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# Ways to Partner with the Federal Government

With the United States needing to get infrastructure projects going quickly, this is the time to employ the kinds of public/private partnering approaches that get projects underway faster and provide the government with better, smarter deals.

THE CLASSIC PUBLIC development model is based on a design/bid/build (DBB) approach that infers a public developer managing the process and employing standard public procurement solicitations and procedures. Put simply, if the government is not engaging private developers to represent the public owner, then the government is the developer. Public developers are government employees typically burdened with a bureaucracy defined by the DBB process. There are usually a procurement office and a site acquisition group, and a separate design operation and construction organization.

The DBB process is managed by the public developer, often called a project manager, who works through a procurement or contracting officer to acquire the services required for each phase of the work. In a series of steps, the public developer determines the requirements, procures the sites, designs the facilities, and constructs the projects. Each step has a procurement process of its own, each of which can run from several months to a year or more.

Overall, the public development process is typically significantly longer and costs more than the comparable process in the private sector. In the public sector, development is process driven, and the process is a function of the perceived requirements of the procurement system.

The best private development models borrow heavily from the DBB approach, but rather than being process driven, they employ a results-driven procedure that is usually significantly more interactive, efficient, and cooperative in its application. In the private development model, activities are typically run in parallel, and procurement processes are conducted much

more quickly. There also is much more extensive use of requests for qualifications (RFQs), a form of solicitation used widely in the private sector and by local governments, but rarely in the federal government. RFQs are targeted first at selecting the private developer partner and then at who will join the development team.

Construction managers, for example, are brought on board mainly based on their qualifications and experience with the kind of project involved in the solicitation. They typically will present fee expectations with their proposals, so price is a consideration in every procurement of a development team member. Selections of team members are often made, even for very large projects, in a month or less. The parties, like architects or construction managers, join the development team with the understanding that they will work together with private developers to create plans for the new facilities. In short, the development team, working with the public owner, determines what will be developed and how it will be accomplished within the budget established for the project.

By conducting activities in parallel and bringing all parties to the table early, private developers can achieve significant benefits. For example, by having the architects, engineers, and contractor available during site selection, the private developer can determine the relative suitability of each prospective site from a design and construction perspective. Or, simply having the contractor available during design is often invaluable in assessing the constructability of the project and in managing costs. Perhaps the most significant advantage of having early access to the construction manager is having the assurance throughout

the process that the project can be built on budget. The model for the private development process is one that allows market, tenant, and regulatory changes to be readily melded into the project's plan as the need for change becomes apparent.

In contrast, the public development model relies on requests for proposals (RFPs), solicitations for offer (SFOs), or invitations for bids (IFBs), forms of solicitation that require the government to specify what is to be procured and how the work will be done. The federal agency, along with its architect and perhaps other consultants, must decide the *what* and *how* of the project, and then the contractor bids according to those plans and specifications. The public DBB process can often result in aborted procurements when the construction bids come in above the amount available for the project. Under most public development models, the contractor is not at the table during the determination of requirements, site selection, and design. As a result, when the deal is bid, it may not be capable of being built for the appropriated funds.

In view of the Obama Administration's proposed stimulus program, there will be a significant increase in the flow of infrastructure deals emanating from the public sector. As a result, government staffs may not be in place to handle a significant increase in volume. Limited public staff using cumbersome public development processes does not augur well for bringing construction projects quickly to market.

A core principle of former Vice President Al Gore's reinventing government initiative begun in the early 1990s was that government often works best when it focuses on steering and leaves the rowing to the private sector. The current

requirement for getting development deals quickly to market requires that kind of perspective. If the government were to concentrate its attention on the role of owner and leave the developer role to its private developer partner, projects could be brought to market quickly.

In the ideal scenario, the government owner of the project would first assemble its team of advisers on public/private partnering procurements and contracting. An RFQ for a developer would be issued asking prospective developers to present their qualifications and fee expectations. In most cases, a developer likely would serve as a fee developer—that is, provide services for a fee similar to the way architects and construction managers now work for the government. That procurement of a private developer partner could take less than a month.

Typically, the selected developer would then issue RFQs for the architect and construction manager and recommend selections to the government client. Once selected, the principals for most development deals would be in place to start working together on the development plan. Depending on the deal, other specialists or consultants might be required and added to the team also using an RFQ process.

Procurement conflicts are virtually unknown when RFQs are the chosen procurement vehicle. With procurement cycles reduced to a month, the offeror's costs of pursu-

ing the business opportunity are minimal. Consequently, offerors have less to recover in a conflict and will choose to channel their effort into responding to the next RFQ rather than dealing with the hassle over the last. Using SFOs, pursuit costs typically run to several hundred thousand dollars, and frequently exceed \$1 million. With so much money being spent by offerors to prepare a proposal, and with all believing they have a reasonable expectation of getting the award, it may only be a matter of time before more and more runners-up begin protesting awards, especially since the cost of filing a protest is so low.

Once the team has been assembled, the public/private partnering process begins for the planning and implementation of the development. Firms have been selected to work as partners with the government rather than as mere conventional contractors. That tends to create a planning and development process that is more open, cooperative, and interactive, where activities run in parallel rather than serially. Everyone is working for a fee so there is less likelihood of an adversarial environment taking root, because one typically cannot earn more by producing less. Nor is compensation driven by the desire to generate change orders.

The final documentation of a development project based on a conventional procurement process may be very similar to that of one

## DIFFERENCES IN CONVENTIONAL CONTRACTING AND PUBLIC/PRIVATE PARTNERING

Conventional Contracting	Public/Private Partnering
<b>Procurement</b>	
Owner specifies <i>what</i> and <i>how</i>	Greater emphasis on <i>who</i> you want
"You are a contractor"	"We are partners"
The process is prescribed	The process is flexible and should be sensitive to pursuit costs
You, the contractor, assemble the team	We, the partners, assemble the team
We prescribe, you provide	We will figure it out together
Request for proposals and statements of work	Request for qualifications
<b>Process</b>	
Closed; need-to-know basis	Open book
Potentially adversarial	Cooperative
Hope to acquire within budget	Design/build to the budget
<b>Compensation</b>	
Fixed price	Fee

based on a public/private partnering model. The same contract provisions based on the Federal Acquisition Regulation (FAR) clauses are likely to be used. It is the partnering process and the creation of a partnering atmosphere rather than a conventional public contractor relationship that matters. The conventional contracting process is much more of an "us/them" procedure, and the public/private partnering approach is more just an "us" process.

The FAR is often blamed for the ills of federal procurement, but, in fact, it promotes partnering in the contracting environment. It also supports innovation. The regulations encourage each member of the acquisition team to exercise initiative in getting the government the best deal. Further, if

there is no rule against a particular practice and it makes sense, then government officials can use that practice. For example, RFQs are not mentioned in the FAR, nor are they precluded by it. Their extensive use in business and local government practice means they should be considered for federal deals.

Economists agree that the positive effects of an economic stimulus depend on timeliness. If projects are delayed until a time when a recovery is already underway, then much of the capital invested may not have the intended stimulus effect. To get the investments in public infrastructure into the market promptly will require a new approach. The federal government needs to start employing public/private partnering practices with a new set of procurement tools, and now is the time to do so. **UL**

**A request for qualifications (RFQ) can be used to engage developers on major federal projects funded through direct appropriations. Recently, the National Institutes of Health used this approach for the \$250 million privately financed Bayview Research Center in east Baltimore, Maryland, following on the methods developed by the U.S. Postal Service in the 1980s in redevelopment of underperforming postal assets.**

**PATRICK J. KEOGH** is president of AMV LLC in McLean, Virginia, and Ferrandina Beach, Florida, which holds a General Services Administration schedule contract to provide public/private partnering, legal, real estate, and development consulting services. Before forming AMV, Keogh worked in Vice President Al Gore's reinventing government office specializing in real estate and procurement issues.

