

Nancy C. Smith

Partner | Los Angeles

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Co-founder of Nossaman's Infrastructure Group, Nancy Smith is nationally known for her expertise in use of design-build, public-private partnerships (P3s) and other innovative contracting methodologies for public projects. Her pioneering efforts and continuing involvement in the infrastructure development process have laid the groundwork enabling public agencies throughout the U.S. to use non-traditional methods for project delivery.

Nancy has been instrumental in obtaining federal and state legislation allowing use of innovative contracting procedures for public projects. In addition to developing contracts for specific projects, she has advised state departments of transportation and other agencies in establishing a programmatic approach using innovative project delivery methods. She is among a select group of attorneys certified as design-build professionals by the Design-Build Institute of America.

EXPERIENCE

Los Angeles County Metropolitan Transportation Authority (LA Metro). Assistance with numerous projects during the last 30 years, including:

- **East San Fernando Valley.** Lead attorney for the procurement of a progressive design-build contract for the East San Fernando Valley Light Rail Transit Project and assisted with a separate contract for design, construction, financing, operation and maintenance of a solar power P3; currently assisting with administration of both contracts.
- **Sepulveda Pass.** Assisted in implementing Metro's first application of the Pre-Development Agreement delivery method for the \$6 billion to \$10 billion Sepulveda Pass Transit Design-Build-Operate-Maintain Project to connect the San Fernando Valley with Los Angeles' Westside, integrating into the East-West SFV LRT, the Orange Line, the Purple Line and the Expo Line.
- Lead outside counsel for LA Metro's first design-build projects, including the \$290 million design-build contract for the 14.4-mile Orange Line, a Bus Rapid Transit line in the San Fernando Valley area of the County of Los Angeles and the \$898.8 million Eastside Extension Project.
- Assisted with various other matters, including utility and railroad agreements, bid protests, Public Records Act requests, development of procurement forms for identification of subcontractors, and analysis of legal issues relating to Metro's toll operations and congestion management program.

Port of Long Beach – Long Beach International Gateway Bridge. Key member of the legal team that advised on the development of a new 1.5-mile cable-stayed bridge to serve one of the world's largest and busiest container ports. We assisted with the \$957.5 million procurement and with contract administration, including claims resolution and project acceptance. We also negotiated agreements for property acquisitions and utility relocations, as well as agreements for transfer of property to the State of California. We are currently negotiating an agreement with the State concerning

reimbursement of operation and maintenance costs. The project opened to traffic in 2020.

Los Angeles County Metropolitan Transportation Authority – MicroTransit P3. Assisting with LA Metro’s two-phase procurement of a pre-development agreement (PDA) for pilot microtransit projects under which the selected private partners are now developing software/technology platforms for a network of small transit vehicles to provide on-demand rides between bus and transit stops and customer origin/destination locations. Contracts for the first phase were awarded in 2018. The second phase involves selection of one or more of the vendors for a three-year implementation of the service in designated zones.

Metro Gold Line Construction Authority – Metro Gold Line. Principal in charge of Nossaman’s general counsel work for the Authority and co-leader of the legal team that advised on projects to develop the Metro Gold Line since 2000. We currently advise the Authority on the 24-mile Foothill Extension. Phase 2A of the project, which began service in March 2016, added 11.3 miles of new track along with six new stations and an operations and maintenance facility. Phase 2B will extend the system further east. In August 2019, the Authority awarded the Phase 2B Alignment Design-Build contract, which includes an \$805.6 million base scope for the first nine miles of the project.

Maryland Transit Administration and Maryland Department of Transportation – Purple Line Light Rail. Co-leader of the legal team for the procurement of Maryland’s first transit P3 project awarded in 2016. After the concessionaire’s design-build contractor left the project in fall of 2020, we advised MTA/MDOT on the negotiation of an amended P3 agreement and resolicitation of a replacement design-build contractor. The \$3.4 billion (capital cost), 16.2-mile light rail system will significantly facilitate mobility between the Maryland suburbs and Washington, D.C. The amended project reached financial close in April 2022. Nossaman continues to advise MDOT/MTA in the implementation of the amended P3 agreement.

Orange County Transportation Authority – I-405 Improvement Project. Co-leader of the legal team engaged as part of the Authority’s program management team to advise on a project to add a general purpose lane and an express toll lane in each direction, as well as the conversion of an existing HOV lane in each direction, between SR 73 and I-605 in Orange County, California. The project, the largest highway upgrade in Southern California, will relieve pressure on one of the state’s most congested corridors. In November 2016, the Authority awarded a \$1.2 billion design-build contract to a consortium led by OHL USA Inc. and Astaldi Construction Corp. Construction on the project, estimated to cost \$1.9 billion overall, began in 2018. Nancy’s role has included drafting and reviewing contract and procurement documents for the project.

New York State Thruway Authority – Tappan Zee Bridge. Key member of the program management team that advised on the replacement of an aging three-mile-long cantilever bridge over the Hudson River with a new cable-stayed, dual-span structure designed to last a century. To help deliver the project, Nossaman drafted procurement and contract documents and assisted with the procurement, resulting in a \$3.1 billion design-build contract with a Fluor-led consortium – \$800 million less than the next lowest bidder – in the first such deal undertaken by the transportation agency and the largest in the country to date. The new Governor Mario M. Cuomo Bridge opened to traffic in 2017. Nancy led the legal effort for review of enabling legislation, assessment of project risk, production of procurement and contract documents, participation in meetings with proposers, dealing with surety issues, assisting in evaluation of SOQs and proposals and participating in contract negotiations.

Los Angeles County Sanitation Districts – Alternative Delivery Advice. Co-leader of the Nossaman team providing advice to the Districts regarding legal authority in California for alternative delivery projects, assessment of projects for alternative delivery, assistance in setting up procurement procedures and forms for job order contracts, and ongoing advice on alternative delivery procurement and project issues.

City of Los Angeles, Department of Public Works, Sanitation & Environment (LASAN) – Alternative Delivery Projects. Services include:

- Lead attorney for the Nossaman team that advised the City on a DBOM contract for a digester gas utilization project within the Hyperion Treatment Plant, completed in 2017. The digester uses gas byproduct from wastewater treatment to generate electricity and steam for use in the wastewater treatment and water reclamation process – reducing the plant’s reliance on the electrical grid. Services included assisting with the instructions to proposers, drafting contract documents for the RFP, advising on issues during the proposal review process, negotiating with the selected proposer, revising and finalizing the contracts, commenting on staff reports involving the contract award and helping the City Attorney’s Office with various matters relating to the procurement.

- Co-leader of the Nossaman team that assisted the Los Angeles City Attorney's Office with the procurement of a progressive design-build contract by the City's Bureau of Sanitation, for an Advanced Water Purification Facility (AWPF) at the Hyperion Water Reclamation Plant (HWRP). Services included assisting with the RFP, drafting contract documents, and assisting with negotiation of a guaranteed maximum price for the construction phase. The project, which is part of the City's long-term water management objectives of "fully" reusing water from the HWRP, will include an advanced water purification facility treating primary effluent from the HWRP to high-quality, nitrified denitrified (NDN) reclaimed water suitable for reuse.
- Assisting the City Attorney's Office with a Design-Build-Finance-Operate-Maintain (DBFOM) procurement for development of an organics processing facility (OPF) for the Central Los Angeles Recycling and Transfer Station (CLARTS), as well as a DBFOM contract for a new campus accommodating LASAN staff, laboratory, research and other facilities.

City of Ventura – Ventura Pure Water. Key member of the legal team acting as infrastructure and procurement counsel with respect to the VenturaWaterPure local water supply infrastructure project, which consists of upgrades to its existing Ventura Wastewater Reclamation Facility (VWRF), construction of a new Advanced Water Purification Plant that will produce purified water for potable reuse, as well as related conveyance pipelines, a new ocean outfall, groundwater injection and extraction wells, natural treatment wetlands and other indirect and direct potable reuse system infrastructure. Services include structuring the transaction, drafting the RFP and project contract.

Orange County Transportation Corridor Agencies (TCAs) – Orange County Public Toll Roads. Lead attorney advising these agencies on all aspects of planning, developing and operating their toll road system since 1990. The TCAs were formed by the California Legislature in 1986 to plan, finance, construct and operate Orange County's public toll road system. The system was primarily financed with proceeds from toll revenue bonds, reducing the need for taxpayer investment in roadway development. Nancy has advised the TCAs on more than \$2 billion in design-build contracts and operation and maintenance contracts for toll roads, facilities and systems, as well contracts for a wide variety of matters, including design professional services, environmental services, landscape maintenance, small construction projects, demolition projects, janitorial services, supply and installation of equipment, software development, disposal of hazardous materials, printing services, master utility agreements, property use agreements, and cooperative and interoperability agreements with other public entities. She is routinely called on by the agency's contracts and procurement department to advise regarding compliance with relevant statutes as well as policies and procedures.

City of San José – Norman Y. Mineta San José International Airport. Key member of the legal team that assisted in negotiating and administering a design-build contract for a precedent-setting \$660 million airport expansion serving California's Silicon Valley. The project, the first major airport design-build undertaking in the state, included the renovation and expansion of Terminal A, a new Terminal B, a 3,000-space consolidated rental car facility and related roadway improvements. The project received more than 25 industry awards.

Metropolitan Transit Authority of Harris County, Texas – METRO Solutions Phase 2. Leader of the legal team that advised on a project to extend the Houston METRORail system. The first leg of the system, the 7.5-mile long Red Line, boasts one of the highest ridership rates in the country since opening a decade ago. Metro Solutions Phase 2 is a \$1.46 billion project to design, build, equip, operate and maintain three additional rail lines. The Authority awarded a development agreement to Parsons Transportation Group Inc. and a design-build contract to a Parsons/Granite/Kiewit joint venture, with vehicles acquired from CAF. The Red Line northern extension opened in December 2013 and the Green Line (East End) and Purple Line (Southeast) began service in 2015. Nancy's work included advising on the turnkey contract to develop the extensions, producing procurement and contract documents, negotiating the original contracts and negotiating subsequent modifications. She is currently assisting METRO with respect to revisions to their template documents.

Washington State Department of Transportation – Alaskan Way Viaduct Replacement. Leader of the legal team that assisted the State Attorney General's Office on the \$1.35 billion design-build contract to replace the 60-year-old Alaskan Way Viaduct with SR 99, which at the time was the world's largest-diameter bored tunnel. The two-mile waterfront tunnel through downtown Seattle opened in February 2019. It incorporates a double-decked roadway with incoming and outgoing traffic on different levels. Nancy's role in the Alaskan Way Viaduct project included reviewing procurement and technical documents, assisting in risk analysis and development of incentives/disincentives to align the contractor's incentives with the owner's, drafting contract documents and helping with contract administration issues.

SPEAKING ENGAGEMENTS

Moderator, "Avoiding Disputes by Drafting Understandable and Enforceable Contracts," Transportation Research Board's 102nd Annual Meeting, Washington, DC, 01.09.2023

Panelist, "The Path to Design-Build Legislative Authority," Design-Build Institute of America's 2022 Design-Build Conference & Expo, Las Vegas, NV, 11.1.2022 – 11.4.2022

Panelist, "Selecting and Using an Owner Advisor in Design-Build," Design-Build Institute of America's 2022 Design-Build Conference & Expo, Las Vegas, NV, 11.1.2022 – 11.4.2022

Moderator, "Avoiding Disputes by Drafting Understandable and Enforceable Contracts," Transportation Research Board's 61st Annual Workshop on Transportation Law, Portland, OR, 07.24.2022 – 07.27.2022

Speaker, "Faster and Better Delivery of Green Stormwater Infrastructure through Alternative Methods," The P3 Water Summit, 04.21.2021 - 04.23.2021

Speaker, "Risk Allocation for Alternative Delivery Projects: Legal Issues," Private Client Presentation, 01.25.2021

Speaker, "Pandemic Preparedness and Response," Transportation Research Board's 59th Annual Workshop on Transportation Law, 09.15.2020 - 09.16.2020

Speaker, "Lessons Learned From P3 Contractor Bankruptcies and Litigation," Private Client Presentation, 09.09.2020

Speaker, "Lessons Learned from 100 Years of Project Delivery Workshop," 2020 Transportation Research Board Annual Meeting, Washington, DC, 01.12.2020

Speaker, "P3 Procurement (Parts 1-3)," U.S. Department of Transportation's Federal Highway Administration's Center for Innovative Finance Support Webinar Series, 06.17.2019 - 06.26.2019

Speaker, "Lessons Learned from Contract Terminations and Contractor Bankruptcies (San Diego Expressway P3)," 98th Annual Transportation Research Board Meeting, Washington, DC, 01.14.2019

Speaker, "Public-Private Partnership (P3) Procurement Training Course," U.S. Department of Transportation, Build America Bureau, Washington, DC, 10.16.2018

Moderator, "What's Ahead for New York Agencies Already Using Design-Build and Those with Newly Granted Authority?," Design-Build Institute of America – Delivering A New-New York Symposium, New York, NY, 06.05.2018

Moderator, "Harnessing Alternative Delivery for the One Water LA 2040 Plan," P3 Water Summit, San Diego, CA, 04.04.2018

Speaker, "Design-Build Contracting Risk Transference – Owner & Industry Perspectives," Design Build Institute of America's Design-Build in Transportation Conference, Portland, OR, 03.22.2018

Moderator, "A Tale of Two States – How Design-Build Spurs an Infrastructure Renaissance in New York and New Jersey," Design-Build Institute of America National Conference, Philadelphia, PA, 11.08.2017

Moderator, "Legal Issues for Airport P3s and Designing Dispute Systems for Alternative Project Delivery," Transportation Research Board 56th Annual Workshop on Transportation Law, Salt Lake City, UT, 07.31.2017

Speaker, "Contract Requirements and Statutes Affecting Liability for Design and Construction Defects," Design-Build Institute of America Design-Build in Transportation Conference, Minneapolis, MN, 03.28.2017

Speaker, "Thirty Years of Design-Build in U.S. Highway Transportation: Evolution of DB Procurements," Transportation Research Board's 96th Annual Meeting, Washington, DC, 01.09.2017

Speaker, "Public-Private Partnerships for California Transportation Projects," National Contract Management Association LA Gateway Chapter Meeting, Los Angeles, CA, 03.15.2011

Speaker, "Public-Private Partnership Update," Transportation Research Board 89th Annual Meeting, Washington, DC, 01.11.2010

Speaker, "Demystifying Best Value in Project Procurement," Transportation Research Board (TRB) 88th Annual Meeting, Washington, DC, 01.13.2009

PUBLICATIONS

Co-Author, "Design-Build in the Transportation Arena," *Design-Build, Public-Private Partnerships and Collaboration Handbook, 13th Edition*, 03.01.2022

Co-Author, "Public-Private Partnership (P3) Procurement Guide," *U.S. Department of Transportation*, 03.01.2019

Co-Author, "Risk Sharing & Transfer Using Alternative Project Delivery Methods & Contracting," *TR News*, 08.17.2018

Author, "What Does the Case Law Say? Geotechnical Risk on Design-Build Projects," *GEOSTRATA*, 08.24.2016

Co-Author, "Liability of Design-Builders for Design, Construction, and Acquisition Claims," *NCHRP Study 20-06*, 12.2015

Co-Author, "Best-Value Procurement Methods for Highway Construction Projects," *NCHRP Report 561*, 01.01.2006

HONORS & RECOGNITIONS

"Member of the Year," WTS-LA, 2022

"Most Influential Women Lawyers" honoree, *Los Angeles Business Journal*, 2017

Transportation MVP, *Law360*, 2016

"Top 100" Attorney in California, *Daily Journal*, 2016

"Distinguished Design-Build Leadership Award," Design-Build Institute of America, 2014

"Meritorious Service Award," Design-Build Institute of America, 2007

COMMUNITY & PROFESSIONAL

Transportation Research Board, Member of Committee on Contract Law

Design-Build Institute of America, Member of Legislative Committee and Owner Advisor Committee; Founding Board Member of Western Pacific Region, 1994-present

Women's Transportation Seminar - Los Angeles, Board Member, 2001-present

American Bar Association, Member of Public Contract Law Section and Forum on Construction Law

Education Through Music - Los Angeles, Board Secretary

PRACTICES

Infrastructure

Procurement & Contracting

Construction Law, Claims & Litigation

Project Financing

Real Estate

Regulatory & Compliance Matters

INDUSTRIES

Government & Public Sector

Transportation

Water

EDUCATION

Yale Law School, J.D., 1981

University of Florida, B.A., 1978, Phi Beta Kappa, *with high honors*

ADMISSIONS

California
Texas
New York