

# ***Demystifying Public-Private Partnerships***



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- **Background & Introduction**  
**Brian Oakley – *Scully Capital***
- **Procurement Basics for Public-Private Partnerships**  
**James Binder - *ARI***
- **Commercial / Legal Considerations**  
**Dan Elias – *Elias Group***
- **Meeting Public Needs Through Public-Private Real Estate Partnerships**  
**John Stainback - *SPPRE***
- **Questions and Answers**



**ARI**



**SPPRE**

# Getting Through the Procurement Process: Procurement Basics for Public-Private Partnerships



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## Options for Public-Private Partnerships

### 1. Public Ownership

- Private Operations
  
- Private Design/Construction
  - Improvements
  
  - New Facilities
  
- Public or Private Financing

### 2. Private Ownership and Provision of Services by Private Company or Utility

### 3. Lease/Sale Facilities and Provision of Services by Private Company or Utility

## Why Consider a Public-Private Partnership?

- **Potential Cost Savings**
  - **Design/Construction of Capital Improvements**
  - **Operations**
- **Risk Reduction**
- **Improved Performance**
- **Need for Alternative Financing**

## What is Procurement?

- **Setting Objectives**
- **Selecting a Procurement Strategy**
- **Defining Service and Key Terms and Conditions for Business Arrangements**
- **Preparing the Request for Proposals**
- **Interacting with Prospective Proposers**
- **Evaluation of Proposals**
- **Selection and Contract Negotiations**

## Objectives of Procurement Process

- **Attract Competitive Proposals from Qualified Parties**
- **Obtain Attractive Terms that Meet Procurement Objectives**
- **Develop Equitable Contract that Fairly Serves Both Parties**

## Role of Consultants

- **Provide guidance and information that allows informed decision making (Consultant often has advantage of experience with similar projects and circumstances and can “steer” client away from pitfalls).**
- **Provide independent advice, considering both the public and private perspective. This is valuable in setting attainable goals, preparing the RFP, contract negotiations and in dispute resolution.**
- **Provide assistance in setting strategy, preparing RFP, evaluating responses and negotiating contracts.**
- **Expertise assists communities achieve an even playing field in discussions/ negotiations with proposers.**

## Procurement Approaches and Strategy

- **Request for Qualifications (RFQ)**
- **Request for Proposals (RFP)**
- **RFQ/RFP [Two Step]**
- **Hybrid Approaches**
  - **Request for Qualifications and Expressions of Interest (RFQEI)**
  - **Draft RFP (for comment)/Final RFP**
  - **Expanded RFP - Menu Approach**

## Request for Qualifications (RFQ)

- **Objectives**
  - To determine if there are sufficient, interested qualified proposers in the marketplace
  - To choose the best qualified proposer for contract negotiations
  - To “short list” proposers, prior to requesting a cost proposal (two-step procurement)

## Request for Qualifications (continued)

- **Advantages**
  - **Allows determination that qualified proposers exist**
  - **Provides assurance that the service/terms requested will draw sufficient number of cost competitive proposals**
  - **If used to short list in two-step procurement, it allows more attention to be focused on only qualified proposers for subsequent evaluation of technical and cost proposals**
  - **Less costly to prepare and for proposers to respond to than an RFP**

## Request for Qualifications (continued)

- **Disadvantages**
  - Technical and cost information not provided
  - If used to select qualified proposer for contract negotiations, then there is not the benefit of competitive cost proposals
  - If used as part of two-step procurement, the procurement schedule is prolonged
- **Application**
  - Most useful to test strength of marketplace for “innovative” procurements; e.g., new service or business arrangement not presently offered

## Request for Proposals (RFP)

- **Objective**
  - To seek competitive technical and cost proposals from qualified proposers meeting service needs and terms and conditions of contract
- **Advantages**
  - Typically shorter schedule, one-step procurement process
  - Allows for open, cost competition
  - Provides qualifications, technical, cost and business information needed to make a complete evaluation of proposals received

## Request for Proposals (continued)

- **Disadvantages**
  - **Requires greater effort and cost to prepare RFP, as it is necessary to define service requested and key terms and conditions of contract**
  - **Is costly for proposers to prepare a response**
  - **Can be limiting in restricting proposer's flexibility and ideas**

## Request for Proposals (continued)

- **Application**
  - **Most useful in situations:**
    - **Where marketplace is mature with ample number of qualified proposers**
    - **Where service and key terms and conditions of contract can be well defined; i.e., you “know what you want”**
    - **Where it is most probable that the project will proceed**

## Hybrid Procurement Approaches

- **Request for Qualifications and Expressions of Interest (RFQEI)**
  - **Cross between RFQ and RFP; it provides qualifications, technical approach, key terms and conditions of contract, and cost information (estimates, not guaranteed prices).**
  - **Application**  
**Most useful when not certain regarding specific service and terms and conditions of contract, but want more than qualifications information; e.g., technical approach and cost estimates, so that a decision can be made to enter into contract negotiations with the benefit of cost and technical comparisons or when seeking to determine if contracting for a particular service is beneficial as compared to other options.**

## Hybrid Procurement Approaches (continued)

- **Draft RFP/Final RFP Process**
  - **One step less than Final RFP**
  - **Application**  
**Most useful when know most all specifics of service and key terms and conditions of contract, but want to check with marketplace to ensure that what is being asked for is “doable”; useful to solicit marketplace comments to strengthen Final RFP;also useful to stimulate interest in procurement process**

## Hybrid Procurement Approaches (continued)

- **The “Menu” Approach for an RFP**  
**This is an expanded RFP approach to allow proposers to propose more than one service option; e.g., sale, lease or contract operations**
  - **Application**  
**Most useful when want formal technical and cost proposals, but are not certain which service option is most advantageous**

## Choosing the Best Approach to Meet Your Needs

- **Inventory Available Information**
- **Know Where You Are Regarding Definition of Services, Key Terms and Conditions of Contract**
- **Set Objectives**
  - **to test marketplace for qualified proposers**
  - **to establish a qualified proposer list**
  - **to seek technical and cost information without a formal proposal effort**
  - **to seek technical and cost proposals**

## Be Cognizant of State Procurement Law

**Can Limit Choice of Type of Procurement or Specify How Procurement is to be done.**

**(For example, in New York and Massachusetts, cannot do design/build or design/build/operate delivery for publicly owned projects (need special State Legislation to do so).)**

## Typical Procurement Schedule

A typical procurement schedule for an RFP is as follows:

- Set procurement objectives and strategy	1-2 months
- Prepare/release RFP	2-3 months
- Pre-bid conference, response to questions on RFP, issue addenda to RFP	concurrent with preparation of proposals
- Respondents prepare proposals	3 months
- Proposal review and selection of proposer for contract negotiations	2 months
<b>SUBTOTAL:</b>	<b>8-10 months</b>
- Contract Negotiations	1-6 months
<b>TOTAL:</b>	<b>9-16 months</b>

## Procurement Incentives

- **Start with attitude of “trust” necessary for a successful partnership**
- **Adopt an honest/sincere approach conveying that contract will be let as a result of the procurement process**
- **Demonstrate that there is a fair and even playing field for all proposers; i.e., no favorites, no exclusionary evaluation criteria biased toward a particular vendor**

## Content of RFP

- **Introduction-background/ objectives**
- **Facility/asset description (existing/proposed)**
- **Scope of supply/service, including performance specifications/guarantees**
- **Draft contract or key terms and conditions of such**
- **Procurement process and schedule**

## Content of RFP (continued)

- **Instructions to respondents: content of proposals to be submitted (technical and cost proposals)**
- **Rights of party requesting proposals**
- **Evaluation process/evaluation criteria**
- **Appendices (e.g., key information describing existing facilities or plans for new facilities)**

## Announcing / Advertising

- **Why advertise?**
  - Remember, you are selling as well as buying!
  - Competition means benefits to the community
  - Take advantage of what the private sector offers
- **Where advertise?**
  - Locally and nationally
- **What's in the Ad?**
  - The salient facts only
- **Be careful about notifying only selected vendors in advance of the Advertising**

## Pre-Bid Conference and Facility Inspections

- **It's Purpose?**
  - An information exchange
- **Why is it beneficial?**
  - Knowledge means better quality proposals
- **When should it be conducted?**
  - Early in process

## Addenda to the RFP

- **Addenda should be issued for the following**
  - **Responses to questions, written or oral**
  - **Changes in procurement process or schedule**
  - **Changes in scope or submittal requirements**
  - **Notes from Pre-Bid Meeting**

## Proposal Evaluation/Selection

- **Establish Selection Committee**
- **Conduct Non-Cost Review**
- **Conduct Cost Review**
- **Value Analysis**
- **Contact References**
- **Interview**
- **Visit Referenced Facilities**
- **Selection**
- **Contract Negotiations and Execution**

## Documenting the Selection Process

- **Importance of Documentation**
  - to clearly “spell out” basis for selection
  - to respond to inquiries
  - to support requests from interested Government agencies
  - to provide documentation to protect against challenges
- **Document Evaluation Process, Evaluation Criteria, Ranking of Proposals and Reasons for Rankings**
- **Hold debriefing for those not selected, if requested**

# Getting Through the Procurement Process: Commercial / Legal Considerations

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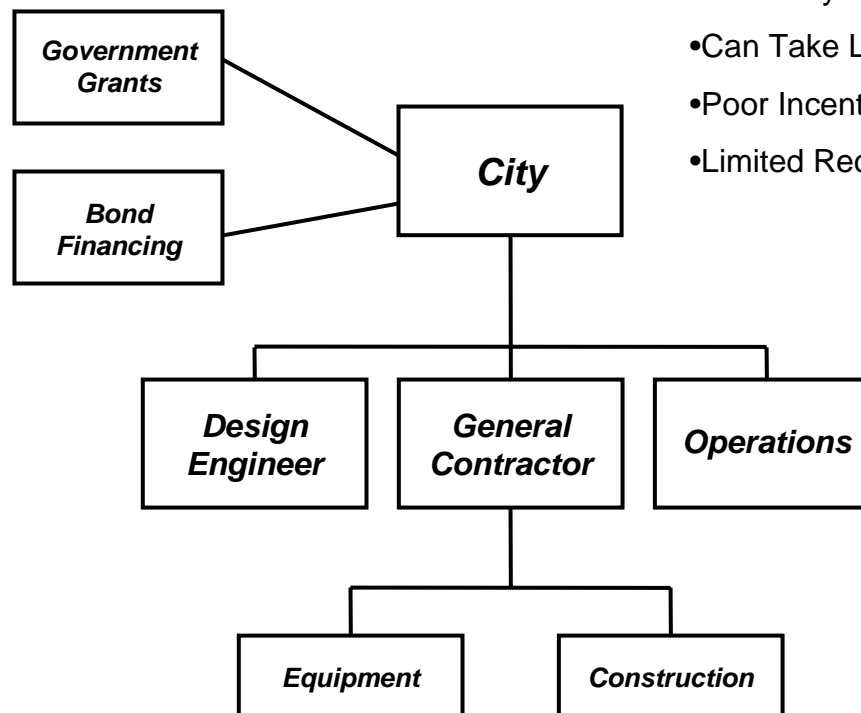
## Agenda

- **Selecting the Procurement Process**
- **Commercial / Legal Considerations – What to Include in the RFP?**
- **Typical Project Risks**
- **Allocating Project Risks – What is Fair?**
- **Other Key Project Agreement Terms**
- **Ingredients for Long-Term Success**

## Selecting the Procurement Process – Traditional Project Delivery Approach

### *Advantages*

- Maintain Control Over Process
- Change-Orders Easily Accommodated
- Well-Tested/Universally Accepted
- Competitive Bidding at All Levels



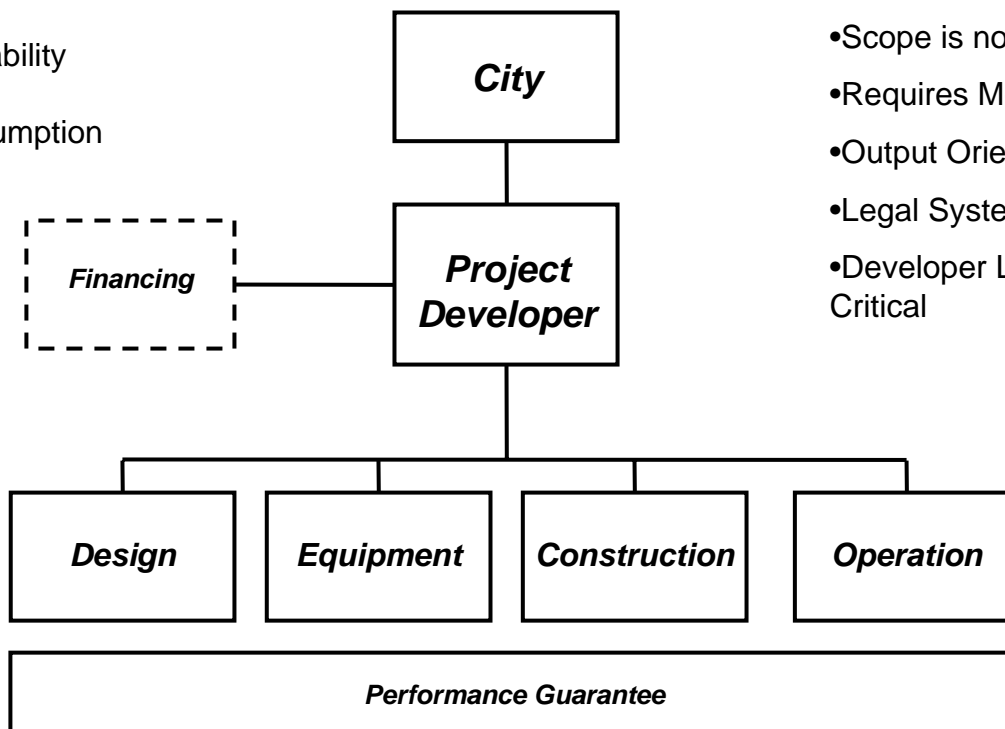
### *Disadvantages*

- Generally More Costly
- Can Take Longer
- Poor Incentive Structure
- Limited Recourse if Things Go Wrong

## Selecting the Procurement Process – Alternative Delivery Models: DBO

### *Advantages*

- Single Point of Accountability
- Private Sector Risk Assumption
- Acceleration Delivery
- Reduced Costs



### *Disadvantages*

- Scope is not clearly defined
- Requires More Planning for Procurement
- Output Oriented
- Legal Systems Need to Adapt
- Developer Long Term Financial Health is Critical

## Selecting the Procurement Process – Procurement Laws

- **State laws differ significantly**
- **“Best Value” Procurements have not been universally adopted**
- **Some states require competitive bidding for each trade**
- **Some states have “home rule” legislation enabling a local municipality to decide on the structure of the procurement process where state or federal funds are not involved**



## Commercial / Legal Considerations – What to include in RFP?

- **Draft Agreement**
- **Risk Allocation Matrix – key contract principles and proposed allocation of responsibilities**
- **Summary of expected contract provisions – to be included in draft agreement provided by the Proposer**

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## Typical Project Risks

- **Permit – Construction and Operations**
- **Design & Technology**
- **Construction/Project Completion**
- **Operations**
- **Deal Economics/Financials**
- **Force Majeure**

## Typical Project Risks - Design-Build Risks

- **Problem – Scope of Work Cannot Be Defined Clearly**
- **Budget Bust**
- **Unforeseen Conditions**
- **Delays**
- **Inferior Quality**

## Typical Project Risks - Operations Risks

- **Permit Compliance**
- **Capital Projects**
- **Repair & Replacement**
- **Change in Law**
- **Uncontrollable Circumstances**
- **Cost**

## Risk Allocation: What Is Fair?

- **Allocate Risks Based Upon**
  - **Fault**
  - **Foreseeability**
  - **Ability to Manage**
  - **Incentive Approach**

## Risk Allocation - Fault Standard

- **Each Party Should Be Responsible for the Consequences of Its Own Actions, or Inactions**
- **Standard Does not Address Unforeseen or Unknown Circumstances**

## Risk Allocation - Foreseeability Approach

- **“The Contractor should only price for those risks which an experienced contractor could reasonably be expected to foresee at the time of tender” ICE, 1970**
- ***Advantage:* Eliminates Pricing Costly and, Maybe, Unnecessary Contingencies**
- ***Problem:* Competitors May Gamble and Assume Risk without Properly Pricing It**

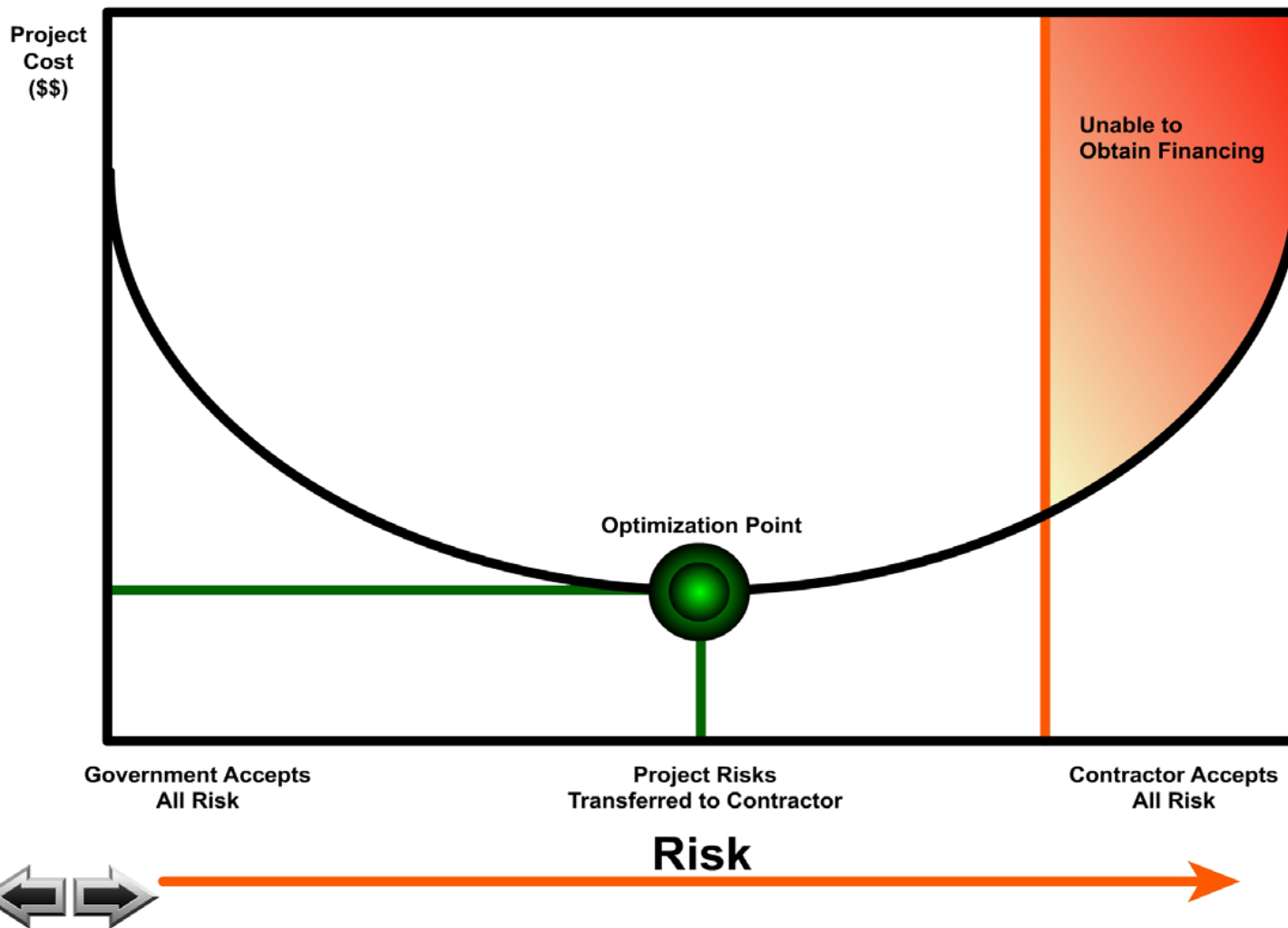
## Risk Allocation - Management Approach

- Risk Belongs to the Party Best Able to Evaluate and Control It
- *Advantage:* The Party Best Able to Manage the Risk Can Minimize Both the Occurrence and Severity of the Risk for All Parties Involved

## Risk Allocation - The Incentive Approach

- **Risks Should Be Placed on the Party Most in Need of Incentive (Presumably Already the Ability) to Prevent and Control Them**
- ***Problem:* Competitors May Gamble and Assume a Risk without Either Properly Evaluating It or without the Financial Ability to Absorb It, All for a Chance of a Bigger Payday**

## Optimum Project Risk Allocation



## Allocating Project Risks – What is Fair? Risk Allocation Matrix for Typical DBO & O&M Water/Wastewater Projects

Risk Type	G	O	S	Comments G – Government’s Risk O – Operator’s Risk S – Shared Risk
Design/Technology	X	X	X	Depends on Project Delivery Method
Permit Procurement (Construction, Ownership & Operation)	X	X	X	Environmental permits are typically procured and renewed by system owner. There is a trend to name the Operator as co-permit holder on NPDES permits.
Financial (Merchant & Credit Risks)	X	X	X	Depends on specific circumstances and deal structure. Contract Price, savings or enhanced revenues may be guaranteed by Operator
Force Majeure	X			Operator absorbs its own business interruption costs

## Allocating Project Risks – What is Fair? Risk Allocation Matrix for Typical DBO & O&M Water/Wastewater Projects

Risk Type	G	O	S	Comments
Operations/Permit Compliance			X	At a minimum, Operator will provide fine protection.
Changes in Law	X		X	Under limited circumstances risk may be shared depending on Operator's ability to hedge against it.
Asset Management – Routine Maintenance		X		Cost included in base fee in most cases.
Asset Management – Repair & Replacement	X	X	X	Operator may assume this risk either with a cap or without a cap. Cap may be a single item cap or a total cap. With long term O&M contracts, trend is to shift this risk to the Operator.
Capital Projects	X			Cost of System expansions or improvements are typically absorbed by the Government.

## Allocating Project Risks – What is Fair? Risk Allocation Matrix for Typical DBO & O&M Water/Wastewater Projects

Risk Type	G	O	S	Comments
Equipment Failure	X	X	X	Depends on reason for failure
Changes in Influent Waste Stream Composition/ Industrial Pretreatment	X			The municipality is best able to control industrial discharges to its sewer system.
Changes in Utility Rates	X	X	X	Varies. Utility cost may be a pass-through item with a cap on total maximum cost. O&M contractor may be able to bargain for preferred rates because of purchasing power or teaming arrangements.
Changes in Tip Fees/Bio Solids Management	X	X	X	Varies. Contractor may bargain for preferred rates because of purchasing power.
Labor Unrest	X	X	X	Union and Non-union. Municipality may bargain for contract termination in the event of labor unrest.

## Other Key Project Agreement Terms

- **Concession Payments**
- **Qualified Management Contract Requirements**
- **Initial and Exit Asset Audits**
- **Performance and Financial Guarantees**
  - **Parent Guarantees**
  - **Performance & Payment Bonds**
  - **Letters of Credit**

## Other Key Project Agreement Terms

- **Indemnification**
- **Default Standards**
  - **Persistent and repeated failure**
  - **Material Breach**
  - **Non Payment**
  - **Insolvency**
- **Liquidated Damages**

## Other Key Project Agreement Terms

- **Termination**
  - **Convenience – Demobilization Costs**
  - **Force Majeure**
  - **Labor Unrest**
  - **Change of Law**
  - **Default**

## Other Key Project Agreement Terms

- **Alternative Dispute Resolution Methods**
  - **Technical Disputes**
  - **Independent Engineer**
  - **Arbitration**
  - **Mediation**
  - **Litigation**

## Ingredients for Long Term Success - What to Consider

- **What Is the Delivery System?**
- **Who Can Best Control?**
- **Who Can Best Manage?**
- **Does the Owner Want to Manage?**
- **Who Should Take the Default Position?**
- **What Is the Premium for the Transfer?**
- **Can the Transferee Bear the Risk?**

## Ingredients for Long Term Success - Keys to a Successful Project

- **Equitable Risk Allocation**
- **Reasonable Financial Security**
- **Attainable and Objective Performance Standards**
- **Well-Defined Work Scope and Division of Responsibilities**
- **Mechanism to Monitor Performance**



# Steps for a Successful Partnership: Meeting Public Needs Through Public-Private Real Estate Partnerships

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# Steps for a Successful Partnership: Meeting Public Needs Through Public-Private Real Estate Partnerships

## Presentation Overview

- I. Overview of the Public/Private Real Estate Industry**
- II. The Good News on the Public/Private Partnership Approach**
- III. The Bad News on the Public/Private Partnership Approach**
- IV. The Three Part Solution:**
  - 1) A Proven Pre-Development Methodology**
  - 2) The “Nitty-Gritty” Details**
  - 3) Alternative Solutions for Covering the Costs of Pre- Development Studies**
- V. The Eight Alternative Developer Solicitation Methods**
- VI. Advantages and Problems of the RFQ/Negotiate Method**
- VII. The Precarious Future of Public/Private Partnerships**
- VIII. Question and Answers**

## Scope of the Industry

- **The public/private development of needed public facilities and government sponsored commercial developments is now a \$50 to \$75 billion per year industry.**
- **All levels of government in the U.S. own real estate valued at \$5.3 trillion.**

## Type of Developments (TODs):

Included in the Annual \$50 Billion Public/Private Development Market

- **Government/University/School District Office Buildings**
- **Urban Mixed-Use**
- **Residential ( High-Rise and Garden Apartments)**
- **Hotel/Conference Centers and Convention Hotels**
- **Airport Facilities (Terminals, Air Cargo and Hotels)**
- **University Facilities and Student Housing**
- **Technology and Bio-Tech Parks**
- **Transit-Oriented Developments (TODs)**
- **Sports and Entertainment Facilities**



# Steps for a Successful Partnership: Meeting Public Needs Through Public-Private Real Estate Partnerships

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## Ten of the Current Largest Public/ Private Real Estate Projects in the U.S.

- **Pre-Development Phase**
- **Under Construction**
- **Construction Completed+**

## Pre-Development

### *Redevelopment of Mueller Airport (TOD): Austin, TX*

- **Site: 709 acres**
- **Office: 5M sf**
- **Housing: 4,000 units**
- **Retail: 300,000 sf**

### *Redevelopment of Bayonne Military Ocean Terminal (MOT): Bayonne, NJ*

- **A \$32 Billion Development**
- **18M sf**
- **Phased over 20 to 30 years**

## Under Construction

### *Victory Development: Dallas, TX*

- **Site: 72 acres**
- **Office: 4M sf**
- **Housing: 1,000 units**
- **Retail/Entertainment: 600,000 sf**
- **2 Hotels**
- **American Airlines Arena**

### *Redevelopment of Stapleton Airport: Denver, CO*

- **Site: 4,700 acres**
- **Office: 10M sf**
- **Housing: 12,000 units**
- **Retail: 3M sf**
- **\$4 Billion Retail**
- **20 year build out**

## Under Construction

### *The LA Sports and Entertainment District: Los Angeles, CA*

- A \$1 Billion Development
- Exp of Convention Center
- Hotel 47 story
- Two Apartment Tower
- Another Hotel
- Theater
- Note: Staples Center: Focal Point

### *Mission Bay: San Francisco, CA*

- Phase 1: \$295M Mixed-use development

### *Revitalization of Oakland's Waterfront: Oakland, CA*

- 19 miles of waterfront property
- A \$1.2 Billion Development

## Recently Completed

### *Walt Disney's California Adventure: Anaheim, CA*

- A \$4 Billion Development
- \$1.4B Theme Park
- \$550M Infrastructure
- \$177M Conference Center Expansion
- \$1.1B Freeway Expansion



## The Good News on the Public/Private Partnership Approach

### *From the Perspective of the Public Partner:*

- Reduce public ownership and development risks
- Reduces primary public partner capital investment
- Generates non-tax income and tax revenue
- Monetizes excess and underutilized assets
- Fully utilizes private partner expertise and creativity
- Often expands into “public-public” partnerships and additional public/private partnership
- Implementation schedule is accelerated



## The Good News on the Public/Private Partnership Approach

### *From the Perspective of the Private Partner:*

- Often public/private developments are high profile projects
- Jointly control a government-owned real estate asset available for the first time
- If needed, primary and secondary public partner provide capital and/or non-capital investments
- Reduce development cost and enhance cash flow
- Approval process is accelerated



## The Bad News on the Public/Private Partnership Approach - Problem

### *From the Perspective of the Public Partner:*

- Reduces control over design, delivery, and operation
- Reliance on a virtually unknown private entity
- Deal structure is perceived as not fair and reasonable sharing of costs, risks, responsibilities and economic return
- Private partner has the right to sell project to an unknown third party
- Economic return is primarily contingent on performance of private partner

## The Bad News on the Public/Private Partnership Approach - Problem

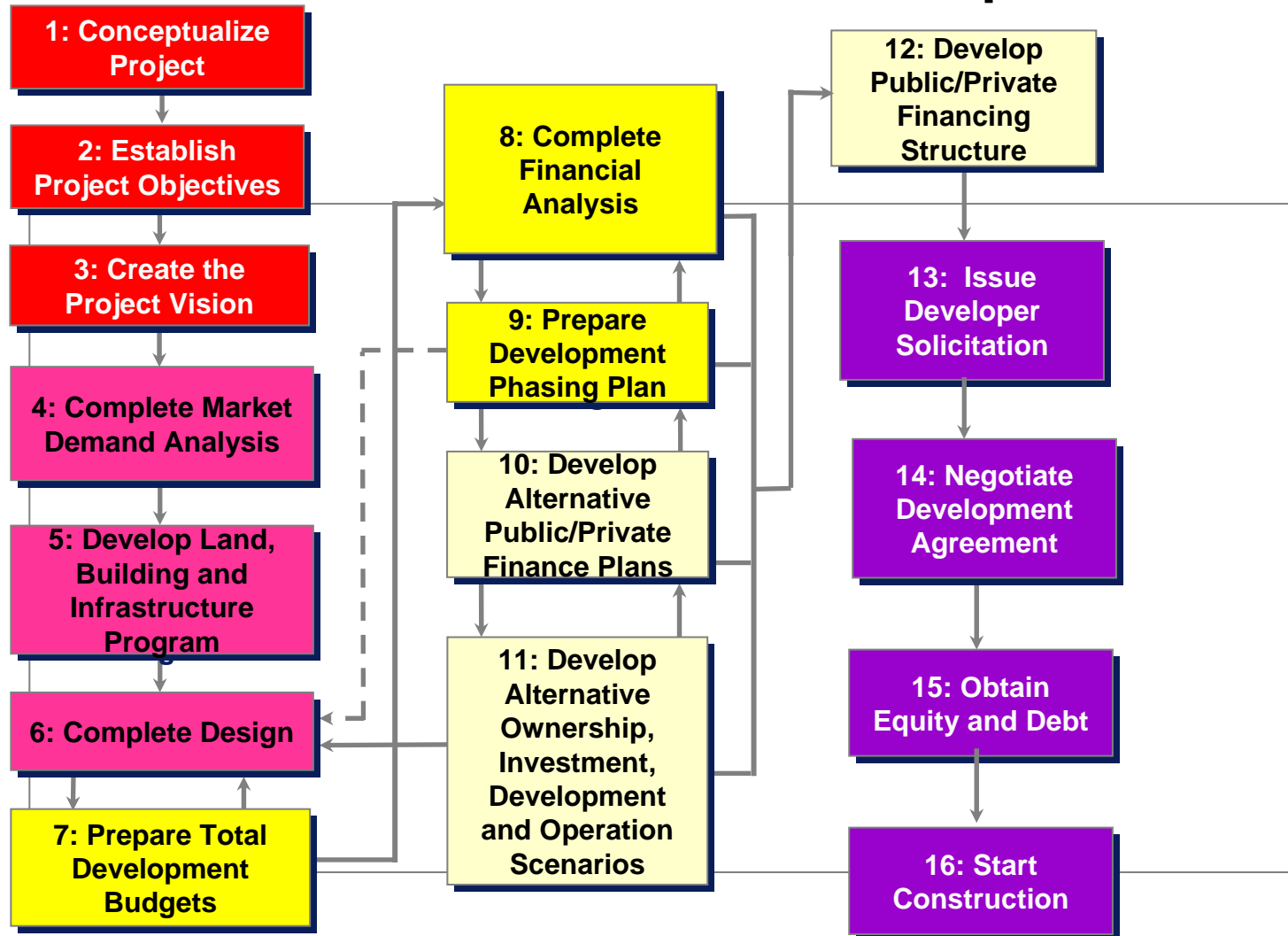
### *From the Perspective of the Private Partner:*

- **Substantial cost both in time and risk capital**
- **Often public partner is not prepared to structure, negotiate and implement**
- **Development site is either not under control, has environmental problems and/or is not entitled**
- **Public partner's expectations are not in sync with the marketplace**
- **Public partner is susceptible to political change**

## The Three-Part Solution

- 1) *A Proven Pre-Development Methodology*
  
- 2) *The “Nitty-Gritty” Details of the Pre-Development Process*
  
- 3) *Alternative Solutions to Cover the Costs of Pre-Development Studies*

## Stainback's Public/Private Pre-Development Process



## “The Nitty-Gritty Details of the Pre-Development Process”

**Tasks to be Completed Before Developer Solicitation is Issued:**

***Step 1: Project Conceptualization:***

- **Describe and/or graphically illustrate the project**
- **Identify the project site(s)**
- **Estimate the project scope**
- **Establish a consensus among project participants**
- **Determine the primary and secondary public partner entities**
- **Discuss alternative project deliver methods**
- **Identify single-point of responsibility for public partner**

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 2: Establish Project Objectives*

- Establish, prioritize and document the primary objectives of the project
- Document “Guiding Principles” for project

### *Step 3: Create the Project Vision*

- Develop a preliminary building program
- Prepare an urban design concept plan
- Prepare a perspective sketch to get people excited about the project
- Prepare a preliminary phasing concept

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 4: Complete Market Analysis*

- Hire an objective third party consultant to determine:
  - 1) Existing and future supply of the proposed land uses
  - 2) Future demand including specific amount of space and/or rooms
- Complete a preliminary financial proforma
- Prepare a development phasing concept

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 5: Develop Building Program*

Document the proposed public and private land, building and infrastructure program including:

- Land area
- Building uses and areas
- Parking
- Infrastructure required to support the proposed development
- Civic improvements required

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 6: Complete Design*

- **Complete a site analysis (physical and regulatory)**
- **Complete an analysis of the project site context**
- **Identify site environmental problems**
- **Prepare Schematic Design (SD)**
- **Prepare a development phasing plan for public and private projects**
- **Identify “Development Packages” for private developer(s) and public partner(s)**
- **Identify required design and development approvals**

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 7: Prepare Development Budget and Schedule*

Prepare a detailed “Total Development Budget” for phase 1 public and private projects, including all hard and soft costs:

#### Hard Costs:

- Land cost
- Site preparation
- Building demolition, if any
- Infrastructure improvements
- Site remediation, if any
- Landscaping
- FF&E
- Tenant Improvements (TI)

#### Soft Costs:

- Professional fees
- Transaction fees
- Development mgmt. fees
- Interest during construction

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 8: Complete Financial Analysis*

- **Determine assumptions**
- **Assume debt/equity split**
- **Complete 10 year financial model**
- **Determine ROC and IRR**
- **Calculate DCR and maximum loan amount**
- **Calculate maximum bond supported by TIF**
- **Complete risk and financial return sensitivity analysis**
- **Begin brainstorming how to solve shortfall, if any**

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 9: Prepare Development Phasing Plan*

- Illustrate how the project can be developed over time based on market condition, financial sensitivity analysis and ability to obtain capital investment from public and private partners

### *Step 10: Develop Alternative Public/ Private Finance Plans*

- Identify potential sources of public capital and non-capital investment
- Reduce development costs and/or enhance cash flow
- Discuss participation by “Secondary Public and Private Partners”
- Structure “Public-Public Partnerships” and/or expand the primary public/private partnership

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 11: Develop Alternative Ownership, Investment, Development, and Operation Scenarios*

Steps 9, 10, and 11 are highly interrelated. These steps should be completed concurrently. Identify alternative ownership, investment, development and operation scenarios for the primary and secondary public and private partners. These scenarios should address:

- Level of responsibility
- Level of risk
- Level of control
- Required capital and non-capital investment
- Return on investment
- Ability to obtain equity and debt
- Implications on project schedule

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 12: Develop Public/Private Financing Structure*

Prepare a diagram of the cash flow and legal interrelationships between the following key project participants:

- **Primary public and private partners**
- **Key secondary public and private partners, if any**
- **Construction contractor**
- **Operator or facility manager**
- **Issuer(s) of debt**
- **Trustees of bonds**
- **Major tenant(s)**

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 13: Issue Developer Solicitation*

#### **Predevelopment Process Places Public Partner in a Position of Strength**

- **Public partner is assured that building program is market driven**
- **Many design issues are addressed prior to RFQ and/or RFP**
- **Development budget incorporates hard and soft costs**
- **Financial analysis reveals return/ shortfall**



# Steps for a Successful Partnership: Meeting Public Needs Through Public-Private Real Estate Partnerships

## “The Nitty-Gritty Details of the Pre-Development Process”

### *Step 13: Issue Developer Solicitation*

#### **Predevelopment Process Places Public Partner in a Position of Strength (cont'd)**

- **Most advantageous public/private finance plan is determined prior to RFQ and/or RFP**
- **Most advantageous ownership/investment position for the public partner(s) is determined prior to RFQ and/or RFP**
- **Public partner can better evaluate developer proposals**
- **Public partner is less dependent on developer and can negotiate from a position of strength**



## The Advantages to Solution #1

- **Increased interest in the development community**
- **Increased competition among developers**
- **Ability to focus on deal structuring (not data gathering)**
- **Public and private partners have confidence in project**
- **Public partner expectations in sync with market**
- **Accelerate the selection and negotiation process**

## The Eight Alternative Developer Solicitation Methods

- **Traditional RFP**
- **Pre-qualify Developers/RFP**
- **Two-step: RFQ/RFP**
- **Three-step:RFI/RFQ/RFP**
- **Interview/RFQ/RFP**
- **RFQ with Option to Negotiate or Issue RFP**
- **RFQ/Negotiate**
- **Sole Source**

## Advantages of the RFQ/Negotiate Method

- **RFQ maintains the required competitive selection process**
- **Substantially reduces the time required to be selected**
- **Public and private partners quickly become a team**
- **Reduces risk of predevelopment investments**
- **Provides opportunity to structure “public-public” partnership(s)**
- **Developers are much more likely to participate**

## Problems with the RFQ/Negotiate Process

- **Public partner often not fully prepared to structure, negotiate and implement**
- **Marginal information to fully assess opportunity and public partner**
- **Negotiations take place in the media**
- **Public and private partner is not yet fully committed to project**

## The Precarious Future of Public/Private Partnerships

- **The future looks bright. Public partners have increasing confidence in the public/private partnership approach, but there are looming problems:**
  - **The pre-development process is far too lengthy**
  - **The solicitation process requires high-risk investment by the potential private partners**
  - **Many public partners are not ready to issue an RFQ or RFP (they jump from Step 1 to Step 13)**

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## The Precarious Future (cont'd)

- **Public partners are not allowing private partners to be creative**
- **Increased voter control over public investment**
- **Public and private partners are not utilizing the enormous creativity and flexibility available**
- **Expectations of public partner are often not in sync with the market**
- **Many times, public partner expects private partner to incur all of the risks, costs and responsibilities**



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## Questions and Answers