Public Services and Procurement Canada | Services publics et Approvisionnement Canada

Canada

Presentation to CIPMM – June 5, 2019

Procurement for Public-Private Partnerships

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Today's Presentation

- The "traditional approach" and the "P3" model.
- Advantages and disadvantages of P3s
- The procurement process for a P3 (as experienced by the Gatineau 2 Project)
- Commercially Confidential Meetings
- Awarding the Contract

The Traditional Approach

- Design – Bid – Build
- Design-Build

- Operations and Maintenance (e.g. RP1 contract between PSPC and BGIS)

- Real Property Lifecycle Management/ Rehabilitation

Traditional Approach

- The Owner (the Crown) is responsible for:
  - Hiring the designer (architect).
  - Hiring Project Management support services or provide its own internally.
  - Hiring the General Contractor.
  - Hiring other trades and/or using in-house services (e.g. security systems).
  - Hiring a facility management company (e.g. BGIS).
  - The overall lifecycle costs (replace a boiler, AC units, generators, etc.)

Traditional Approach

- The Owner must ensure that all different services are well coordinated during the work.
- The Owner must think of the maintenance at the design phase.
- The Owner must think of the lifecycle during the design, construction and O&M phase.

- The Owner **assumes almost all the risks**.
- The Owner **does not have the expertise to manage all those risks.**

Traditional Approach

- Since the Owner hires everyone, it must generally assume a large portion of the project risks.
- A delay with a supplier that will cost money to another supplier is a risk for the Owner.
- The Owner may not have the resources to optimize its specifications; consultants may not understand the objectives of the Owner.
- The Owner must fund the project's different phases as they happen (e.g. milestone payments).

Traditional Approach

- Consequences of the risks:
  - Projects are delivered late
  - Cost overruns
  - Expensive changes during the design and construction phases/new senior management wishes to influence the end result
  - Not an efficient design/errors identified during the operation and maintenance phase.

The P3 Approach

- A Public-Private Partnership (P3) is a collaborative arrangement between a public organization and a private consortium.
- This presentation focuses on infrastructure projects, but P3s do not have to be limited to that. It can be used for IT projects, or any other capital asset (e.g. fighter jets).
- Contracts can, and usually, last several decades.

The P3 Approach

Design

Build

Finance

Operate

Maintain

- All of those, or a combination of those, may be the basis of a P3 contract.
- Rehabilitation may be added to the maintenance.

What a P3 is...

- A way to transfer risks generally assumed by the Crown to the Private Partner (the "contractor").
- A long-term partnership/relationship with ups and downs, subject to the forces of market.
- A way to combine multiple services under one contractual arrangement.

What a P3 is not...

- ... **magic**, if specifications and performance requirements are poorly written, there will be extras/change orders.
- ... meant to save money. While efficiencies may result in considerable savings, and the P3 model is often sold as a way to save money, **it is not its purpose**.
- ... a guarantee that a project will be delivered on time.

What a P3 is not...

- A contract with no change orders, just like any contract, changes will be happening, and costs will increase.
- A transfer of the responsibility of developing the requirements to the private sector.
- ... a way for evil corporations to privatize public jobs and make generous profits on the back of the taxpayers… but in some scenarios, it may result in public jobs moving to the private sector.

Advantages and disadvantages

- The Owner remains the owner (!)
- Under a DBOM (with or without rehabilitation) effiencies and innovations will give a very cost-effective result in the long-term.
- It takes a lot of resources to manage a P3, but it would take more to manage several smaller contracts.

Advantages and disadvantages

- Changes in political environment will not affect maintenance and rehabilitation (e.g. cutting maintenance costs to reduce deficit).
- When financing, no need to have all funds available at substantial completion.

Advantages and disadvantages

- The owner loses some control over the work as the Private Partner does the work their way to meet the performance requirements.
- Poorly developed specifications are more complicated, and potentially costly, to resolve.
- Higher level of complexity and not having the internal expertise/relying on external advisors.

Advantages and disadvantages

- While value for money may be better, it may end up costing more.
- Transferring risks to the private sector is easier said than done; during the RFP the proponents will challenge the risks we transfer them, and
- Lenders are looking for stable, low-risk investments. Transfering too much risk may not be a solution (e.g. site contamination).

Advantages or Disadvantages?

- Different members of the consortium must assume their own part of the risks, and those risks might only be mitigated by actions of the other members.
- It is the time to be innovative for all parties, but is it going to pay out?

"while private finance is more expensive, the government gains private-sector innovation, transfers substantial risk, receives efficient whole-of-life treatment of the asset, and, ultimately, generates more value than if the government financed the project itself." – Brian Budden, CEO Plenary Group.

- Private financing costs more, is it worth it?

Procurement Process for a P3

- Overall, the process is similar to any other large project (Letter of Information/Request for Information; Request for Qualifications; Request for Proposals);
- Commodities covered by a trade agreement would still be covered;
- The details of the RFP are however very different and involve more participation and investment from the proponents (bidders).

Request for Information

- Generally, issuing a Request for Information is a good practice to engage the industry early on and give them the opportunity to start establishing relationships.
- At this step, with the limited information that is shared, the industry has the opportunity to inform us of what seems wrong, what they can offer, what has been done before, etc.
- Responses may be requested, but would not be required, or the RFI may only be to send information.

Request for Qualifications

- The Request for Qualifications (RFQ) is an essential part of our procurement strategy as it results in a list of qualified consortia that will receive the opportunity to participate in the RFP process.
- Qualifications are fairly specific, as the goal is to find a limited number of participants as opposed to pre-qualifying a large number of firms to establish a procurement tool.
- We generally pre-qualify 3 consortia.

Request for Qualifications

- By limiting the number of participants, we save costs (proponents get paid if their proposal meets minimum criteria) and time.
- Evaluation P3 proposals takes several months.
- The costs of developing a proposal is very high as an advanced design must be submitted, and knowing the competitors are limited will ensure proponents will invest in their proposal.

Request for Qualifications

- For the Library and Archives "Gatineau 2" Project, we assessed:
  - The capability of the consortium in terms of design and construction
  - Experience and capability of the operation & maintenance company, with project-specific elements to be assessed.
  - The ability of the consortium to obtain funding, as our project requires them to finance the design and construction of the new asset.

Request for Proposals

- Following the pre-qualification, an RFP is sent to the proponents.
- We generally pre-qualify up to 3 consortia, which we did for Gatineau 2.
- The RFP is similar to any other type of requirement, however there are key differences in the process…

Commercially Confidential Meetings

- A key difference used in a P3 procurement process is the Commercially Confidential Meetings (CCM).
- The CCMs are sessions held with each individual consortia, several times during the RFP period, where information is shared between parties and will remain confidential, as opposed to an RFI which is shared with all proponents.
- For the Gatineau 2 project, we held 6 CCMs and 2 Design Consultation Sessions.

Commercially Confidential Meetings

- They are usually full day in-person meetings
- Attendance depends on the topics to be discussed.
- Identify issues with the RFP, output specifications, clarify the requirements, etc.
- Discussions go both ways; we learn about their decision making process and how they plan to manage risks, they learn about why some requirements have been included for example.

Commercially Confidential Meetings

- Proponents have the opportunity to submit questions in advance to allow us to do research and prepare.
- No record of decision or meeting minutes are taken by either party, but people can write their own notes.
- A fairness monitor was always present; lawyers from each party are usually present.
- **Meetings are non-binding.**

Commercially Confidential Meetings

- For the Gatineau 2 RFP those were the topics:
  - ➢ Technical Requirements
  - ➢ Project Agreement's Terms and Conditions
  - ➢ Payment Mechanism and Financial Model
  - ➢ Facility Management
  - ➢ Discussing design ideas for the building (Design Consultation Sessions)

- The relation that is established can have an important impact on the proposal.

Innovation Proposals

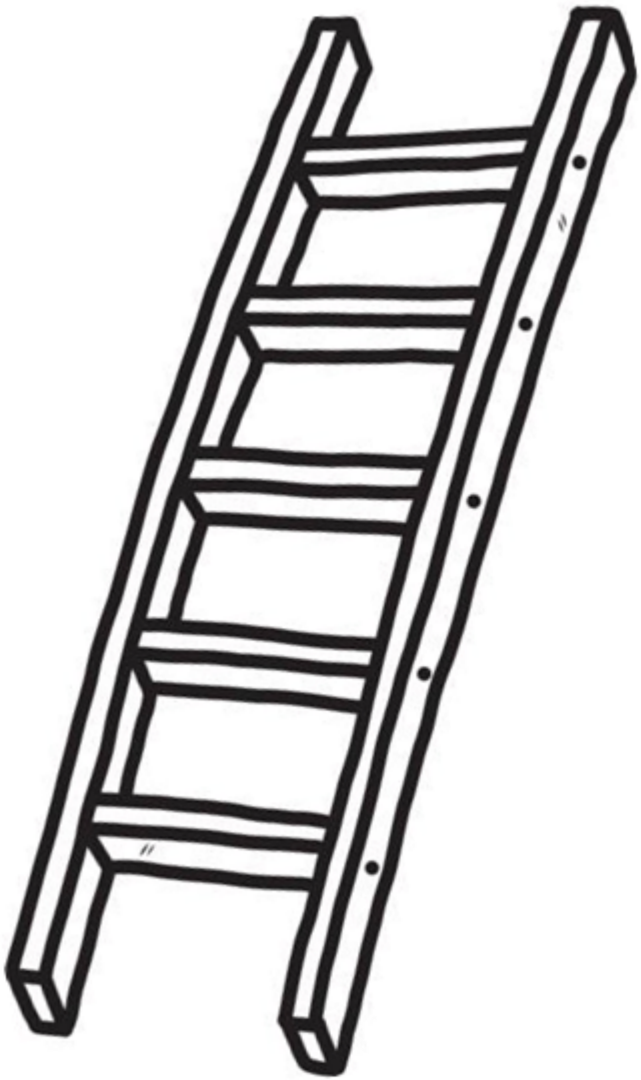
- Because they have to keep the price low, innovations that cost more would not be part of the proposal.
- Those are selected after the award of the contract.
- Very little success in the past; industry not willing to put the effort based on previous negative experiences.

Method of Selection

- P3s are different, but in the end the method of selection will be adapted for each project just like any other procurement process. But there is another option…

Step Ladder Evaluation

- All proposals must meet the minimum requirements, but the method of selection would pick the proposal that reaches the highest "step"
- Each "step" is an upgrade to the standard requirement.
- Can also be used to de-scope pre-identified elements if budget does not allow it.
- Client must identify desirable upgrades upfront, will not necessarily help innovate.



Additional Working Space

Green Roof

Basic Requirements

Remove 30 places in Parking Lot

Building not Net Carbon Zero

Post-Evaluation and Award

- There is a major difference in the post-RFP period for a P3 project.
- We have a "Preferred Proponent Stage" which is the period between the announcement of the "winner" and the award of the contract.
- Announcements are generally made to inform the public that a Preferred Proponent has been identified.

Treasury Board Approval

- As P3 projects are significant in value, they exceed standard delegated authorities and require TB approval.
- Regardless of the value, some risks may require TB approval (e.g. limitation of liability)
- The departmental and TBS review processes are not made for P3s and it can create a lot of confusion and delays.
- As P3 proposals are complex and linked to the market conditions, delays can be very costly.

Treasury Board Approval

- Unlike a regular contract with a fixed price or a ceiling, the approved value may fluctuate between bid closing and contract award (financing).
- Financing costs and Sales Tax Problem.

Closing Procedures

- The consortium members must enter into agreements between themselves.
- The consortium must confirm its financing.
- Lenders, assuming a large portion of the risk, require that the terms of the final agremeents are acceptable.
- Negotiations between Canada and the Consortium.
- Commercial Close vs Financial Close.

Commercial Close

- Over 700 documents for the Gatineau 2 Project.
- Involvement from over a dozen organizations
- Legal Review by every parties.
- End result: all partners sign the contract in advance, conditional to obtaining the financing.
- All documents put in escrow (locked and released if specific conditions are met).

Commercial Close Challenges

- Loooooong hours… for about 6 weeks working days, nights and weekends.
- Must rely on outside expertise, not full control over the process (e.g. lawyers, financial advisors).
- Preferred Proponent manages the schedule, Authority reviews but dates are not set based on a specific methodology (e.g. close after Easter weekend as markets are more stable).

Financial Close

- Rate Set Dry Runs days before the live run
- Rate Set Live Run
- Waiting…
- A few days later, confirmation that the money is available.
- Documents released from Escrow

We have a valid contract!!!

Next Steps

- Debriefing the non-selected proponents.
- Payment of a "design proposal fee".
- Building tools for contract management based on the Project Agreement.
- Enter the contract management phase for the design and construction phase.
- Prepare the contract management phase for the Operations and Maintenance phase.

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