

Joint Legislative Audit and Review Commission



Lessons Learned from Public-Private Partnerships

Joint Subcommittee Studying Public-Private Partnerships Related to Seaports

August 12, 2009



JLARC

In This Presentation

- Legislative Oversight of Public-Private Partnerships Varies
- Lessons Learned from Selected Public-Private Partnerships

Public-Private Partnership Legislation

- 1995 Public-Private Transportation Act (PPTA)
- 2002 Public-Private Education Facilities & Infrastructure Act (PPEA), § 56-575.1 of the *Code of Virginia*
- 2003 PPEA amended to include technology infrastructure as qualifying project
- 2005 Revisions to PPEA allow interim agreements
- 2005 APA study of PPEA makes several recommendations
- 2006 Revisions to the PPEA to improve transparency
- 2007 Public-Private Partnership Advisory Commission established (§ 30-279 of the *Code of Virginia*)

Public-Private Partnership Advisory Commission

- Established to “advise responsible public entities...on proposals received pursuant to the [PPEA]”
- 11 members, including 8 legislative:
 - Chair of Appropriations & 4 members of the House
 - Chair of Senate Finance & 2 members of the Senate
 - Secretaries of Administration, Finance, & Technology
- Not presently intended for review of **transportation** projects
- Joint Commission on Transportation Accountability created in 2007 (§ 30-282)
 - May play a role in legislative oversight of PPTA projects

PPEA Was Basis for Technology Partnership

- Virginia partnered with Northrop Grumman (NG) in 2005 to provide information technology (IT) infrastructure
- 10-year, \$2 billion contract
 - NG provided up-front capital
 - Contract includes targeted economic development goals & hiring of State employees
- No comparable project ever executed nationwide
- Contract overseen by state IT agency (VITA) & its governing board

JLARC Currently Evaluating IT Partnership

- Concern expressed regarding the cost of IT provided by Partnership
 - Contractual cap of \$236 M does not cover all services
- Concern regarding quality of services provided
 - Operational & business needs of State reportedly not well understood
- Concern regarding dependence on NG
- JLARC requested to (1) evaluate quality, cost, and value of services & (2) characterize impact to State agencies of partnership

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Vendor's Experience & Understanding Are Key Elements for Success

- Private partner should have experience on similar project(s)
 - If deal involves multiple objectives, clearly rank prior experience among desired attributes
- Look for a private entity that understands the public entity's business from an operational perspective
 - Private entity must understand the public entity's budgeting process, timetable, & constraints – including FOIA
 - Look for a private entity that understands the governing body's position on the proposed project, including legislative opinion

Partnership May Still Require Public Role and Support

■ Public entity needs experienced staff

- Before reviewing a proposal, agency needs staff (engineering, procurement, legal, communications) experienced in working a PPEA deal
- After contract is signed, need staff experienced in contract administration & ongoing customer relationship management, both with access to necessary technical support

■ Public-private partnerships may still require the expenditure of public funds

- Identify any savings & subject these to rigorous analysis
- For a large public entity with excellent access to credit markets, it may be more cost effective to rely on internal financial resources

Factors to Consider in Evaluating Proposals

- Proposal may identify a need, but public entity may be able to provide services without a partnership
 - Option of taking no action always exists
- Problems with a proposal's feasibility may not come to light until completion of agreement
 - Comparison of vendor conceptual proposals may provide limited information if State's needs are not specified
- Budget flexibility may be lost if long term financial commitment is made to private partner
 - May require continuation of services at fixed level or involve significant cost increases for service level changes
 - Appropriations power can be hindered if no specific item in budget exists

What Is the Proper Legislative Role?

- Implicit tension between executive branch and legislative branch over Partnership projects
 - Executive branch authorized to solicit, negotiate, and implement proposals
 - No traditional role for legislature in approval process
- How much legislative oversight is appropriate?
 - When does too much oversight compromise the process?
 - How “public” is the partnership?

Role Should Exist for Legislative Financial Auditing and Performance Evaluation

- Contract should include defined role for legislative auditors (JLARC & APA) to evaluate & audit project periodically
 - Actual need for auditing may depend upon significance, complexity, & successfulness of project
- Certain factors may limit this form of oversight
 - Usefulness of evaluation may depend on nature of project, and quality & extent of **available** data
 - Determining whether public-private partnership is cost effective may be difficult
 - Ability to act on audit findings & recommendations may be limited by contract or other considerations

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