



PUBLIC-PRIVATE PARTNERSHIP

An Industry Perspective

Many governments are today focusing on finding new ways to deliver and manage infrastructure and related services. The options that are being considered generally involve the private sector playing an increasingly significant role in development and ownership of infrastructure through joint ventures with the host governments and agencies. Governments in many countries are examining new ways to deliver a range of public services as diverse as water/wastewater facilities, roads, airports, jails and fire services. These projects have become known as public-private partnerships, or P3s.

P3s are complex arrangements for a variety of reasons which include the absence of competition to help regulate price and efficiency and the inevitable dislocation caused by a change of delivery in management systems. Key to the successful development of public-private partnerships will be an effective, fair and open procurement methodology.

In this early stage of our experience with P3 projects in BC, it is important to recognize some basic principles and guidelines associated with the process.

Conventional procurement approaches will generally not work for P3s. Procurement for P3 projects must be approached differently.

Conventional procurement by tender call is generally regarded as being fair and open. Public confidence is often based upon the use of well-known principles and standards which are widely applied. Procurement in a proposal setting (known as procurement by way of "Requests for Proposals" or by way of "RFP") must be undertaken to ensure fairness and openness using well-developed principles and customs.

Where project specifics are known, the tender method of procurement should generally be used because of its highly developed nature.

Host governments should develop a clear understanding of the RFP process for P3s before embarking upon P3s which will require use of an RFP. Host governments should publish policy guidelines for P3s setting forth how competition, transparency and fairness will be achieved. Host governments should sponsor forums and studies as part of an effort to institutionalize the RFP process with common practice and usage.

Where host governments are considering contracting out existing services through partnership arrangements with the private sector, the host government should first try to organize the services intended to be contracted out as "business units" which will later facilitate procurement efforts. A fair, open and accountable process for public-private partnership contracting free of favouritism, patronage and politics is fundamental to protecting the public interest.

To protect bidders, the host government should ensure that adequate steps are being taken to ensure competition and fair and equitable treatment in the procurement opportunity. Competition should be the key objective of the procurement process. Competition is facilitated through the use of a widely disseminated RFP call.

Sole sourcing, local content requirements and nationality limitations are incompatible with competition and should not be relied upon.

Pre-qualification procedures will often be in order to establish the qualifications of suppliers or contractors for a proposed particular RFP procurement.

Governments must resist using the RFP process simply to encourage internal efficiencies. Permitting 'office bids' will be seen by the private sector as unfair and will deter competitive bidding.

For the purposes of developing both requests for qualifications (“RFQs”) and the RFP itself, host governments should generally retain qualified technical, legal and financial advisers to assist them in what can turn out to be a complex process.

Host governments and procuring entities should fund a portion of bid costs for the limited number of prequalified proponents in complex RFPs.

Evaluation criteria and weighting should be fully described in the RFP documentation at the time proposals are sought.

In order to ensure projects are free of potential conflicts of interest, advisers acting for host governments must not be permitted to have any role in project execution or delivery.

The RFP solicitation document should contain sufficient information to permit bidders to thoroughly understand the objectives of the RFP as well as the details of proposed or planned management and operational requirements. The RFP documentation should identify how the procuring entity will deal with key items such as confidentiality, bid clarification and the relative weighting of evaluation criteria.

Where the procuring entity has determined that there are certain risks it will not accept under any circumstances, those risks should be set forth in the solicitation document.

For significant projects an independent expert should be appointed by the host government to ensure the process is conducted in a fair and fully accountable manner. A record of procurement proceedings should be maintained in the public interest as part of the fairness and transparency of the process.

Following selection of a private partner, the procuring agency should not re-negotiate any fundamental aspects of the RFP without reopening the bidding process.

The selection panel must be in a position to exercise its functions impartially and effectively. The selection process and final decision making should not, for example, be controlled by the ultimate public sector contracting entity.

As our knowledge and experience with Public-Private Partnerships projects evolves, the “rules of the game” will become more specifically defined. The BC Construction Association would be pleased to share its information and offer its perspectives to owners on process issues relating to this emerging method of procurement.

The Canadian Council for Public-Private Partnerships produces substantial material on this issue. For further information, such as the *Best Practices Guidelines for Initiating Contracts and Contracting with the Private Sector*, please contact the Council at:

Canadian Council for Public-Private Partnerships
One First Canadian Place-Ste. 3400
PO Box 130
Toronto, Ontario M5X 1A4
Telephone: 416-777-4891
Fax: 416-863-1716
Email: partners@pppcouncil.ca