

RESULTS FROM AN EXPERT ROUNDTABLE ON UTILIZATION OF PUBLIC-PRIVATE PARTNERSHIPS TO PROMOTE HIGH-PERFORMANCE PUBLIC BUILDINGS IN THE UNITED STATES

Federal agencies and policy makers are becoming increasingly interested in the performance of public buildings. Whether driven by sustainability, resilience concerns or the desire to protect the investment of taxpayer dollars, government agencies are under increasing pressure to achieve performance-based requirements around energy and water use in their facilities. These pressures are coming at a time when aging assets are facing significant maintenance backlogs but budgets for new facilities, major capital improvements and long-term maintenance are contracting. Utilizing public-private partnerships (P3s) may help governments overcome the challenges related to project financing while driving achievement of performance requirements.

In recognition of these challenges, the National Institute of Building Sciences (NIBS) and Royal Institution of Chartered Surveyors (RICS) held a “Roundtable on Utilization of Public-Private Partnerships in the United States” in the fall of 2015. The use of the P3 model in the United States lags behind Canada and other international markets. In the U.S. market, it has largely been used for transportation infrastructure development rather than building construction. The purpose of the roundtable, which included a mix of private- and public-sector practitioners, academic leaders and staff from both NIBS and RICS, was to examine the potential use of P3s in the U.S. market, and, in particular, to encourage the construction of high-performance buildings.

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While sustainability has become a significant priority within the U.S. building industry, to date the focus has largely been on design and construction without fully incorporating the post-construction phase and its associated energy use and cost factors. This is despite the fact that most of the cost of the building across its life cycle is incurred during its operation. High-performance buildings more fully integrate sustainable operations and maintenance (O&M) into building design and construction so that building operation is part of the sustainability solution.

The P3 Model

The P3 model often is viewed as a tool to stretch public-sector budgets. It is true that P3s can help with budget issues, but much of P3’s potential value is as a tool to improve O&M and to integrate design, construction, O&M and disposition to maximize the efficiency of the structure’s use. P3s should not be viewed as a cure-all for public-sector budgets, but should be viewed instead as an additional option to fulfill public-sector facilities requirements. P3s should be viewed as another procurement model alongside design-build, integrated project delivery and early contractor involvement to be utilized when appropriate for a specific project. As most government construction/development projects require engagement by both the public and

private sectors, it may be best to characterize the approach discussed here as design-build-finance-operate-maintain (DBFOM).

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P3 has a number of potential benefits for the public sector. From a budgetary standpoint, it can reduce initial capital costs. In the P3 model, instead of the public partner having to outlay the full costs to design and construct a new structure upfront, the private partner is responsible for the initial costs. Once the structure is in use, the public entity pays a contractual amount to cover

usage of the space and amortization of design and construction costs. This assists with the budgeting process because the public entity has a predictable budgetary amount to pay for use of the space. Risk is also shared. Rather than the taxpayer playing the role of final payer in the event of overages, the P3 agreement stipulates a level of service for a particular payment, meaning that overages in O&M impact the profitability of the private partner. Risk-sharing arrangements in the P3 agreement also can incorporate how design and construction overages are allotted.

Highlighting the Benefits

During the roundtable, a number of panelists commented that governments are better at building than maintaining. From a political standpoint, ribbon-cuttings are much more visible than performing routine maintenance, and it is not uncommon for governments to reduce their O&M budgets to help preserve their capital budgets. One panelist noted that public-sector O&M is often driven by emergencies rather than scheduled maintenance. Conversely, in the P3 model, O&M costs are a basic part of the partnership agreement. The private partner is contractually bound to provide a minimum level of service. P3 agreements can specifically spell out the required availability of components, such as elevators, during particular times, and can set financial penalties if a certain level of performance is not met under the agreement. This means that a building's O&M budget cannot be cut, and there is a strong incentive for the private partner to maintain the level of service for key aspects of the structure.

The P3 process also provides an opportunity for significant efficiency gains. One of the more traditional models that the public sector uses for real estate procurement is design-build. Alternatively, the P3 presents either a design-build-O&M or design-build-O&M-disposition model. The benefit is that the private partner has a greater incentive to factor in O&M costs into the design and construction phases. Instead of focusing on the most efficient way to deliver a completed structure, the private partner has a strong incentive to optimize the project by balancing construction with O&M, and is more likely to add to initial design and construction in order to produce O&M savings over the life of the structure.

A further added benefit to P3s is the opportunity to include disposition as part of the agreement. With the exception of the U.S. Department of State, most federal agencies are not allowed to keep the proceeds of the sale when they dispose of property. Because they don't benefit from the sale, the agencies often discount disposition of the property as a factor when making asset management and planning decisions. Even if the P3 agreement does not include disposition, it

may improve the re-use opportunities for a facility. P3 agreements can be written so that the building is guaranteed to be at a certain condition at the end of the agreement. One of the roundtable participants cited an example where a P3 agreement had a requirement for the building to be at least 85% condition at the end of the agreement term. Public-sector partners can employ a third-party consultant to monitor the building's condition.

Panelists noted one way to facilitate the expansion of P3 use: present P3 as procuring a service instead of procuring a project. Discuss P3 as a "total cost of ownership" for the asset, with design, build and O&M costs all baked into the agreement. At the same time, present how the P3 model simplifies the process and how the public-sector partner only has to deal with one entity, instead of separate architectural, construction and facilities management contractors.

High-Performance Buildings

The P3 model can also advance the implementation of high-performance buildings. The public sector played a leading role in encouraging the development of Leadership in Energy & Environmental Design (LEED)-certified buildings. Similarly, P3s also are a vehicle that can be used by the public sector to encourage the construction and operation of high-performance buildings. Private partners have an incentive to seek efficient buildings. As an element of the O&M costs, the private partner is responsible for the energy costs for the building. Additionally,

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the public partner can stipulate as part of the contract that the structure to be delivered must be a high-performance building. The public partner is able to take advantage of the innovation present in the private sector by working with a private partner. Placing public-sector offices in high-performance buildings also supports objectives such as reducing the government's carbon footprint, saving money through greater efficiency (which reduced energy costs), and the increased productivity that is tied to high-performance buildings.

Challenges

There are, however, still a number of challenges that are holding back wider usage of the P3 model. In the United States, to date, public entities at the state level are championing P3, which means that there could be 50 or more different P3 models to follow, unless a standard model is set now. There currently is no unified state model, and the state models all differ from a potential federal model. This adds a layer of complexity to implementing P3 efforts across multiple states. The roundtable panelists contrasted this with the Canadian model; the Canadian federal government created a P3 template, which the provinces can use and adjust.

P3 implementation in the United States has resembled more of a stop-start process rather than a smooth ramp up. In some states, there has been backsliding, rather than progress. Public partners and many domestic firms do not have experience because there have been a limited number of P3 projects, and those that have occurred in the U.S. market to date have primarily been related to transportation infrastructure rather than buildings.

One of the reasons P3 is used more widely in the United States for transportation is because it is easier to monetize. Specifically, the concession is often easier to define in an infrastructure project. One important distinction is between the asset and the service provided. The key government service is providing education (the service), not providing the building (the asset) for education. Access also complicates the issue. Charging a toll for the use of a road is acceptable, but charging for access to a courthouse would not be.

Public perception also may be a potential issue. Some citizen groups and politicians have hardened their opinions against public expenditures; one concern is the perception that

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taxpayer money is being used to fuel private-sector profit. When presenting a P3 model, it is important to emphasize any efficiencies the public sector will gain by pairing with the private sector.

There are several concerns tied to procurement. In the 1990's, when it came into fashion, the design-build model was seen as an important innovation. Traditional design-build helps to minimize construction costs, but sometimes it can

be at the expense of future O&M costs. P3 or DBFOM should be viewed as an alternate approach that may be more beneficial for some projects. Meanwhile, public-sector financial decision makers tend to view projects through the one-year prism of annual budgets and funding. This presents a disconnect for the real estate asset managers, who have assets that are often in service for decades. One of the procurement issues will be how to score the P3 option against other options such as leasing or acquisition.

The roundtable panelists emphasized the importance of P3 as a true partnership. The timing of when the public entity brings in the private partner can be critical, so the earlier, the better. The panelists also pointed out that public-sector assets are in many ways unique from generic commercial space. Factors such as security and continuity of operations often carry significantly greater weight with public-sector agencies and can alter the ultimate building requirements.

Next Steps

Utilizing P3s for buildings in the United States is largely in its infancy and many public-sector officials do not have firsthand experience. Therefore, roundtable panelists emphasized the role of educating stakeholders. They recommended creating a P3 guide for the public sector. Written from the public-sector perspective, the guide would discuss the benefits and challenges of P3s. It would cover how issues such as cost overruns, maintaining levels of service and financing work, and explain how P3 works within existing government procurement models. One panelist emphasized that brevity and good graphic sensibility in the document would be important.

One of the simplest, and important, steps in the P3 educational process will be to develop a common nomenclature to help standardize terms. Participants recommended providing diagrams of workflows to help clarify roles and timing of the steps in the P3 process. Providing case studies, examples and best practices from international P3 projects would be helpful, but



U.S. examples would have the most impact. Panelists also suggested having a set of listening sessions with the public sector to seek their feedback on P3s in order to address their questions and concerns.

Following the compilation of a common nomenclature, the listening sessions and the publication of the guide, the roundtable participants recommended going on a road show to help disseminate information regarding the P3 process, high-performance buildings and how to accomplish both, where appropriate, within the public-sector process. The participants raised an additional option to consider: a possible education campaign for members of Congress. Federal procurement guidelines play a major role in shaping how public-sector real estate is managed, and discussions with members of Congress could help to encourage greater flexibility in the procurement process to enable P3 and high-performance building projects to move forward more easily.

Conclusion

Effective implementation and utilization of P3s and other procurement methodologies that advance the finance, delivery and operation of high-performance buildings requires the engagement, leadership and advocacy of many stakeholders from across the buildings industry. NIBS and RICS will continue to facilitate the dialogue and support development of the education and outreach tools necessary. Additional activities are planned for early 2016 with formal findings and recommendations to be released at the RICS Summit of the Americas in April.