Lessons Learned from Public-Private Partnerships

Joint Subcommittee Studying Public-Private Partnerships Related to Seaports

August 12, 2009
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
J LARC 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
In This Presentation

- Legislative Oversight of Public-Private Partnerships Varies

- Lessons Learned from Selected Public-Private Partnerships
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
JLARC Staff for This Presentation

Hal Greer, Division Chief
Ashley Colvin, Team Leader

For More Information

http://jlarc.virginia.gov  (804) 786-1258