



# PROFESSIONAL PRACTICE COMMISSION

**Draft 02** for

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## **Recommended Guideline for the Accord Policy on the Participation of Architects in Public Private Partnerships**

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## Draft 02

# Recommended Guideline for the Accord Policy on the Participation of Architects in Public Private Partnerships

## Accord Policy

Under the Accord Policy, Recommended Guidelines for the Policy on Building Project Delivery Systems add the following:

### 3 The Alternative Methods

*Most methods can be categorized into one of the following major groups:*

- *variations on the traditional building contracts*
- *construction management*
- *design and construct*
- *multi-party contracts, and*
- *public private partnerships*

#### 3.5 Public Private Partnerships

Under this procurement method a private developer, often in the form of a consortium or joint venture, takes responsibility for the design, documentation, construction, ongoing operation (usually for a defined period), facilities management and maintenance and financing of the project.

The common reason given for delivering a project by this methodology is that the combination of private and public skills, abilities and resources will deliver improved value for money and thus result in wise investment by the proponent (usually Government) to achieve the desired level of service. Improved value for money may comprise finance, risk transfer, operational service outcomes, design amenity and/or sustainability.

The risks associated with this procurement method include an inadequate design brief, a lack of direct access to the client or end user of the facility, the role of the architect may be that of a sub-consultant and design is often constrained by the financial considerations of the bid. Innovation is often discouraged and rather than the client or user of the facility the design decisions may be made may be the building contractor or the financier.

## Introduction

Public Private Partnerships (PPPs) is a project delivery methodology popular with Governments as a means of minimizing the risks in the delivery of major projects, particularly infrastructure projects. A PPP requires a private developer, often in the form of a consortium or joint venture, to take responsibility for the design, documentation, construction, ongoing operation (usually for a defined period), facilities management and maintenance and financing of the project. In many respects a PPP is not unlike earlier design and construct models and particularly the BOOT (build, own, operate and transfer) model of project delivery.

Internationally the structure and detail of a PPP invitation varies to reflect local conditions and customs however the underlying principles of a PPP remain intact. From the perspective of the architect, PPPs offer the opportunity to participate in major projects but the costs and risks are significant.



## Background

The purported driver for PPPs is that the combination of private and public skills, abilities and resources will deliver improved value for money and thus result in wise investment by the proponent (usually Government) to achieve the desired level of service. Improved value for money may comprise finance, risk transfer, operational service outcomes, design amenity and/or sustainability. A key difficulty is that not all of these factors are able to be measured in a meaningful way and some are not measurable.

In the UK, the Private Finance Initiative (PFI) has been under review, as there has been a need to create a suite of more flexible PPP models. The Royal Institute of British Architects (RIBA) has responded by introducing SMART PFI<sup>1</sup>. One example cited is the Manchester Civil Justice Centre, UK, where a different PFI methodology was used. A design competition was held first, even before a site was selected, and the PFI was packaged once the design and designer had been selected<sup>2</sup>.

The evolution of the PPP process and structure has caused refinements to the model, usually intended to provide higher levels of predictability in terms of time, cost and service delivery and to ensure more appropriate design outcomes.

## Issues for Government to consider

When considering using a PPP for the delivery of a public project, Governments should consider the following matters:

- Is there any innovation in a losing bid that would increase the value for money outcome, and can it be used?
- Did the winning PPP bid contain the best design, or were there other factors influencing the outcome?
- Is innovation a realistic bonus in the current PPP policy, and exactly what is innovation?
- The cost of losing is currently significant and this may discourage participation and reduce competition in the future.
- The need for a comprehensive brief to be prepared and for some level of preliminary design to be undertaken before going to the market.

## Aspects of the Australian experience

The Partnerships Victoria<sup>3</sup> policy was launched in June 2000 by the Victorian State Government and its two key elements are that projects under this policy must provide value for money, and be in the public interest. The policy aims at placing the risk with the party best able to manage it, which is optimal risk transfer not maximum as has been done in the past.

The policy focuses on whole of life issues and one of the key drivers of the policy is the cost of operation and maintenance over the life of the project, not just the up front capital cost. Partnerships Victoria doesn't suit all projects, and is expected to service 10% of Victoria's infrastructure needs (currently it is around 8%).

The policy is continually evolving, and there has been a suite of guidance documents released on a progressive basis. The processes are evolving, and one of the recent process improvements has been the interactive tender process, which facilitates an active interface between the State and bidders. This is critical in social infrastructure, where the operator and designer are on different teams.

<sup>1</sup> SMART PFI is a consultation process canvassing the following issues:

- building the understanding needed to base future design choices on clear evidence from previous comparable projects;
- repositioning the end user to the very centre of the design and delivery of PFI projects;
- questioning the relevance of a public sector comparator that fails to compare like with like;
- the need to look again at how value for money is measured over the lifetime of a building.

<sup>2</sup> Further detail of the Manchester Civil Justice Centre can be found at: [www.dentoncorkermarshall.com/projects.aspx?p=0&projectID=844&catID=18&f1=location&f2=europe&pg=1](http://www.dentoncorkermarshall.com/projects.aspx?p=0&projectID=844&catID=18&f1=location&f2=europe&pg=1)

<sup>3</sup> For further details see [http://www.partnerships.vic.gov.au/domino/web\\_notes/PartVic/PVWeb.nsf](http://www.partnerships.vic.gov.au/domino/web_notes/PartVic/PVWeb.nsf)



## Financial considerations

The main focus for financiers is to deliver a successful facility, one which delivers the clients requirements, especially the functionality it is intended to deliver while providing a sound financial return on the investment. An ineffective and inefficient design not only leads to unsuccessful bids and high bid costs, but on operational projects can quickly impact on operating and maintenance costs as well as projected revenues which in turn result in reduced returns and/or loss of capital. Hence it is critical that all stakeholders place a strong emphasis on design in the procurement, development and operation of PPP projects.

Design excellence in PPP's is about meeting a defined standard for the facility or infrastructure to be delivered. Most importantly it's about delivering the functionality that is intended. User group consultation is essential in delivering this goal. This can be achieved by involving end users early in the design process including in the initial formulation of the brief.

In addition, ongoing workshops and interaction between private sector bidders, advisors and end user groups during the bidding phase is key to ensure functional requirements are effectively communicated to private sector bidders. This will ultimately translate into the State receiving bids which comply with the functional requirements and achieve the successful delivery of the project.

## The selection process

The process by which the private partner(s) for a major public project are selected may take the form of an invitation to a small group of known participants, an advertised expression of interest or a tender process. In most cases a comprehensive submission is required to enable the preparation of a conforming and competitive bid and to allow the proponent 'client' to conduct a proper assessment of the bids. The submission will by necessity include some level of preliminary design, construction scheduling, programming and financial modeling. All members of the design, construction and management team will be required to commit significant resources to this early, often unremunerated stage of the project.

## The risks for architects

The risks for architects involved in PPPs include:

- the adequacy and comprehensiveness of the design brief
- lack of direct access to the client or end user of the facility
- the role of the architect may be that of a sub-consultant
- design often constrained by the financial considerations of the bid
- innovation is discouraged
- the design decision maker may be the building contractor or the financier
- materials and finishes may be dictated by the facility manager or operator

## Recommended Guideline

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### General considerations

- Successful PPPs need a visionary 'client' to champion the design process
- Clients should establish design benchmarks that are qualitative rather than prescriptive and could employ images and examples to generate dialogue and better design outcomes
- The profession needs to sell to proponents, particularly Government that good design is an investment in a long term performance of the facility, not a premium to be paid
- The PPP process needs to include clear communications between end users and bidders
- There must be recognition that even where the State has transferred a specific risk, it has a continuing role in managing and minimising that risk
- It should be recognized that sometimes user groups are ill informed, and the State needs to take responsibility to ensure the brief is comprehensive and correct
- One-sided risk allocation and unrealistic time constraints often subdue innovation
- The PPP process should seek to exploit the full range of skills of the consortia and the value of good design must be more broadly quantified



- There must be sufficient time to both prepare the bid and to deliver the project. The PPP process should not be seen as an opportunity to defer decision making or overcome delays due to poor project planning
- Design parameters must be accurately established. There are examples where freeway projects were undertaken based on projected traffic flows which failed to be achieved resulting in losses for the operator

### **Interaction with clients and end users**

Communication is critical at many levels throughout the PPP process. In particular communication between clients and end users and the design team is critical at each stage of the design process if the design is to reflect a real understanding of the true needs of the end users. Additionally:

- The end users can assist architects in the design process by defining their specific requirements early in the design process.
- Design outcomes will improve if bidders are able to communicate effectively with all stakeholders.
- The proponent has the responsibility to ensure that the brief contains the user's true needs.
- All brief requirements should be discretionary unless aspects of the brief are mandated.

### **Probity in the PPP process**

Probity in the PPP process needs to allow fair and honest dialogue between the client or end users and designer team. During the bidding process

- Probity policies and practices should be tailored to ensure the PPP process achieves the best design outcomes.
- Probity policies should not restrict the dialogue between the bidders and the proponent and/or end users.