

# Law, Justice & Development Week 2013

## Dispute Boards and Public Private Partnerships

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Dispute Resolution Board Foundation. ***Moving projects forward*** since 1996.

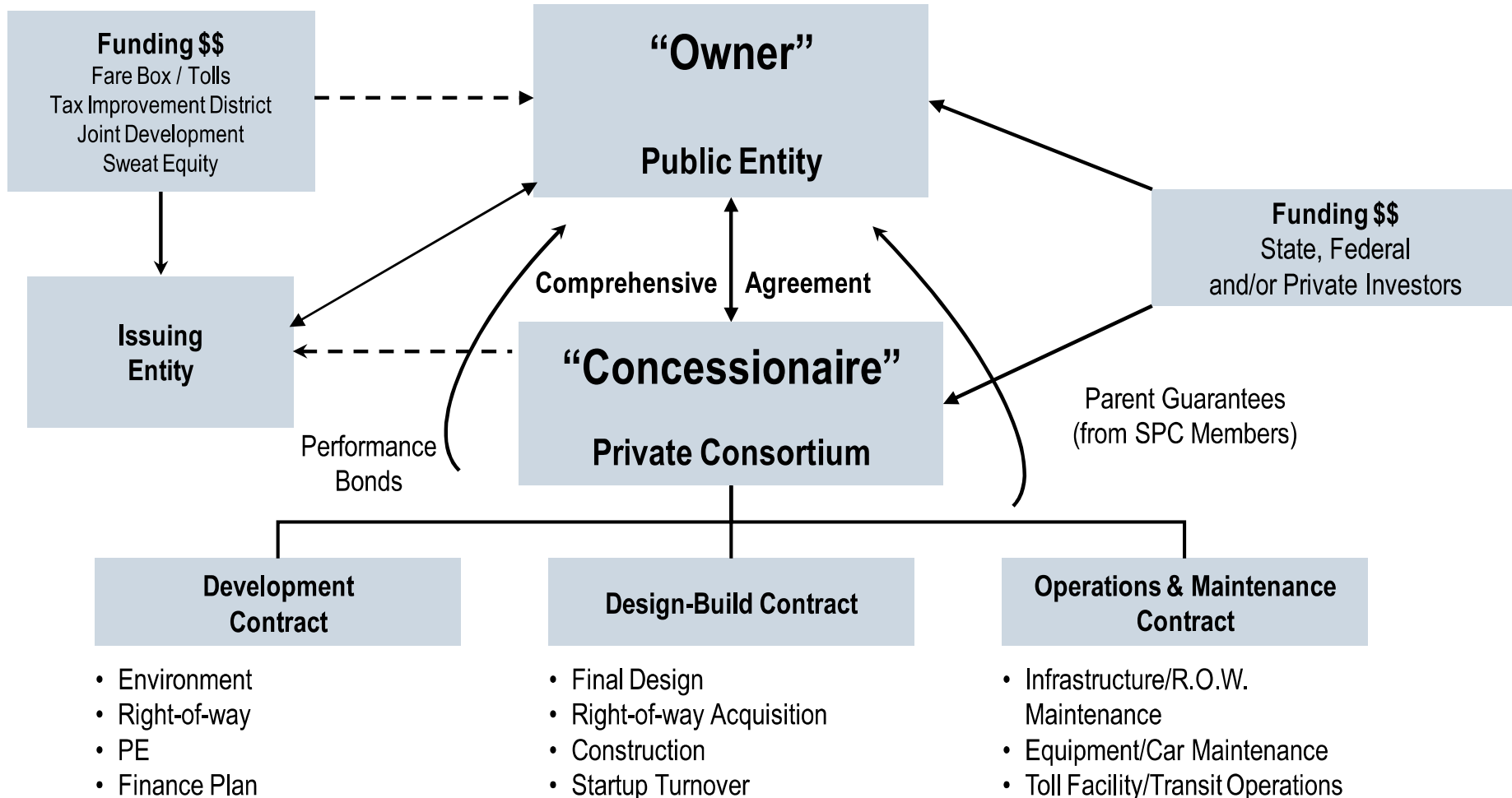


# Starting Point: Dispute Systems Design (DSD)

Dispute Systems Design Steps:

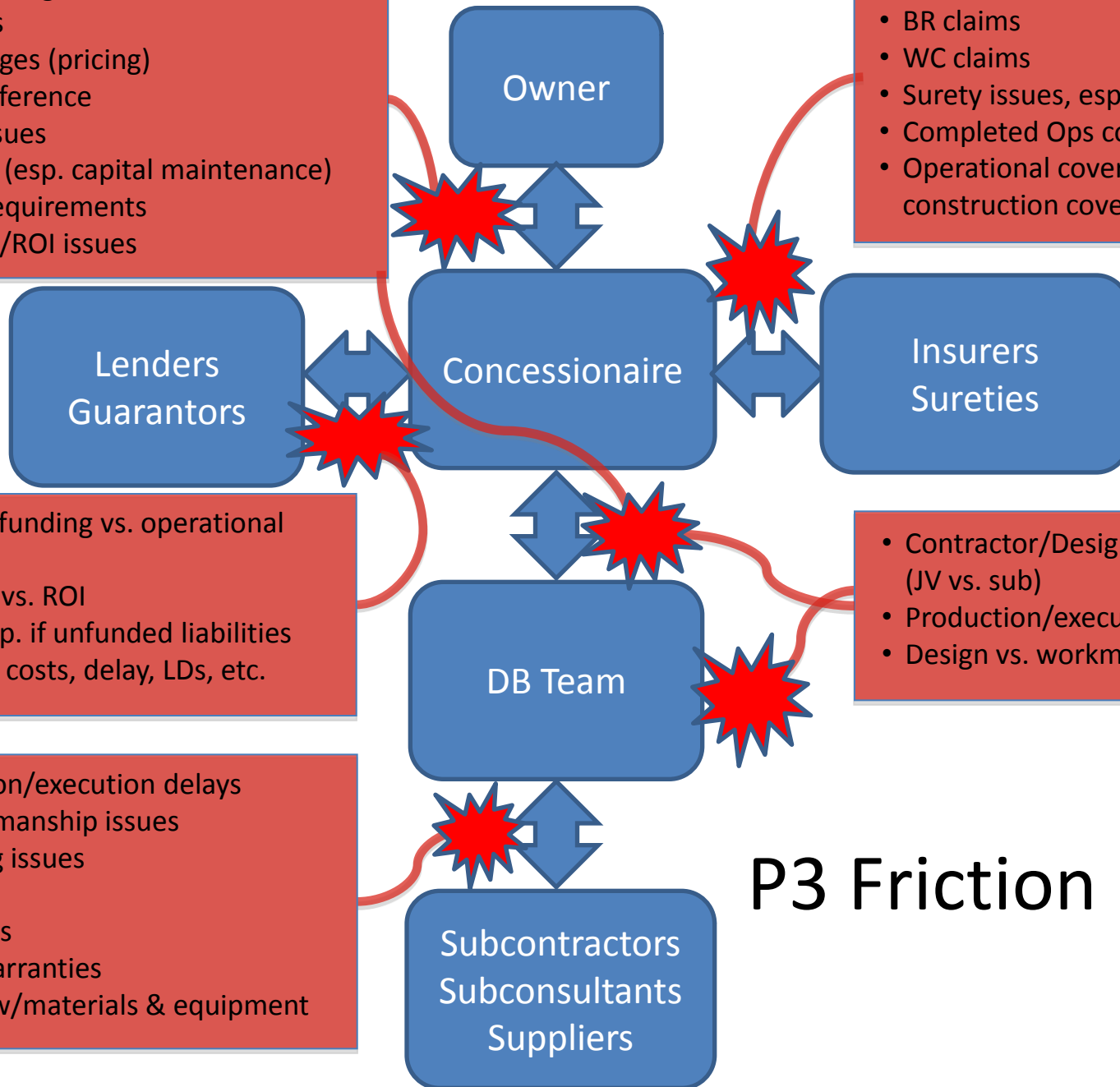
- Develop a “Claim Risk Profile”:
  - Parties/Friction Points
  - Types of Disputes
- Understand and Effectively Deploy:
  - Dispute Avoidance Tools
  - Dispute Resolution Tools

# PPP Project Structure



- Owner risk event — DSCs, permitting, ROW
- Scope issues
- Owner changes (pricing)
- Owner interference
- Warranty issues
- O&M issues (esp. capital maintenance)
- Handback requirements
- Toll revenue/ROI issues

- E&O claims
- GL claims
- BR claims
- WC claims
- Surety issues, esp. subs
- Completed Ops coverage
- Operational coverages vs. construction coverages



- Construction funding vs. operational funding
- Toll revenues vs. ROI
- Credit risk, esp. if unfunded liabilities for additional costs, delay, LDs, etc.

- Contractor/Designer relationship (JV vs. sub)
- Production/execution delays
- Design vs. workmanship issues

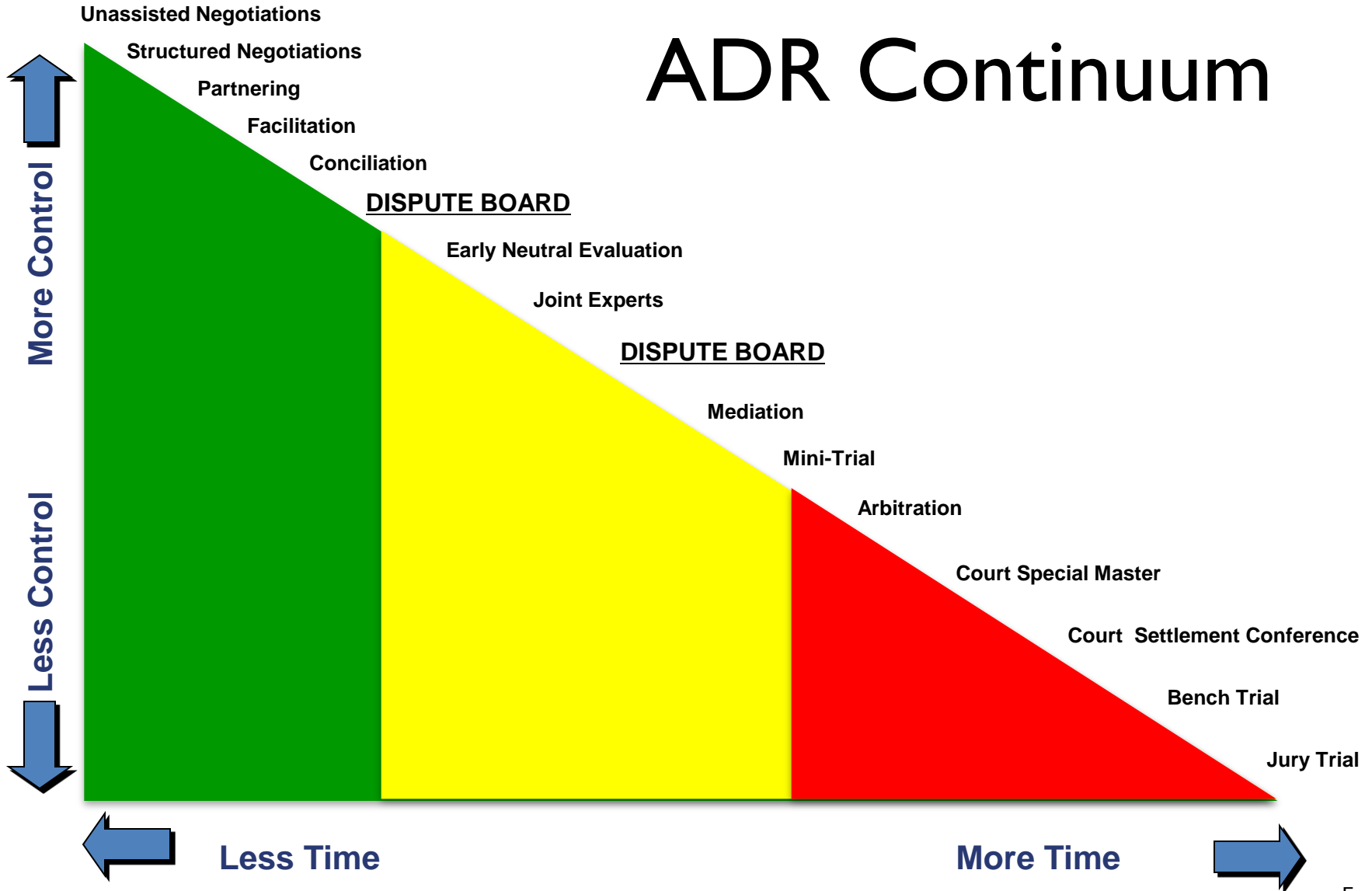
- Sub production/execution delays
- Design/workmanship issues
- Scope/pricing issues
- Warranties
- Product issues
- Long-term warranties
- O&M issues w/materials & equipment

# P3 Friction Points

← Low Cost Resolution

High Cost Resolution →

# ADR Continuum



# Summary: Key P3 Mega Project Features

- Complex, high risk
- Many phases, changing stakeholders
- Construction Phase and Operational Phase impacts on the environment and community
- Relationship building is as important as P3 program management and delivery plans

# Standing DBs on Mega Projects

## → Benefits:

- Encourages collaboration among parties
- Improves relationship with external stakeholders
- Maximizes dispute prevention role

## → Challenges:

- Defining scope of role/responsibility
- Different project phases/players over time
- Long term commitment by all parties

# Case Study: I-595 in Florida

- P3 agreement between Florida DOT and Concessionaire
- DBFOM agreement spanning 35 years (largest P3 in US)
- US\$ 1.2 Billion
- Three member standing DRB (bt. owner and concessionaire)
- Standing DRB within DBT





# Case Study: LISEA High Speed Rail

- 50-year P3 concession contract
- Largest ever rail concession contract
- €7.8 Billion
- Three member standing Dispute Board (bt. Owner and Concessionaire)



# Smaller P3 Projects

→ Single Person Standing Dispute Board

→ Benefits:

→ Scalability: smaller issues, lower costs

→ Easier to offer informal assistance (advisory opinions)

→ Challenges:

→ Lose benefit of 3-member DB complementary skill sets

# Single Person DB Models

- Caltrans Dispute Resolution Advisor
  - Single person appointed at project start
  - No regular site visits
  - Available to parties to address and resolve issues early (as called upon)
- Hong Kong Dispute Resolution Advisor
  - Gatekeeper for the parties to select best resolution path

# Key Requirements for Successful DB Implementation on P3s

- Use Standing Board (not ad hoc)
  - Initiated at beginning of project
  - Regular site visits
  - Remains in place through all phases of the project, including concession operations phase

# Key Requirements for Successful DB Implementation on P3s

- Emphasis on dispute prevention attributes
  - Expand role to include all P3 parties
  - Expand role to include outside stakeholders
  - Early identification/resolution of issues
  - Informal assistance/advisory opinions encouraged

# Key Requirements for Successful DB Implementation on P3s

- Emphasis on quality of DB members
  - Experienced in the work of the project
  - Experienced in alternative project delivery
  - Experienced in collaboration/facilitation
  - Available to serve for the duration of the project

# Public Private Partnerships: What is Different?

- Complex, long-term relationships
- More shared risk and reward
- More stakeholders, including outside groups (environmental, social, etc.)
- Greater need for “real time” dispute avoidance and dispute resolution systems

.... all leading to a requirement for collaboration among all parties.

# *Questions?*



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