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An opportunity that can't be wasted

"PPPs represent the best chance to accelerate the development of much-needed infrastructure and increase the island's production capacity."

"The opportunity is within reach and we must grab it."

Gov. Luis G. Fortuño

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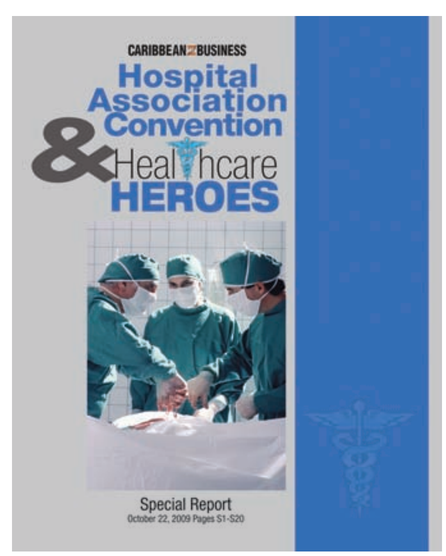

PPPs investments estimated at $6.2 billion and expected to create 100,000 jobs

Hundreds of investors from around the world to attend PPP conference



From left:
Luis G. Fortuño
Governor of Puerto Rico

Carlos M. García
President & Chairman
Government Development Bank for Puerto Rico

David Álvarez
Executive Director
Public-Private Partnerships Authority

BY CARLOS MÁRQUEZ &
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The deterioration of publicly owned infrastructure facilities in Puerto Rico is no secret. The government's financial inability to make the required improvements is well known. The need for a new source of investment is clear and represents a major economic and policy challenge for the island government.

Hundreds of local and international investors, multinational corporations, financial institutions, consultants, law firms, engineering and architectural organizations will meet with Fortuño administration officials today at El Conquistador Resort in Fajardo to explore the possibility of doing business with the Puerto Rico government.

At stake are significant strategic projects that can represent more than $6.2 billion in investment and 100,000 jobs over time through public-private partnerships (PPPs). It's an opportunity that Puerto Rico simply can't afford to waste.

"In our current fiscal situation, PPPs represent the best chance to accelerate the development of much-needed infrastructure and increase the island's production capacity," Fortuño told CARIBBEAN BUSINESS.

"Yet, we are the only jurisdiction in the U.S. with an economic model integrating PPPs, which helps us get closer to the rest of the nation in terms of competitiveness," he added.

The combination of rising and costly infrastructure needs and social demands along with tight government budgets and public resistance to additional tax increases has made it essential for the government to turn to the private sector's innovation, efficiency and potential access to capital to fulfill its responsibilities.

The government has finally realized that the traditional do-it-all-and-control-it-all strategy has fallen short and that private investment is a key element to developing competitive, world-class infrastructure and public services, he explained.

With a new PPPs law, the Fortuño administration intends to attract investors and developers to commit to invest more than $4 billion in 10 priority infrastructure projects with target start dates between 2010 and 2011.

By 2013, the Puerto Rico Public-Private Partnerships Authority (PPPA) intends to close 13 PPP projects with an investment of $4.537 billion and 21 projects that will continue to 2017 for a total cumulative investment of $6.214 billion and the creation of 99,735 jobs.

That is a substantial amount of money by any account, but considering that the top five Puerto Rico infrastructure public corporations are expected to have a combined capital improvement plan (CIP) of approximately $5 billion during the current four-year term, then the private-sector investment in strategic infrastructure projects becomes much more critically important to Puerto Rico.

PPP Conference

The PPPA and the Government Development Bank (GDB) are hosting a PPP conference with potential investors designed to showcase Puerto Rico's new PPP law and a "road show" of strategic government projects that could draw investment.

The government will present a list of its priority projects to more than 250 potential investors at the PPP conference to be held today and tomorrow at El Conquistador Hotel.

"The conference is designed to acquaint potential investors and contractors with the government's recently established PPP program," said PPPA Chairman and GDB President & Chairman Carlos García.

The two-day presentation will include an update covering the most significant components of the Strategic Model for a New Economy, Puerto Rico's new economic development plan; a fiscal update; and a discussion of the potential contribution of the PPP program within the context of the plan. An overview of the public corporations that are in charge of managing the main components of Puerto Rico's infrastructure

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will be presented to the potential investors and Fortuño will deliver a luncheon speech.

PPPs beneficial to Puerto Rico

PPPs can enhance the government's scarce resources and its capability to push ahead with pressing public project needs especially in challenging fiscal and economic times. Even in the best of times, the government at all levels will be challenged to keep pace with the demands of residents and businesses and PPPs present a viable alternative. PPPs are vehicles for government financing of projects that either the government can't afford to do on its own or that it is more efficient to do with a third party. These serve as engines of economic development by opening financing possibilities not previously available.

"The benefits of implementing a robust PPP program are several. It generates plenty of jobs with investment from the private sector. It improves the fiscal condition of our public corporations. At the same time, it fosters innovation and maximizes the value of the government's assets and, most importantly, it will help us deliver quality infrastructure and service to our citizens," said Fortuño.

"For example, in Chile and Ireland—two countries with which we frequently compare ourselves—PPPs have been responsible for more than $11 billion in investment for each country, and have made possible the development of important projects that would have been impossible with government resources alone," he explained.

"Puerto Rico has one of the best laws concerning PPPs in the U.S. and indeed the world. In creating our law, we looked around and benefited from the experience that some of these jurisdictions have had with their own legislation," the governor said.

Fortuño answered criticism from labor groups that the PPP strategy is a step toward privatization of government services.

"PPPs don't equal privatization. They are not even two sides of the same coin. I want to make that abundantly clear to the people. With privatization you sell the asset completely to a third party. In the case of PPPs it is the partner—whether a private-sector company, a workers' cooperative, a nonprofit organization or what have you—that puts down the money to create the project and operates it during the period of concession, but the asset itself continues to be owned by the public," the governor said.

One key aspect of PPPs is that they allow transferring risk out of government to the private sector. As partners, the government and the private sector will share risks related to infrastructure and service improvement. Currently, all the construction, financial and operational risks are absorbed by the government and that results in great costs and inefficiencies for the public sector that ultimately affects citizens, Fortuño said.

"Moreover, I believe there's been a gradual shift in public opinion. People are seeing the benefits of having a cash-strapped central government enter into these alliances with workers' co-ops, municipal corporations or private-sector companies to develop much-needed assets that will always belong to the people, even if they are managed under a concession by a private company, or a workers' cooperative," the governor said.

Idea of PPPs is not new

The idea of incorporating the private sector in the development and maintenance of government infrastructure and services through PPPs is not new and the results have been mostly positive. One of the most successful examples is the Teodoro Moscoso Bridge, partnered during the last administration of Gov. Rafael Hernández Colón.

Puerto Rico was one of the first jurisdictions to use PPPs. The Teodoro Moscoso Bridge, a 35-year toll concession built in 1994 that spans the San José Lagoon, provides a quick link between the San Juan airport area and downtown. It was built by Dragados/ACS, but is now controlled by Abertis. However, it continues to be an asset of Puerto Rico.

"It's important to understand the historical context. PPPs are not new in Puerto Rico. The Teodoro Moscoso Bridge is but one example. The doña Fela parking building in Old San Juan is another example that even predates the Teodoro Moscoso Bridge. However, the process to bring a PPP project to fruition before the enactment of the law usually took a decade or even longer. The bureaucratic process was so long and unwieldy that many times it choked the life out of the project. Our recently enacted law gives a turbo boost to these types of projects," said Fortuño.

The building of the coal and natural gas co-generation plants that reduced our dependence on oil for electricity from 99% to 70% during the Rosselló administration is another example. Both of these energy projects were constructed with private investment and are privately owned and sell power to the government's Puerto Rico Electric Power Authority under contract.

A backlash against anything private took roots in the 1990s and beginning in 2001 the government all but abandoned any effort to incorporate the private sector into the development of new infrastructure.

"PPPs play a big role in our Strategic Model for a New Economy as they were an integral part of our economic platform. The Puerto Rican people gave a resounding mandate

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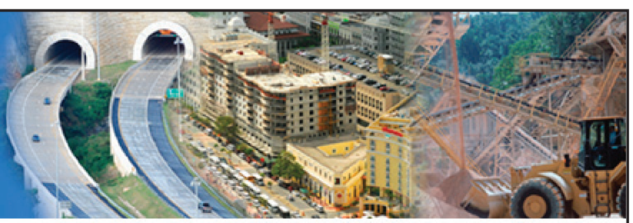
Priority PPP Projects



#	Key Assets for PPP	Government Entity	Preliminary Target timing	Size
1	Concession and Extension of PR-22	DTPW / PRHTA	June 2010	~$1,000m *
2	Concession and Extension of PR-66	DTPW / PRHTA	June 2010	~$250m *
3	Design, Build, Operate a 1,500 tons/day Waste-to-Energy Plant	Solid Waste Authority	2010	~$200m
4	Construction of Valenciano Reservoir and Water Treatment Plant	PRASA	June 2010	~$200m
5	Construction of Beatriz Reservoir and Water Treatment Plant	PRASA	June 2010	~$200m
6	Development of a Bus Rapid Transit (Cupey - Caguas)	DTPW / PRHTA	2010	~$350m
7	Construction of a New 500MW Carbon Plant at Old Phillips Plant	PREPA	2010	~$600m
8	Conversion of the 270MW Costa Sur Plant to Natural Gas	PREPA	2010	~$400m
9	Design, Build, Operate Consolidated Data Center (NAP)	Office of the Governor	2010-2011	N/A
10	Schools Improvement Program - Rehabilitate and Maintain Schools	Department of Education / PBA	2010	~$875m
	Total			~$4,075m

Note: * Impact of the Greenfield component not included. Value based on concession only.

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in the voting booths in favor of such a model. In fact, I don't think it's even a partisan issue in Puerto Rico to tell you the truth. The previous administration embraced the concept and was promoting it aggressively, although they were not very successful at it. Part of the reason is that they didn't have the legislation that was needed, which we did pass, to make these partnerships a reality for the benefit of the Puerto Rican people," said Fortuño.

With much fanfare, Puerto Rico rolled out a series of PPP projects at an investor conference in San Juan in 2007. It then put two projects into tender: PR-22, an existing toll road with a proposed extension, and the San Juan airport parking concession. Both failed for different legal reasons and PPP investors became somewhat disillusioned with Puerto Rico in the aftermath.

"Essentially, there was no comprehensive PPP-enabling legislation in place. Former Gov. Aníbal Acevedo Vilá had less than a year remaining in office when the PPP procurements were underway and he quickly became distracted by an unrelated political issue involving a U.S. Department of Justice probe and his campaign finances," said Alfonso Guzmán, a PPP lawyer with Castalia LLC.

Castalia is a global PPP consulting firm with offices in Washington, D.C.; Paris; Sydney; and Wellington, New Zealand. The firm designs and implements PPPs throughout the world.

"PPP-backed projects that are the closest to becoming a reality are those dealing with road infrastructure, energy and water services. But a prospect that I'm particularly interested in is the use of the PPP model to build new schools or improve existing ones. Through PPPs we'll be able to build the best new public schools our children and their parents have ever seen," Fortuño said.

THE TOP 10 PRIORITY PROJECTS

"The public policy of the government of Puerto Rico is to favor and promote the establishment of PPPs for the creation and development of priority projects. With PPPs we intend to further the development and maintenance of infrastructure facilities; share between the government and the contractor the risk involved in the development, operation or maintenance of such projects; improve the services rendered and the functions of the government; encourage job creation and promote Puerto Rico's socioeconomic development and competitiveness," said Fortuño.

As of Sept. 22, 108 projects had been submitted by government agencies, public corporations and municipalities for consideration by the PPPA. The next round for submissions to the PPPA will start in January 2010.

According to CARIBBEAN BUSINESS sources the administration's top-priority PPP projects include the concession and extensions of PR-22 ($1 billion) and PR-66 ($250 million); the design, construction and operation of a 1,500-ton-per-day, waste-to-energy plant ($200 million); the construction of the Valenciano and Beatriz dams and water treatment plants ($200 million each); development of a bus rapid transit system (Cupey-Caguas, $350 million); construction of a new 500 megawatt (MW) coal-fired energy plant at the old Phillips site in Guayama ($600 million); the conversion of the 270-megawatt Costa Sur electric energy generation plant from oil to natural gas ($400 million); a schools improvement, rehabilitation and maintenance program ($875 million); and the design, building and operation of a consolidated data center (still to be priced). These greenfield projects add up to a total of at least $4.075 billion in investment not including the existing PR-22 and PR-66.

García told CARIBBEAN BUSINESS he aims to have five PPP deals in negotiation by year-end and three signed by June 30, 2010, the end of the fiscal year.

For several years, the Puerto Rico Aqueduct & Sewer Authority (Prasa) has been the leading government agency promoting PPPs to carry out infrastructure projects on the island. Since the PPPA was established there are several firms interested in Prasa's projects, including Siemens Building Technologies, Miya Group, Itron, Neptune Technology Group, Inekon Power, Dragados, Aguas Roma, Scotia Capital, Proactiva, Water Company of America, Empresas Públicas de Medellín, Aguas Bogotá and local banks such as Banco Popular.

A deal for the Valenciano dam and water treatment plant could be closed before the end of the calendar year, according to CARIBBEAN BUSINESS sources.

The Valenciano Onstream Reservoir project will promote the economic development of the eastern region, serving approximately 218,928 customers in the municipalities of Juncos, Gurabo, Las Piedras, San Lorenzo and Caguas. The 15 million-gallon-a-day (MGD) project will also guarantee the water resources to cover present and future water needs in the benefited municipalities and ensure reliability with current and prospective water regulations (CB Oct. 11, 2007).

"We are putting words into action.

What is a PPP?

A Public-Private Partnership is:

- **A contractual agreement between a government agency and a private or non-governmental entity**
- **Allows for greater participation of the private sector in the development and financing of infrastructure and provision of services**

Direct benefits of establishing PPPs

1. Accelerates infrastructure investment
2. Creates new opportunities for jobs and economic development
3. Improves fiscal condition of Public Corporations and General Fund
4. Encourages innovation and maximizes Government assets

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The opportunity is within reach, and we must grab it," said Fortuño.

TWO TYPES OF PPPS: BROWNFIELDS AND GREENFIELDS

"Brownfields are related to the monetization of existing assets. In a brownfield scenario the government essentially wants to bring to present value future income streams generated by an existing asset. That lump-sum payment is then used by the government for new projects and to reduce debt. Brownfield projects have the advantage of providing funds to the government today for use today," explained José A. Sosa Lloréns, a corporate attorney and PPP specialist with Fiddler, González & Rodríguez.

Also, in both brownfields and greenfields, there is a shift of risks. In brownfields, the private party assumes the risk that the revenue it will receive for the term of the project (i.e., the concession) will be sufficient to pay for the lump sum payment paid to the government, the return on capital on the investment and pay for the costs of operating and maintaining the project.

In greenfields, the private party is assuming the construction risk and the financing risk so the future revenue to be generated by the project has to be sufficient to pay for both. In greenfields the risk could be even higher because there has not been an experience of revenues as is the case in brownfields. For that reason, the rate of return sought by private parties is usually higher.

All of these proposed PPP projects will technically be considered greenfields as they are related to the construction of new projects. The government seeks the construction of the project but wants it financed and operated by private entities. In exchange, the government grants the revenue that the asset generates for a given period. The revenue sources could be fees, tolls, rent, etc.

"Most government entities are authorized to enter into PPP arrangements for the construction of new infrastructure facilities and the refurbishment or improvement of existing ones. With appropriate project screening done by the PPPA, this wide array of potential government partners should encourage

Alfonso Guzmán
PPP Lawyer with Castalia LLC

Carlos M. García
President & Chairman
Government Development Bank for Puerto Rico

some innovative PPP projects that will help improve infrastructure service delivery to the general public and make the island more economically competitive," said Guzmán, of Washington, D.C.-based Castalia LLP.

"If it can avoid some of the major mistakes made in the mainland U.S. and abroad, then the PPP law will help build an innovative PPP program with a pipeline of good projects for Puerto Rico and its residents," said Guzmán.

"Transparency is key to the whole PPP process. Bureaucracy and government gigantism has been done away with in this model," said Fortuño.

IMPORTANCE OF PPP LAW

In June 2009, Fortuño was able to get a new and comprehensive PPP-enabling statute enacted due in part to the government's serious financial crisis as it faced a $3.2 billion general fund budget deficit and most public corporations were without cash or credit ability to raise money for infrastructure development.

"Puerto Rico's PPP law is clear, comprehensive and reflects many of the best practices that have developed over recent years in the U.S. and elsewhere and then more," Guzmán said.

While Puerto Rico is therefore off to a good start, both the public and private sectors need to manage their expectations by remembering that a good PPP law is not the same as a good PPP program; it is only a first step, he cautioned.

One of the quickest ways a number of PPP programs have unraveled around the U.S. and abroad has been when the general public lost confidence in the PPP program and the projects proposed, according to Guzmán.

This usually has resulted from a lack of transparency, poor project selection and execution, or perceived or actual conflicts of interest involving the government and its private partners. The PPP law recognizes the importance of these issues, and contains some meaningful provisions designed to promote transparency.

A WIDER DEFINITION OF INFRASTRUCTURE

Although for political reasons such as opposition by public employee unions, some U.S. states have placed restrictions on which government agencies can enter into PPPs.

Nevertheless, the Puerto Rico PPP law covers many different types of assets and services, including both physical and social infrastructure. A number of U.S. states use a narrower definition of infrastructure, which unnecessarily limits the range of potential opportunities.

Physical infrastructure is what people normally think about when they hear the term "public works," such as highways, passenger and freight rail, seaports, airports, renewable energy facilities, reservoirs and dams, water and wastewater treatment plants, etc. Social infrastructure typically is not revenue generating and covers educational, health, recreational and correctional facilities, said Sosa Lloréns of Fiddler, González & Rodríguez.

"Puerto Rico should be congratulated on having established a solid legal foundation for realizing its twin goals of economic development and better, faster and cheaper services for the general public through the selective use of PPPs. This program should benefit from strong political support and a well-structured process for PPP projects. It should also create a number of interesting opportunities for potential private investors," added Guzmán.

PPPA AFFILIATION TO THE GDB

The new PPP law created the PPPA, which is affiliated with the GDB. This is important for two main reasons.

First, the GDB staff working on PPPs is more likely than many of the other government agencies to possess the technical, financial analysis and public management skills that are required to create and sustain long-term partnership arrangements of the type involved in PPPs.

Second, PPP projects have a steep learning curve, so retaining the lessons that are learned from past projects across multiples sectors makes it more likely that Puerto Rico will learn from mistakes that are made (and such mistakes are unavoidable).

A number of U.S. jurisdictions, by contrast, either have not created such a dedicated PPP unit or if they have it is located in an implementing agency for one type of infrastructure such as the state Department of Transportation.

MACQUARIE CAPITAL HIRED AS ADVISOR

The PPPA has engaged Macquarie Capital as advisor to assist in the development of its PPP program.

"The PPPA has the mission of supporting the economic development of Puerto Rico by facilitating infrastructure investment in high-priority areas. Having an experienced advisor of the stature of Macquarie will

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allow the PPPA to quickly establish the necessary guidelines and procurement framework to fulfill its mission," said García.

"The objective of the engagement is to advance the development of a robust PPP program in Puerto Rico. Macquarie Capital will assist the PPPA in formulating and developing program guidelines and procedures that include assistance in developing a desirability study methodology adequate for PPP projects," added David Álvarez, PPPA executive director.

The PPPA aims to develop a program that uses best practices from around the world in procurement and other key areas that will allow for the efficient establishment of PPPs.

"Macquarie Capital's PPP capabilities are well suited to the PPPA's program needs, given Macquarie Capital's previous experience as advisors to other governments and public-sector agencies in their development of similar PPP programs," said Álvarez.

"Puerto Rico has established one of the best legal structures in the U.S. to encourage the development of PPPs. Its program has great potential to significantly improve the quality of infrastructure and promote economic development. We look forward to working with the PPPA to bring the full value of PPPs to Puerto Rico," said D.J. Gribbin, managing director of Macquarie Capital (USA) Inc.

Macquarie Capital is a member of Macquarie Group, a global provider of banking, financial, advisory, investment and funds management services. Founded in 1969, Macquarie Group operates in 27 countries and employs approximately 12,500 people. Macquarie's assets under management total more than $190 billion as of July 31, 2009.

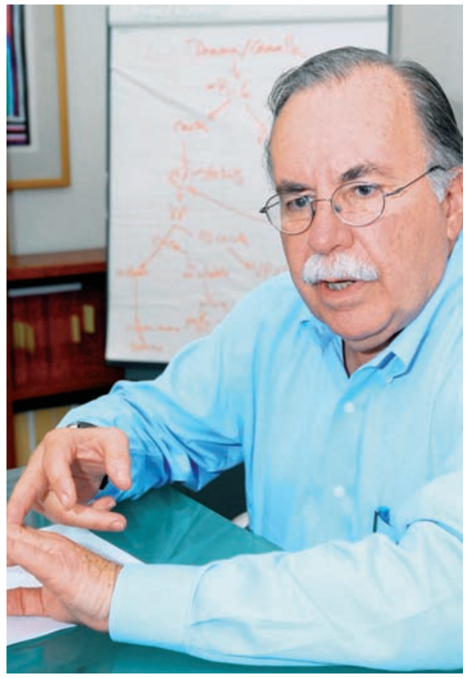
UBS and Morgan Stanley were selected by the previous administration as advisors for PPP projects.

Project delays

Puerto Rico still faces many obstacles in the coming months including labor union opposition and project delays.

The PPP law created a system to prepare projects with seven separate procedural steps, which increases the possibility of unexpected delays.

José Sosa
Corporate Attorney and PPP specialist with Fiddler, González & Rodríguez



José Villamil
Chairman of Estudios Técnicos Inc.

Unexpected delays can quickly undermine private investor interest and the credibility of the PPP marketing strategy—whether resulting from an overly complicated approval process, commercially nonviable and unbankable projects being proposed or potential projects that have not yet been adequately screened.

Such project delays have already created problems in several U.S. states, including Texas, Georgia and Pennsylvania. Moreover, Puerto Rico already had a similar credibility problem before it recently enacted its PPP law due to earlier project delays involving its PPP program.

Pricing is a key determinant of success

"Puerto Rico is faced with ever-increasing demands for improved infrastructure in a wide range of areas at the same time that resources to satisfy them are extremely limited. Thus, PPPs appear to be the correct approach," said José "Joaco" Villamil, an economist and chairman of local consultancy firm Estudios Técnicos Inc.

In a global context in which financial resources are constrained, identifying the prospective candidate projects for a PPP is extremely important, particularly in the initial stages. Early successes will lead to subsequent ones. This is why the legal and technical dimensions related to the negotiations are so important in the initial phases, Villamil noted.

"Both the initial needs assessment and the subsequent cost-benefit analyses are key elements in the process and require, in many cases, an interdisciplinary approach that brings together technical expertise in the specific areas (construction, energy generation, port operations) as well as legal and economic analyses," he added.

The fact that the PPP law was adopted does not mean that the government has to use the PPP to finance public works and services.

"PPPs are neither good nor bad by themselves. PPPs are not the solution to every challenge the government faces. How good a PPP is depends on how well it is structured," said Villamil, who was an advisor to Senate Economic Development & Planning Committee Chairwoman Norma Burgos during the PPP law approval process.

Balance, risk and pricing

Balance should be sought in both economic and financial matters and public policy issues. The more control the government wants to exert into the relationship, the less value it will receive.

Both parties have to strike a balance between what are called "value-creating provisions" and "value-destruction provisions." For example, the extension of a concession from 20 years to 30 years is a value-creating provision because the private party would be in position to pay more for a longer term on the concession. However, the government may want to reduce the term of the agreement which, in turn would reduce its value, thus being a "value-destruction provision."

"One of the biggest pitfalls in the negotiation of a PPP is not knowing what risks you are assuming. If you don't know what those risks are you might be assuming risks unknown to you and not be paid for assuming them. In this situation you not only fear what you know, you also fear what you don't know. Parties need to assess as many risks as they can identify to price the deal. For that they need expertise and counsel. If they fail to identify such risks the venture could be disastrous for the private party and for the government as well because the project may be in jeopardy," added Sosa Lloréns.

"Risk allocation is an essential component of PPPs with the private partner assuming commercial risks. This makes a careful assessment of revenue projections a key component of success. Negotiations must incorporate various dimensions, including technology transfer issues, exit strategies, oversight and review procedures, and, of course, risk allocation. The clear presentation of assumptions concerning those factors that have a bearing on potential revenues and costs is a key component of any negotiation as is the process for renegotiating an agreement should such assumptions change," Villamil said.

At the end of the day, pricing of the PPP is the factor that will determine if the PPP will go forward. However, pricing is very difficult in a PPP because there are many variables working at the same time creating uncertainty. The parties will be making the best guesses they can.

"The failure to carry out a correct pricing exercise is that the private party prices itself too high making the PPP too onerous for the government, or that it prices itself too low which would make the PPP a losing venture for the private party. The government has to be on the lookout for this second scenario because at the end of the day the project either doesn't get done because the private party is trying to get out of the PPP because it is losing money or the government takes over to finalize the project but at a higher cost than doing the project itself in the first place," explained Sosa Lloréns. ■

Who is attending?

A look at some of the participants expected at the two-day PPP conference at El Conquistador Resort in Fajardo

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More than 200 local, stateside and international firms are expected to attend the first public-private partnership (PPP) conference hosted by the Public Private Partnerships Authority and the Government Development Bank today and tomorrow at El Conquistador Resort in Fajardo.

Among the top names attending the two-day conference are Fluor Corp., a Fortune 500 company that provides engineering, procurement, construction, maintenance and project management to governments and clients around the world. Another is Globalvia (GVI), one of the world's leading infrastructure groups that designs, builds, maintains and operates transportation projects.

OHL Concessions is one of the world's leading investors in the international infrastructure market, ranking among the top-10 private developers of transportation infrastructure. The company was founded in 2000 as a subsidiary of the OHL Group—one of Spain's leading construction, concessions and services groups—with the corporate purpose of developing under concession all types of infrastructure in any part of the world, including toll roads, airports & seaports and railways.

AECOM is a global provider of technical and management support services to a broad range of markets, including transportation, facilities, environmental and energy markets. AES Corp. is a Fortune 500 global power company with generation and distribution businesses in 29 countries with revenues of $16 billion. It owns and manages $35 billion in total assets.

San Francisco-based Bechtel is one of the world's top engineering, construction and project-management firms encompassing energy, transportation, communications, mining, oil & gas and government services with projects in dozens of locations worldwide.

Honeywell International Inc. is a diversified technology and manufacturing leader, serving customers worldwide with aerospace products and services; control technologies for buildings, homes and industry; automotive products; turbochargers; and specialty materials.

Aleut Global Solutions is a family of companies with large and diverse reach-back capabilities providing information technology, communications, base operations support and a variety of other services to government agencies.

Abertis is an international group that manages tollroads, telecommunications infrastructure, airports, parking lots and logistics parks. Acciona Infraestructures recently got a 35-year, $1.5 billion concession for A-30, a toll road in Canada which will become a main axis linking Quebec and Montreal, as well as a contract for the *Rodovía Do Aço* (Rio de Janeiro State) toll road and a toll road in Chile.

Financial services

Among the local and international financial services institutions expected to attend the conference are FirstBank, Banco Santander, Advent Morro, Goldman Sachs, Barclays Capital, JP Morgan, Bank of America-Merrill Lynch, BBVA, Lazard Freres, Siebert Brandford, Shank Morgan Stanley and Wells Fargo, Popular Securities, CITI, Ramírez & Co., Bostonia Partners, Jeffries & Company, Alinda Capital Partners and Assured Guaranty/FSA.

Alinda is an independent private investment firm specializing in infrastructure assets and is one of the world's largest investors in infrastructure. Assured Guaranty/FSA

is a provider of financial guaranty and credit-enhancement products to investors.

Law firms

Law firms which have not stated who they are representing or seeking business for include local firms Martínez Odell & Calabria; McConnell Valdés; O'Neill & Borges; Fiddler González & Rodríguez; Adsuar Muñíz Goyco Seda & Pérez; and Ochoa Gibson Dunn & Crutcher.

International law firms providing business law advice throughout the Americas, Europe, the Middle East and Asia include Nikon Peabody; Greenberg Trauring; Akin Gump Strauss Hauer & Feld; Allen & Overy; Chadbourne & Parke; Sidley Austin; Mayer Brown; Johnson Stokes & Master; and DLA Piper.

Local developers, architects, engineering and contractors

Local developers, architects, engineering firms and contractors include Bermúdez & Longo; Bird Construction; Barrett Hale & Alamo; CSA Group Inc.; LMC & Associates; Nogama Construction Corp.; Constructora Santiago; Cemex Puerto Rico; Unipro Architects, Engineers& Planners; F&R Construction Group Inc.; Evertec Inc.; Carrera Arquitectos; Del Valle Group; CMA Architects and Engineers LLP; Empresas Fonalledas; Aireko Construction; and Iglesias Vázquez & Associates.

Stateside and international firms attending conference

Among other companies to be represented are ACS Infrastructure Development Inc.; Gannett Fleming Inc.; Hill International; Infiniti Global Solutions Inc., a provider of mobile applications and solutions; Barquin International Corp., a Washington, D.C.-based firm specializing in assisting organizations in planning, designing, implementing and operating knowledge management, e-government, information architecture and data warehousing solutions and strategies; Netxar Technologies Inc., providers of information technology; Brisa North America Inc., an affiliate of Brisa Auto Estradas de Portugal SA (Brisa), a Portugal-based holding company engaged in the construction, maintenance and operation of highways; and New Millennium Consultants Inc., a provider of highly specialized services for clients in the wireless communications industry.

Other stateside and international companies expected to attend include Texas-based C&M Associates Inc.; Castalia LLC; the PBSJ Corp.; CH Caribe Engineers; R.W. Beck Inc.; DCK International; Covanta Energy; Entech Design & Project Management; the Conti Group; Dragados USA; the Stanley Group; Environics Engineering Group Corp.; the Solis Group TSG; TRMI System Integration; KCI Technologies; A.H. Beck Foundation Caribe Inc.; Excelerate Energy; Atkins Faithful & Gould; and Vinci Construction Grand Projects. ■

How will a judicial review apply to the PPP law?

Exclusive interview with former Puerto Rico Supreme Court Associate Justice Francisco Rebollo López sheds some light

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Aware that duly permitted development projects in Puerto Rico are often delayed or stopped in court, CARIBBEAN BUSINESS conducted an exclusive interview with former island Supreme Court Associate Justice Francisco Rebollo López to glean insight into how the new public-private partnership (PPP) law will stand up to judicial review.

Rebollo, now special counsel at Fiddler, González & Rodríguez, P.S.C., spent 26 years on the bench of Puerto Rico's top court.

"Law 29 (PPP law), like all laws that deal with extremely important matters and aspire to regulate it all, is very complex, comprehensive and hard to predict in terms of how successful it will be in its implementation phase. Although it does raise a few eyebrows, it presents no insurmountable obstacles. If properly financed, enforced and handled by knowledgeable professionals on each side of the fence, it should be able to work out wonders for Puerto Rico's economy," Rebollo said.

The obvious objective of the law is to help promote the economic recovery of Puerto Rico by providing public corporations, government agencies and the residents of Puerto Rico with the necessary legal tools to spur the island out of its serious fiscal crisis, he noted.

"A specific constitutional provision comes to mind, the right of our citizens, and their families, to have economic well-being. To that effect, Section 2 of Article III of our Constitution expressly states that: 'The executive and judicial branches shall bear in mind this duty and shall construe the laws that tend to fulfill it in the most favorable manner possible,'" Rebollo said.

From a judicial review standpoint, Rebollo started by pointing out that Law 29 creates the Public-Private Partnership Authority (PPPA), a public corporation of the island government assigned to the Government Development Bank (GDB). PPPA duties and powers will be executed by a board of directors, which is responsible for establishing the public policy.

According to Rebollo, the PPPA will be able to sue (and be sued) under its own name, file complaints and defend itself before all courts of law, administrative boards and commercial arbitration panels.

The first reference to judicial review lies in Article 9(h) of the law: The elimination of a participant or proponent at the qualification stage

Francisco Rebollo López, former Puerto Rico Supreme Court associate justice and now special counsel at Fiddler, González & Rodríguez, P.S.C.

and/or the adjudication of the alliance contract to a specific participant are determinations or decisions subject to the comprehensive judicial review proceedings established in Article 20 of the law, but it must be kept in mind that "according to the law" the adjudication of an alliance contract to a participant will only be reviewable by the courts after the approval of the contract by the governor.

"This can only be interpreted as applying to only the participants that are discarded by the PPPA and the alliance committee; they, however, will have to wait to review the decision, until the governor signs the final contract," Rebollo explained.

The provisions of Articles 15 and 16—although not directly related to judicial review—are worthy of some attention, he said. In negotiations for an alliance contract, provided public corporations or municipal entities are not involved, Article 15 allows a private participant to sue the government up to the maximum sum of money stipulated in the alliance contract.

It also states that Article 2(c) of Law 104 of June 29, 1955, known as "*La Ley de Reclamaciones y Demandas contra el Estado*" (Law on Claims and Lawsuits Against the Government), does not apply to the alliance contracts. That means that the money limits established under Law 104 do not apply to the alliance contracts. It does state, however, that the plaintiff must comply with the general proceedings established in Law 104 and that the private participant cannot claim damages. The plaintiff, therefore, can only sue the government for the amount of money involved in the alliance contract.

Article 16 provides immunity to the PPPA board of directors, public corporations and/or government agencies and the GDB, except for the commission of a crime and/or gross negligence. These persons, furthermore, will have the right to legal counsel paid by the PPPA and/or the government.

Rebollo noted the judicial review process finds its "home" in Article 20 of Law 29. He explained this is a complex article of law, which should be read carefully several times.

"We have to remember that the Legislature, as per the provisions contained in Section 6, Article V, of the Constitution has the last word in matters pertaining to the rules of evidence, civil and criminal procedure since it has the power to amend, repeal or supplement said rules after they are submitted to the Legislature by the Supreme Court. Having that power, it should be clear that they should have the power to establish a special set of civil procedure rules to handle a specific situation, as long as they, in doing so, do not violate any constitutional provision," Rebollo said.

The procedure established in Article 20 follows, in general terms, the current Rules of Civil Procedure.

"Nevertheless some are worth mentioning," said Rebollo.

He cited among them: who has "standing" to question the proceedings; the grounds for disqualification as a participant; timetable for the judicial review; motions for reconsideration are not allowed at certain stages of the proceedings; the timetable established for the Appeals Court decisions; the parties to be notified of the proceedings; stay of the proceedings and requirement of a bond to solicit it; lawyers' fees; scope of the review; no concession of damages; and exclusiveness of the review proceeding to be filed.

"There is no doubt that this set of special rules is stricter and more controversial than the general Rules of Civil Procedure. That does not mean, however, that they are necessarily unconstitutional. We will just have to learn to live with them and observe the way they are applied by the government and the way that they are enforced by the courts," concluded Rebollo. ■

Tax and labor implications for PPPs

Specialists from Fiddler, González & Rodríguez provide a clearer view as to what potential PPP investors can expect

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It's basic business sense. Potential investors in Puerto Rico will make sure they understand the implications of Puerto Rico's new public-private partnerships (PPP) law (Law No. 29 of June 2009) before they move forward with their investments.

CARIBBEAN BUSINESS sat down with specialists at one of the island's top law firms, Fiddler, González & Rodríguez, (Fiddler) to provide potential investors and CB readers a better understanding of the tax and labor implications of the new law.

Rosa Méndez Santoni, shareholder in the Labor & Employment Law Division and member of the Fiddler board of directors is joined by Luis Torres Marrero, shareholder in the Corporate Law Division, Tax Section at Fiddler, González & Rodríguez.

Tax implications

"The PPP law provides that the net income derived from operations covered under the partnership agreement shall be subject to a 10% tax rate instead of the regular tax rate of up to 39% in the case of corporations or partnerships, or up to 33% in the case of individual taxpayers. Subsequent corporate or partnership distributions are subject to a 10% tax rate," said Luis Torres Marrero, a certified public accountant.

Alternatively, a contracting entity could elect to be treated as a special partnership (flow-through entity) in which case a tax rate of 20% shall be imposed at the shareholder or partner level on the net income derived from the operations covered under the partnership contract.

Torres explained that certain government real and personal property used by the contracting person under the partnership agreement shall be exempted from real and personal property taxes at the rates and for the periods provided for in the agreement.

"These incentives could have the effect of reducing the pricing of interested bidders and increasing the opportunities for the government to accomplish cost-effective results in desired projects," said Torres.

Labor implications

"After approval of Law No. 29, which enables the PPPs, several questions have arisen regarding its labor aspects, principally because the law is silent regarding the same," said Rosa Méndez Santoni, a shareholder in the Labor & Employment Law Division and member of the Fiddler board of directors.

The labor union sector has publicly questioned the concept of PPPs and argues the intention is to privatize public services.

The law just establishes that under special circumstances of fiscal precariousness, certain labor contract clauses that prohibit the transfer of functions, services, facilities or employees to a PPP will not be valid or effective.

"In other words, the provisions of the collective bargaining agreements in effect or of employment contracts will not be an impediment to the transfer of public employees to a PPP," said Méndez.

The law specifically provides in Article (f) (nontransferable obligations of the partnering government entity) that the contractor neither assumes nor is responsible for any existing obligations or debts of the partnering government entity (PGE) unless the partnership contract expressly provides the opposite.

According to Méndez, the contractor shall not be responsible for the obligations concerning the merits, time and service accrued by the employees of the PGE that the contractor agrees to hire nor for any other obligation of such PGE with such employees, except for those obligations and responsibilities expressly assumed by the contractor under the partnership contract.

In those events that the contractor does not agree to assume the cost of these obligations, the PGE shall assume the costs of liquidating said obligations, she said.

"On the other hand, Article 10(g) (inapplicability of the prohibition of employee transfers) provides that in the in the case of a PGE that during the fiscal year in which a contract was signed, or any other preceding fiscal year, finds itself in precarious fiscal situation (as certified by the Government Development Bank) shall be exempted from the application of the contractual labor clause that prohibits the transfer to the contractor of any function, service or facility of such PGE or the transfer of its employees of the latter who are assigned these functions, services or facilities," explained Méndez.

In the event that such prohibition exists and is rendered ineffective, the contractor shall be required, in the course of the procedures for selecting the persons who will work with the contractor, to guarantee that it shall give preferential treatment to employees of the PGE who shall be affected by the establishment of the PPP and who shall not be transferred to other positions within the PGE or other government agency.

The parties shall implant a displaced employees transition plan for other employment and retraining, whose cost will be defrayed in equal parts by the contracting parties.

"Every public employee who is a participant in the retirement systems of the government of Puerto Rico who has 10 years or more of accumulated service and becomes part of a PPP shall maintain the vested rights under said system and may continue to make his or her individual contribution to the Retirement System and his or her new employer shall make its employer contribution," Méndez said.

In case the new employer has its own retirement system and the employee chooses to switch over, the transfer of the total contributions shall be allowed without the employee having to pay taxes for the contributions transferred.

"Every entity that is interested in entering into a contract alliance with a PGE must be aware of the labor implications that this contract would entail such as labor-management relations with the unions that represent the employees, whether the employees are deemed public or private employees, including applicable fringe benefits and whether it involves transfer of employees or newly hired employees," concluded Méndez. ■