virginia Department of Transportation – Coalfields Expressway. Leader of the legal team that advised on a four-lane highway project connecting I-77/I-64 to U.S. Route 23. The transportation department took an innovative approach – utilizing coal mining operations and equipment to provide a rough-grade roadbed, to substantially reduce anticipated delivery costs. Simon is assisting the department in drafting and negotiating the preliminary engineering and design-build agreements.

North Carolina Department of Transportation – I-77 Managed Lanes Project. Co-leader of the legal team that advised on the procurement of a \$600 million highway improvement project, which was the state's first toll concession and included TIFIA financing. The project is the first hybrid toll concession model to structure a credit support vehicle for lenders in conjunction with a traditional toll revenue risk concession. Simon assisted with the structuring, development, procurement and administration of the P3 and advised the transportation agency on legislative and regulatory changes needed to create a P3 program.

Virginia Department of Transportation – Elizabeth River Tunnels Project. Leader of the legal team that advised on a groundbreaking toll concession P3 procurement for a major tunnel and highway project to improve traffic in the Norfolk-Portsmouth region. A key feature of the \$2.1 billion project is a new two-lane tunnel between Norfolk and Portsmouth – the first all-concrete highway tunnel in the U.S. designed to function under deep water. Other improvements include upgrades to the existing Midtown and Downtown tunnels and an extension of the MLK Freeway, with tolling for new and existing portions. A Skanska/Macquarie led-team is developing the 58-year DBFOM project via a \$422 million TIFIA loan, \$663.75 million in PABs, \$310 million from VDOT and up to \$272 million in private equity. The project achieved financial close in April 2012 and the new tunnel opened to traffic in the summer of 2016. In 2012, *Project Finance* magazine honored it as North American Toll Road Deal of the Year and *Infrastructure Journal* awarded it Global Transport Deal of the Year.

Florida Department of Transportation – I-595 Corridor Improvements. Key member of the legal team that advised on procurement and delivery of this \$1.8 billion public-private partnership aimed at alleviating congestion on the main east-west traffic corridor in Fort Lauderdale. We advised on procurement and contract documents and the financing structure, and addressed issues that arose throughout design and construction. The project, the first U.S. transportation project with an availability payment scheme, won numerous honors. Simon assisted with procurement and contract documents and the financing structure.

Virginia Department of Rail and Public Transportation – Dulles Corridor Metrorail Project Phase 1. Co-leader of the legal team that advised on procurement of a \$2.9 billion project to extend the Metrorail to Fairfax County. The project, which included 11.7 miles of track and five new stations, was the first phase of the eventual 23-mile Silver Line. Phase 1 of the \$1.6 billion design-build project opened in July 2014. Simon assisted the Department in negotiating the contract.

Metropolitan Washington Airports Authority – Dulles Corridor Metrorail Project Phase 2. Key member of the legal team that advised on the procurement of a \$2.7 billion Metrorail extension in Fairfax and Loudon counties, including Washington Dulles International Airport. The 11.4-mile, six-station project is the second phase of the eventual 23-mile Silver Line. The Authority awarded the design-build contract to a joint venture in 2013. Simon assisted the Authority in developing the procurement documents and the design-build agreement.

INSIGHTS

SPEAKING ENGAGEMENTS

Speaker, "Construction Claims: Lessons from the Field for Public Owners," Nossaman Webinar, 03.11.2021

Panelist, "(Don't) Kill All the Lawyers . . . Untangling Risk Issues in P3 Projects," American Road & Transportation Builders Association P3s in Transportation Conference, Washington, DC, 07.19.2019

Panelist, "Innovative P3 Arrangements," American Association of Port Authorities Capital Projects Seminar, Norfolk, VA, 05.09.2018

Speaker, "Technical and Operational Development of Baltimore's LRT," Railway Age Conference, Baltimore, MD, 04.27.2018

Panel Chair, "P3s – What Works – What Doesn't," American Council of Engineering Companies Annual Convention, Washington, DC, 04.16.2018

Panelist, "Partnership Beyond Financial Close," P3 Federal Conference, Washington, D.C., 11.29.2017

Panel Chair, "Emerging P3 Markets: Are We Headed for a Bull Rally," American Road & Transportation Builders Association P3s in Transportation Conference, Washington, DC, 07.14.2016

Panelist, "P3s in Transportation," 56th Annual Transportation Research Forum, Atlanta, GA, 03.12.2015

Panelist, "All Projects are Local: Procurement and Financing Structures," The Bond Buyer's Transportation Finance/P3 Conference, Arlington, VA, 11.16.2014

Panelist, "The Contract Documents: Whose Project is it Anyway?," American Bar Association Fidelity & Surety Law Committee's Mid-Winter Meeting, New York, NY, 01.23.2014

Moderator, "Managing Risk on Complex P3 Agreements," American Road & Transportation Builders Association P3s in Transportation Conference, Washington, DC, 07.26.2013

Speaker, "Public-Private Partnerships: Insights from Industry Experts," 2013 National Forum for Black Public Administrators, Atlanta, GA, 04.22.2013

Speaker, "Innovative Public Procurement in Virginia: The Current State of Design-Build and P3," 33rd Annual Construction and Public Contracts Law Seminar, Charlottesville, VA, 11.03.2012

Speaker, "Successful Teaming: Turning Sticks & Stones into Bricks & Mortar," 2011 Design-Build Conference & Expo, Orlando, FL, 10.21.2011

Panel Chair, "U.S. P3 Transport Finance Investors Forum," U.S. P3 Transport Finance Investors Forum, New York, NY, 03.24.2011

Speaker, "A Legal Perspective of Public-Private Partnerships: Statutory Framework and New Concession Contracts," American Bar Association Fidelity & Surety Law Committee Mid-Winter Meeting, New York, NY, 01.22.2009

HONORS & RECOGNITIONS

Included in *The Best Lawyers in America*® for Transportation Law, 2020-2021

Selected to the Super Lawyers list, 2014-2017

COMMUNITY & PROFESSIONAL

American Road and Transportation Builders Association, Past President, Public-Private Partnership Division
District of Columbia Bar Association, Government Contracts and Litigation Section
George Mason University, P3 Center for Transportation Policy, Advisory Board Member
Virginia State Bar Association, Construction and Public Contract Law Section
American Bar Association, Public Law Section, Forum on the Construction Industry
National Filipino American Lawyers Association, Founding Member, DC Chapter

PRACTICES

Infrastructure
Procurement & Contracting
Legislation & Policy
Project Financing
Dispute Resolution
Regulatory & Compliance Matters
Construction Law, Claims & Litigation

INDUSTRIES

Government & Public Sector
Transportation

EDUCATION

Washington College of Law at American University, J.D., 1996, *magna cum laude*; Notes and Comments Editor, *American University Law Review*
University of Illinois, B.A., 1993

ADMISSIONS

District of Columbia
Maryland
Virginia
U.S. Court of Federal Claims
U.S. Court of Appeals, Fourth Circuit
U.S. District Court, Eastern District of Virginia