

Hawkin
Delafield & Wood LLP

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**PRIVATE FINANCING OF
NEW PUBLIC INFRASTRUCTURE**

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OVERVIEW

**Public Works Financing and Contracting
Generally**

Alternative Project Delivery Methods

Private Project Financing of Public Works

Focus on New, Not Existing Assets

**Illustrative Public-Private Partnership (P3)
Projects**

**A Structured Approach to Determining the
Appropriate Project Delivery and
Financing Method**

HAWKINS PERSPECTIVE

Public/Private Partnership Transaction Attorneys

Top Tier Public Finance Firm

Leading National Public Contracts and Procurement Firm

Transportation, Civic, Water, Power and Solid Waste Sectors

Privately Financed Public Works Projects, Both Publicly and Privately Owned

Special Counsel

**PUBLIC WORKS FINANCING
AND CONTRACTING
GENERALLY**

TRADITIONAL PUBLIC WORKS FINANCING AND CONTRACTING

Bid-build Contracting

Public Operations

**Governmental Obligation Municipal Bonds
(Revenue or Tax Secured)**

Projects Are Publicly Owned

**Design, Construction, Operation and
Financing All Separate Functions**

ALTERNATIVE PUBLIC WORKS FINANCING AND CONTRACTING

Design-build (DB)

Design-build-finance (Turnkey)

Design-build-operate (DBO)

Design-build-finance-operate (DBFO)

**Design-build-finance-own-operate (Private
Ownership)**

Performance-based Contracting

RFQ and RFP Process

Best Value Selection

WHAT'S P3?

Any Alternative Delivery Method can be Considered a P3

Private Financing is Often Considered the Key Distinguishing Feature of a P3

Internationally, P3 is synonymous with DBFO for New Assets

Sometimes Regarded in US as “Privatization” (Divesture of Existing Assets)

DBFO – INTERNATIONAL NORM

**Australia, UK, Canada
Partnerships BC, Infrastructure Ontario
Dozens of Projects
DBFO Consistently Chosen Over Traditional
Disciplined Analysis of Risk Transfer
Small Difference in Cost of Capital (All
Taxable)**

ALTERNATIVE PROJECT DELIVERY

BENEFITS OF ALTERNATIVE DELIVERY

Extensive Use in Private Sector

Cooperation Among Participants Permissible and Desirable

Life-Cycle Cost Perspective

Long Term Contracts

Substantial Risk Transfer

Striking Success of Projects Built Using Alternative Delivery

10-20% Savings Against “Benchmark”

“Faster, Better, Less Expensive”

Consistent Success and Growing Acceptance Nationwide

UNIFIED PROJECT RESPONSIBILITY

Traditional Design-bid-build (DBB) Trifurcates Responsibility

DBO and DBFO Unify Responsibility

Comprehensive Asset Development and Management Under a Single Contract

One Contractor Deals With All Subs and Equipment Suppliers

Avoids the Cost and Risk of Disputes Between the Designer, Builder and Operator

Easier Administration

DBO SAVINGS

Source of Savings

- Core Competency
- Competition As To Design; Operator-driven
- Competition As To Operation
- Cooperative Relationship Between Designer, Builder
- Smaller Contingency Allowances
- Bulk Consumables Buying Power
- Broader Technology Access

Preventive v. Breakdown Maintenance

Optimized Balance Between Capital and Operating Costs

Excessive Redundancy Eliminated

RISKS RETAINED AND TRANSFERRED

CONSTRUCTION RISK TRANSFER

Design Liability

Completion Risk (Delay and Efficacy)

Construction Cost Overruns

**Disputes Between Designer and
Builder**

Securing Patents and Licenses

**Some Permitting Risks (Terms and
Conditions)**

OPERATION RISK TRANSFER

O&M Cost Overruns

Regulatory Compliance

Capital Maintenance

Technological Obsolescence

Excess Electricity Consumption

Labor Relations

RISKS RETAINED UNDER ANY DELIVERY METHOD

Changes in Law

Force Majeure

**Pre-existing Site and Environmental
Conditions**

Buried Infrastructure Conditions

General Price Inflation

EARLY PRICE CERTAINTY

Traditional

- **Owner Design Costs 8-10% of Construction Cost**
- **Costs Unknown Until 100% Design**
- **Bidder's Price May Exceed Engineer's Estimate**
- **Project May Be Delayed or Re-designed**

DBO/DBFO

- **Owner Design Costs 1-3% of Construction Cost**
- **Proposers Design to Level Necessary to Guarantee Price**
- **Owner Obtains Early Price Guarantee for Low Cost**

PRIVATE PROJECT FINANCING

PRIVATE FINANCING DRIVERS

Legal Debt Limits On Government

Government Debt Reduction Efforts

Use of Debt Capacity For Other Projects

Voter Debt Approval Rules

Avoidance of Debt-caused Rate Spikes

Risk Transfer

HOW IT WORKS

**“Project Finance” For Public Infrastructure
Contractor Forms Special Purpose Entity
Entity Issues Debt For Project Construction
Debt Is “Non-recourse” to Government or
Contractor**

**Financing Integrated With DBO Responsibilities
Used Extensively at Local Level for Solid Waste
and Power Projects**

**State Use For Transportation and Building Projects
Greater Transactional Complexity**

PROJECT DEBT IS TAXABLE

**Private Financing, Ownership or Leasing
Creates Private Activity Bonds (“PAB’s”)**

PAB’s Are Not Tax-exempt

**Taxable Interest Rates 30% Higher Than Tax
Exempt Rates (e.g., 5.0% v. 6.2%)**

**Exception: Exempt Facility Bonds (Water and
Housing, Subject to State Volume Caps)**

**Transportation Projects Have \$15 Billion
“National” Volume Cap**

Buildings Are Not Exempt Facilities

PROJECT DEBT STRUCTURE

Government's "Service Contract" Is Pledged To Secure Debt

"Service Fee" Contains Debt Component and O+ M Component

Project Feasibility and Risk Study Is Conducted

Contractor Entity Invests 5-10% Equity (With 10-12% Return)

Equity is Cushion Against Contractor Non-performance and Government Non-payment

Project Debt Rating is Generally Lower than Municipal or Corporate "Recourse Debt"

SECURITY FOR PERFORMANCE

**Project Company Has No Other Resources
Except the DBFO Service Contract**

Subcontracts Provide Indirect Security

**Service Fee Doesn't Start Until Project
Completion**

**Service Fee Offset Rights for Non-
Performance**

**Intense Scrutiny of Project by Equity and
Bank to Protect Their Interests**

CREDIT AND ACCOUNTING ISSUES

Are DBFO Contract Payments:

- **Debt, for Voter Approval?**
- **Debt, on the Balance Sheet?**
- **Debt, to the Rating Agencies?**
- **Debt, for Borrowing Capacity?**
- **Subject to Expenditure Limitations?**

DBO/DBFO SUCCESSES - WATER

Seattle (WA)	DBO
San Diego County (CA)	DBO
Phoenix, (AZ)	DBO
Tampa Bay (FL)	DBO
San Juan Capistrano (CA)	DBFO
Cranston (RI)	DBFO

DBO/DBFO SUCCESSES – TRANSPORTATION

Atlantic City Tunnel (NJ)	DBF
Hudson/Bergen Light Rail (NJ)	DBO
Golden Ears Bridge (BC)	DBFO
Sea-to-Sky Highway (BC)	DBFO
SR 125 (CA)	DBFOO
Dulles Greenway (VA)	DBFOO

OWNERSHIP

PRIVATE FINANCING NEED NOT INVOLVE PRIVATE OWNERSHIP

Private Ownership Normally Accompanies Private Finance

But Governments Are Reluctant To Convey Public Infrastructure Project Ownership

Debt Markets Don't Require Private Ownership To Provide Financing

Security of Service Contract Is Sufficient

Mortgage on Project Would Add Little to Security

PRIVATE OWNERSHIP CONSIDERATIONS

Pros:

- Discipline of Private Project Investors
- Transfers Risk of Performance/Project Efficacy
- Competitive Proposal-based Procurement
- Federal Tax Benefits Can Mean More Equity, Less Debt

Cons:

- Loss of Residual Value of the Asset
- Less Public Control
- Private Ownership of an Essential Public Asset is Unusual
- Greater Transactional Complexity

**CALIFORNIA AOC'S
LONG BEACH COURT
BUILDING PROJECT**

PROJECT

**\$400 Million New State Court Building
LA County, Commercial Office, Retail
Components**

Renovate Existing Parking Garage

Specific DBFO Enabling Legislation

Judicial Branch Led

Department of Finance and Legislature Review

RFQ/RFP Process

Best Value Selection

“Performance-Based Infrastructure” (PBI)

DRIVERS

**Obsolescence, Overcrowding, Safety,
Functionality**

Commercial Lease Opportunities

Avoid More Direct State Debt

Speed of Project Delivery

Competitive, Innovative Design

Life-Cycle Cost Focus

Risk Transfer

STRUCTURE

**Structured Analysis of Potential Delivery
Methods Undertaken**

DBFO Selected

Project Company (SPV)

Investor Led (Equity)

DB and O&M Subcontracts

First Major State DBFO Project in California

RFQ Has Been Issued

FINANCING

Bank Financed (Taxable)

No Other Borrowed Funds

Availability (Service) Payments

**Payments Subject to Annual
Appropriation**

**Revenues from Leases to LA County,
Commercial Office and Retail Tenants**

Termination Issues

**FDOT'S
PORT OF MIAMI
TUNNEL PROJECT**

PROJECT

\$1 Billion Tunnel

**Connects Port of Miami Directly to
Interstates**

Authorizing Legislation

FDOT Led

RFQ, RFP Process

Best Value Selection

DRIVERS

Avoid More Direct State Debt

Speed of Project Delivery

**Secure Proprietary Tunneling
Technology and Equipment**

Life Cycle Cost Focus

Risk Transfer

STRUCTURE

DBFO Selected Project Company (SPV)

Investor Led (Equity)

DB and O&M Subcontracts

First Major State DBFO in Florida

**Concessionaire Selected; Financial Close
Expected Soon**

FINANCING

**Bond Financed (Tax-Exempt; Federal
Volume Cap Allocation)**

TIFIA Loan from FHWA

State Funding

Availability (Service) Payments

**Payments Subject to Annual
Appropriation**

Not Toll-secured

Termination Issues

**A STRUCTURED APPROACH
TO DETERMINING A
PROJECT DELIVERY AND
FINANCING METHOD**

QUALITATIVE CONSIDERATIONS

Optimizing Risk Allocation
Project Quality and Asset Management
Implementation Schedule
Regulatory Compliance
Sustainability
Staffing Considerations
Level of Owner Control
Viability in Contractor Market
Flexibility
Cost Predictability
Fiscal and Legal Viability

QUANTITATIVE CONSIDERATIONS

Cost Projections for Each Method

- Capital Costs
- Operating and Maintenance Costs
- Financing Costs (Tax Exempt, Taxable, Equity)
- NPV Determination

Risk Adjustments to Projected Costs

- Risk Register
- Risk Ranking

Risk Adjusted NPV Projected Costs

CONCLUSIONS

Consider Alternative Project Delivery for Your Major CIP Projects

DBO and DBFO Can Deliver Superior Value in Schedule, Cost and Performance

Private Project Financing of Public Infrastructure Projects is Proven, Available and May Be Suitable For Particular Projects

“All This, My Friend, Is Offered Merely For Your Consideration And Judgment, And Without Presuming To Anticipate What You Alone Are Qualified To Decide For Yourself.”

Thomas Jefferson

FURTHER INFORMATION:

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