Public-Private Partnerships

In recent years, States and local governments face the ever-increasing challenge of addressing infrastructure needs, including the need to repair or replace aging infrastructure and the need to construct new facilities, all within an environment of limited resources. In addition, local government professionals have long since recognized the awkward, and sometimes inefficient standard procurement method of design-bid-build delivery methods and have sought more innovative, creative project delivery methods.

In response to these challenges, the State of Virginia joined a large number of other states in the nation and adopted legislation authorizing the use of P3's, granting responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use. Importantly, projects qualifying are only those where there is both a public need for the facility, and clear evidence that private involvement will provide the project in a timely or cost-effective fashion.

In Virginia, there are two forms of enabling legislation providing a statutory framework for P3's: The Public-Private Transportation Act of 1995 (Title 56, Chapter 22 of the Code of Virginia)(PPTA), and the Public-Private Education Facilities and Infrastructure Act of 2002, as amended (PPEA). As the title implies, PPTA's are strictly about transportation projects. PPEA's, conversely, grant local governments the authority to create P3's for the development of a wide range of projects for public use, including education facilities, buildings or facilities that meet a public purpose, utility and communications infrastructure, technology infrastructure, etc.

PPEA's can take many forms. At the most basic level, the project can be delivered using the "Design-Build (DB)" method, thus providing the primary benefit of moving away from the more traditional "Design-Bid-Build" methodology. Other iterations include: "Design-Build-Finance (DBF)" where the contractor is providing financing; "Design-Build-Maintain (DBM)" – contractor maintains facility; Design-Build-Finance-Maintain (DBFM); Design-Build-Finance-Operate (DBFO); and finally, "Design-Build-Finance-Operate-Maintain (DBFOM).

The particular form of P3 undertaken will of course depend on the project. The DB form bundles both design and construction into one procurement and contract, reducing project delivery time while simultaneously reducing project delivery costs. Arguably, a contractor has no incentive to cut corners with materials or specification in the design phase because it will also be constructing the facility. When issues arise during construction, the DB model precludes finger pointing because the same contractor is responsible for both design and construction. The same logic applies when adding financing, operations and maintenance to the design-build bundle – e.g., no incentives exists to use cheaper materials that might result in higher operating costs later. As regards private sector financing, it is important to recognize that financing is not funding. A common misconception about P3's is that the private sector is providing free money for infrastructure projects. The private sector views P3's as investments, and repayment of the investment plus a profit is required.

A P3 need not fall within the formal structure of a PPEA. As recent as 2017, legislation now enables localities to execute a project using the design/build delivery model, provided they can demonstrate that such a delivery model will be more cost-effective than the more traditional design-bid-build model.

Larger localities, such as Fairfax County and the City of Newport News, have also engaged in P3's by establishing special oversight teams or institutions such as industrial development authorities.

Staff believes that PPEA's provide a credible, well-defined framework for considering projects that include public infrastructure or buildings and may benefit from private sector involvement. We believe that the adoption of PPEA guidelines as proscribed by the state, will put the County in a position to receive both solicited and unsolicited proposals that may ultimately result in a more successful, innovative project, not otherwise likely under the more traditional methods of procurement. Not all projects lend themselves to a P3 structure, and certainly not all project proposals will result in the best interest of the County; however, the County and the Schools can always decide to reject any and all proposals so there may be little to lose and perhaps much to gain.

The following are excerpts from Virginia Tech's Center for Organizational and Technological Advancement (COTA) on P3s and significant economic/redevelopment projects:

……reviewing the experiences of Newport News, Va., which has been a leader in deploying public-private partnerships in the redevelopment arena…….

Newport News' redevelopment partnerships

In Newport News, most of the major partnerships have been in the arena of redevelopment. Three examples implemented over the past 20 years provide a basis for identifying several common variables.

- The "Downtown Partnership": In the early 1990s, the City of Newport News, its Economic Development Authority, and its Redevelopment and Housing Authority, along with Newport News Shipbuilding, and, in some cases, the Commonwealth of Virginia, executed a series of projects that resulted in several hundred thousand square feet of office and research space, multiple parking decks, a waterfront park, and, more recently, residential and retail space. The new Shipyard Apprentice School, which opened in December 2013, is the newest element.
- City Center at Oyster Point: City Center is a dramatic mixed-use development in the Oyster Point area of midtown. This ongoing partnership links the city and its Economic Development Authority to a private consortium led by Harvey Lindsey Commercial. Governed by a master development agreement, this public and private investment continues to transform Newport News.
- Brooks Crossing: Now under way along the Lower Jefferson corridor, this partnership unites the city and Aaron Brooks, as well as Armada Hoffler. The ambitious effort will bring private investment to an underserved area by leveraging large public infrastructure improvements and incremental private projects, all of which are mapped out with a master development agreement.

Different projects, common variables

Each of these projects started with the local government already having acquired some critical real estate in the general target area. In each case, it became obvious that the scale of site assembly and infrastructure upgrades—and the ultimate potential to create a new built environment—needed the financing, marketing skill, and practical knowledge of the private sector to move beyond an idea and get to a "bankable," well-grounded development.

In each case, there was a pre-existing public policy that targeted a particular area for major physical change. To varying degrees, that public policy took the form of comprehensive plan guidance, citizen and business advocacy to affect change within a targeted area, professional recommendations by staff and consultants, and a political consensus by elected officials to move an initiative forward. Moreover, the successful completion of each of these partnership projects required strategic thinking, political will, and administrative capacity on the part of public partners. These endeavors were also heavy on process and underscore the important point that similar partnerships should not be pursued without careful deliberation.

Lessons learned

Newport News staff has learned from these and other less successful partnership undertakings. Clearly, while every opportunity is unique, partnership efforts that grow out of well-defined community redevelopment needs are more likely to succeed than unsolicited proposals not linked to established priorities. When the effort is pursuant to a community consensus—such as strengthening a major employer, creating a mixed-use center for the economy of the future, or finding a way to encourage private investment in an area long suffering from disinvestment—implementing a successful partnership remains difficult but worth the effort.

Helpful Links:

https://www.vml.org/wp-content/uploads/pdf/City_Section_PPEA_Cameron.pdf

https://cdn.ymaws.com/www.nasfa.net/resource/resmgr/learning_series/P3_Success_Stories_Slides_-_.pdf

http://jlarc.virginia.gov/contracts.asp

https://www.fairfaxcounty.gov/budget/sites/budget/files/assets/documents/fy2019/adopted/cip/5-public-private-partnerships-joint-ventures.pdf

https://www.onvia.com/company/blog/5-examples-public-private-partnerships-p3-action

https://via.spia.vt.edu/2014/03/public-private-partnerships-trends-issues-and-policy-considerations-and-the-newport-news-redevelopment-experience/

https://planning-org-uploaded-media.s3.amazonaws.com/document/PAS-Memo-2017-09-10.pdf

https://uli.org/wp-content/uploads/ULI-Documents/Successful-Public-Private-Partnerships.pdf

http://www.ncsl.org/research/transportation/building-up-how-states-utilize-public-private-partnerships-for-public-multi-sector-vertical-infrastructure.aspx