

Public-Private Partnerships Becoming More Popular

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By: [Alexander Tachmes](#)

The utilization by local governments of public-private deals, otherwise known as public-private partnerships or P3s, continued to grow in popularity over the course of 2017. We expect that popularity to continue as more and more local governments become familiar with and experience the benefits of such projects.

In a public-private transaction, a local government enters into an agreement with a private entity, whereby the private entity agrees to build one or more public facilities, such as a parking garage or new city hall, in exchange for profitable private property rights relating to the underlying public land. Take, for example, a city that wishes to alleviate a jurisdictional parking shortage by building a public garage. In a traditional scenario, the city would function essentially as a developer and would hire an architect, general contractor and other third parties to design and build an expensive parking facility with public funds. In a P3, however, the city would have the ability to enter into a long term ground lease with a developer, who would design and build the garage at its expense in exchange for profitable real estate rights that it would receive as ground lessee. Moreover, because a developer who has constructed millions of square feet of real estate projects is much better suited to designing and building a parking garage than a local government whose main functions do not include developing real estate, a P3 framework often produces a better, finished bricks and mortar product.

At the outset of a P3, a local government typically selects a development team through a request for proposals (“RFP”), request for qualifications (“RFQ”) or other competitive bidding process. In an RFP, a city would describe the project it is seeking to have built and solicit proposals from development teams, who would submit specific design plans, budgets and other details as part of its proposal to the city. In an RFQ, although a city would still describe in the bid documents the project it is seeking to have constructed, the city would ask interested bidders only to submit their qualifications and experience related to the development of such a project. Once a developer is selected in an RFQ process, then the city and the developer would work together to design and build the proposed project based on an agreed upon budget.

Sometimes, for political or other reasons, a city is hesitant to issue an RFP or RFQ for a new project. If a developer is interested in a P3 but cannot persuade the local government to initiate the process by issuing an RFP or RFQ, the developer itself can submit an unsolicited proposal, which can serve as the catalyst for a P3. Assuming a local government wants to pursue the development of a project, after its receipt of an unsolicited proposal, the city can invite other bidders to submit proposals within a certain period of time. Or, the submission of an unsolicited proposal could provide the

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impetus to a city to draft and issue a formal RFP or RFQ for the subject project.

To make P3's financially feasible for private entities, such projects often contain commercial uses, such as retail and housing, as part of the overall development project. For example, in the case of a P3 involving the development of a public garage, a developer will often propose substantial retail square footage on the ground floor of the garage facing a street. Rental revenue from such retail uses can flow to the developer or can be shared between the local government and the developer. Of course, parking garage revenue itself would be another revenue stream available to the parties as part of the business deal to construct a garage and would facilitate the payment by the developer of the upfront costs to construct the facility. Ideally in these cases, the developer recovers its costs and receives a return on its investment from the uses in the project, while the city receives ground rent and a percentage of revenues from the various uses in addition, of course, to a new public facility. That being one example, such deals can be financially structured in a variety of ways so as to best achieve the goals of both parties.

Public-private deals have existed for years. For example, in 1994 I represented the City of Miami Beach and its redevelopment agency as they developed a Loews convention center hotel and public parking garage on public land. This complex deal started with an RFP, which led to the selection of Loews and its team as the hotel developer. The transaction, which took approximately two years to negotiate and document, featured a 100-year ground lease, base rent and percentage rent, quality standards, a ground lease buy-out structure and many other elements.

Although P3's are not a new concept, the popularity of public-private deals has increased in recent years due in part to the Florida Legislature's adoption of Section 255.065, Florida Statutes, in 2013. This statute sets forth a comprehensive framework for those interested in pursuing public-private partnerships, while still allowing parties to retain creativity and flexibility in structuring their deals in a mutually beneficial manner. The statute provides guidance to local governments that might otherwise be ill-equipped to embark on such complex projects. The adoption of Section 255.065 has brought public-private partnerships to the attention of local governments, while simultaneously facilitating the use of such public private vehicles through the adoption of laws to be followed in their implementation.

Assuming public-private transactions are negotiated and documented in a reasonable manner, such deals can provide strong benefits to local governments and profitable business ventures for private companies. P3's permit cities to construct major public buildings, such as a new town hall or municipal police station, with virtually no upfront costs to the local government. Moreover, local governments can delegate project design, construction and similar tasks to private developers and other entities better suited to handling such complex tasks. While navigating the intricacies of a public-private transaction can prove challenging for the inexperienced participant, this delegation to the private sector often encourages a more efficient, higher-end and more cost effective method of building major facilities for local governments.

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Alexander Tachmes is a partner in the Miami office of Shutts & Bowen LLP, where he is Chair of the Land Use and Government Relations Practice Group and a member of the Real Estate Practice Group.

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