

## CONSTRUCTION LAW

# Private Support

NEGLECTED INFRASTRUCTURE IS TAKING ITS TOLL. COULD PUBLIC-PRIVATE PARTNERSHIPS OFFER A FIX? BY KEVIN HUDSON & MATTHEW SPIVEY

**W**e may use other, less academic terms to refer to them, but we all deal with infrastructure problems on a daily basis. We all hate sitting in traffic or driving on deteriorating roads. How many times have you thought, “If only the public transportation was safe, convenient and reliable, I would be happy to hop aboard?”

Each new day brings a new price for a barrel of oil and we constantly hear about the energy crisis. Not only do we hear about it on the radio, we feel it in our pocket each time we go to the pump to fill up our vehicles. At the same time, everyone worries about where to send their children to school, hoping that they will be served a healthy lunch in a safe and modern building. One would be hard-pressed to find a common citizen here or abroad who doesn't want quality healthcare and the most modern, efficient and cost-friendly management systems for their community. Although no one talks about it, we expect that our tax dollars will ensure that our trash will be picked up and that our drinking water will be clean.

Regardless of our expectations, the infrastructure deficit is evident worldwide. Citizens around the world cope with congested roads; bridges in need of repair; deteriorating hospitals, schools and other public facilities; as well as understaffed and poorly maintained public transportation systems. National, state and local governments are forced to deal with soaring budget deficits, yet still attempt to combat these problems. This results in job cuts and the need to reorganize and prioritize the main services they provide to their citizens.

## Incentives, Outcome and Results

Infrastructure problems impact citizens everyday as evidenced by a reduced quality of life, increased transaction costs in personal and business relationships, and a reduction in competitiveness worldwide. In general, we all hope and should expect that the money we put towards government is being spent wisely and producing the results that deal with these everyday infrastructure problems. That being said, Rome wasn't built in a day and what citizens expect isn't always what they get.

The use of public-private partnerships (P3) can serve as a tool to help combat these problems. While experts are free to argue

about the proper definition of what a P3 is, its true effects on the economy and its possible role in fixing these problems, it is clear that P3 is one of the most popular new reform tools in the last decade related to financial management.

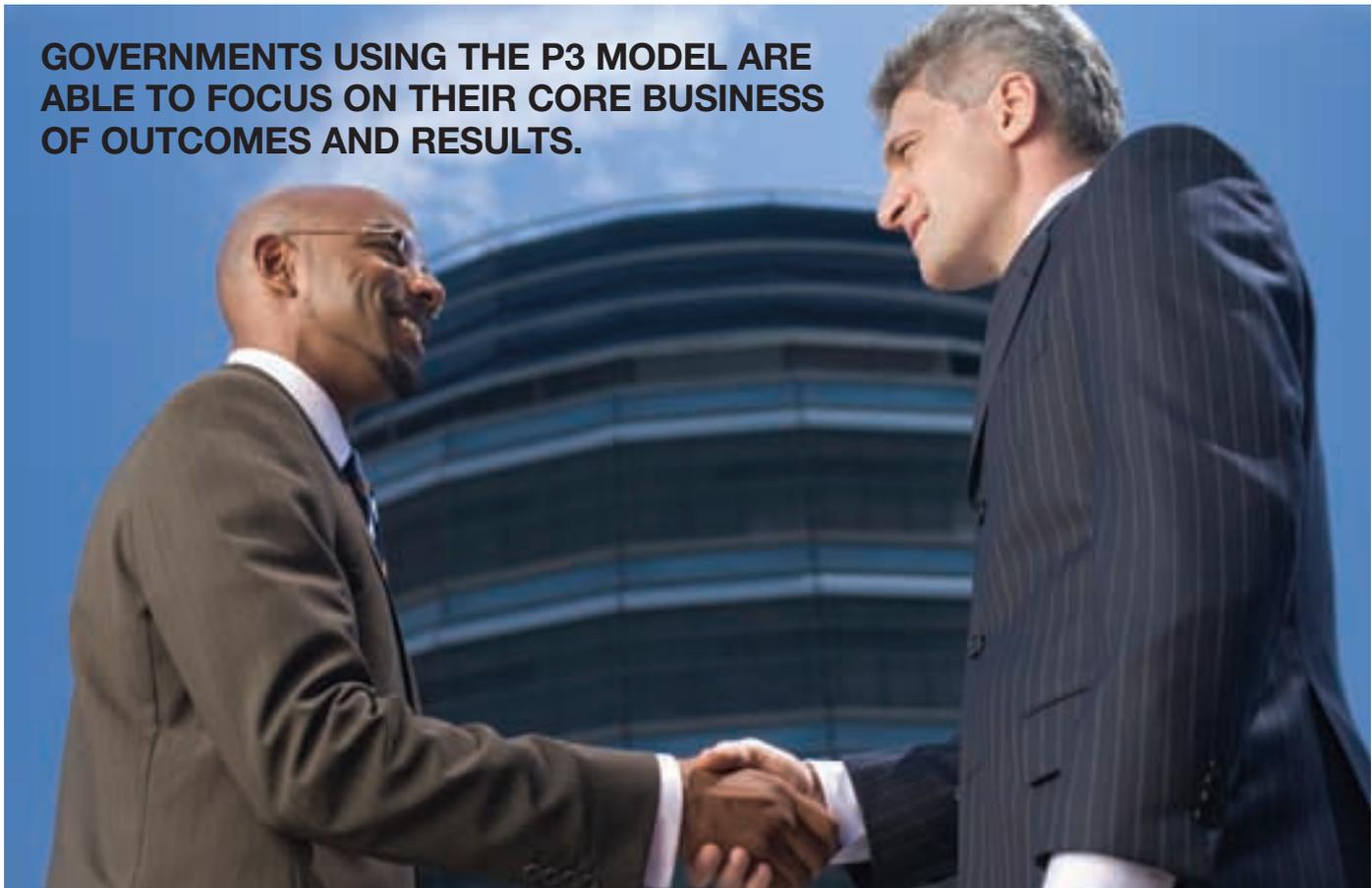
Given the state of many government purse strings and the frustrations of the common citizen, the use of these partnerships to finance infrastructure projects at the very least has the opportunity to save valuable time and energy for individual citizens and governments. Instead of dealing with the common format of procuring contracts – and the infrastructure neglect and deficits which many would argue are the cause of congested urban areas, mismanagement of hospitals and dilapidated schools – governments using the P3 model in differing variations are able to focus on their core business of outcomes and results. These models, in varying forms, provide important economic and civic advantages, including, but not limited to:

- **Construction and maintenance risks are transferred to the private sector** – Given the shifting whims of public officials during budget crunches and election years, infrastructure maintenance is the likely area to be neglected. In this regard, many people view the infrastructure as, “if it isn't broke, don't fix it.” There are not many politicians or governments who want to push boring projects dealing with infrastructure when a more pressing issue arises to help them win votes. However, such deferral of maintenance results in huge costs over the long run. Through P3s and by placing the design risk, standards of delivery, the underlying costs and other market risks on the private partner, proper maintenance can take place sooner rather than later.

- **The private sector has an established track record of on-time and on-budget delivery and disciplined project management** – While some may laugh at this statement, compared to solely public projects, the P3 used from the United Kingdom to Canada has a fairly solid track record of on-time delivery. Can the same really be said for solely public projects here and abroad?

- **Public-private infrastructure projects are often completed faster than “pay-as-you-go” financing** – Because investment costs are spread over the lifetime of the asset, there is less chance that the problems seen with pay-as-you-go financing will arise. In today's market, we have all seen the danger of projects stalling out as the funds dry up.

## GOVERNMENTS USING THE P3 MODEL ARE ABLE TO FOCUS ON THEIR CORE BUSINESS OF OUTCOMES AND RESULTS.



■ **An orientation toward better customer service** – The arrangement seen in many P3s allows for a type of checks-and-balances relationship between the customer, the private sector and the public sector, with each having incentives that can help lead to better customer satisfaction. For example, in many cases, the private sector relies on user fees to generate revenue and therefore has a strong incentive to maintain a good relationship and provide efficient customer service. Likewise, as it is no longer directly involved in management, the public sector can serve to ensure that the private provider is doing its job from a less-biased perspective.

### For Future Consideration

The United Kingdom, through the use of the Private Finance Initiative (PFI), was the first country to truly explore the concept of P3s on a large scale. The PFI, introduced in 1992 and further developed in 1997, is generally used for hospitals, prisons, roads and accommodation projects. The contracts are usually for long time periods, lasting anywhere from 25 to 30 years and use output-based specifications.

Similarly, Australia has financed much of its infrastructure

through Partnership Victoria, a variation of the P3 discussed above. In the United States, examples can be seen on various road projects, one of the most recent being in Washington, D.C., where the partnership between the Virginia Department of Transportation and Fluor-Transurban on the high-occupancy toll lane projects has the goal of improving the traffic flow on the Capital Beltway.

P3s are unlikely to replace the traditional infrastructure financing model altogether, the above-mentioned problems and possible benefits of using P3s make them an appealing option for the future. The major sectors where P3s provide the most potential for success are schools, public housing, prisons, defense, hospitals, waste management, water treatment and management and transportation. Next time you're stuck in traffic, contemplate whether the traditional model of procurement and financing to maintain and build infrastructure is effective. ■

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