Articles + Publications | January 9, 2024

Are P3s the Future of Public Health Care Construction Projects?

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Public-private partnerships (P3s) have recently become a popular tool for the development of public infrastructure projects in the U.S. and across the globe. By bringing together public and private resources, P3s can be used to finance the construction of large-scale projects ranging from highways to airports.

As P3s become more prevalent, there is opportunity for P3s to be used in a broader range of public projects, including those in the health care sector. Public and university hospital systems in the U.S. have, for example, recently used the P3 model for the maintenance and supply of energy systems. Last year, the World Health Organization (WHO) even issued a report outlining steps governments should take to optimize P3 opportunities for health facilities, services, and equipment.

But it remains to be seen whether P3s will become the model of tomorrow's health care construction industry. Nonetheless, construction firms and public agencies should start considering the benefits of these arrangements and prepare to navigate the additional complexities facing P3s in the health care sector.

What is a P3?

A P3 is a collaborative partnership between a public agency and a private sector organization to finance, construct, and/or operate an infrastructure or other public-service project. From a construction standpoint, this usually involves a construction firm partnering with a public agency and undertaking all or part of the design, building, maintenance, and/or operation of the project, in return for payment — often in the form of tax breaks, collection of tolls or user fees on the completed project, and/or payments from taxpayer dollars.

Key to structuring these arrangements is balancing the risk between the public and private partner. Whether the construction does not go as planned, or the public demand (and source of revenue) for the project is not as anticipated, both the public and private partner are at risk if they have not carefully structured the arrangement. For example, a construction firm may finance and build a toll bridge in partnership with the state's department of transportation, and then receive payment in the form of the tolls collected from drivers. But if the bridge does not have the anticipated number of drivers crossing it each day, the construction firm could find itself in financial trouble and take a loss on its investment.

P3s and Construction in the Health Care Industry

Whether there is a community need for a new behavioral health facility or simply a modernization of an existing hospital, P3s can enable federal, state, and local governments to pursue essential projects — particularly where financing constraints might otherwise exist.

However, the health care system in the U.S. is unique, and construction firms and government agencies may face greater roadblocks and challenges when implementing a P3 in a health care context, versus in other sectors and industries, including the following:

- Regulatory Compliance – Health care facilities are required to comply with a variety of additional regulations. This can include special licensure requirements, surveys, and certificate of need approvals to authorize construction of a facility and/or special construction or financing specifications. Ensuring that a P3 project meets all these requirements can be complex and costly, and there will be an increased risk if a construction firm is noncompliant or fails to obtain required approvals.

- Financial Complexities – While many P3 financing models involve the construction firm obtaining payment at a later date from revenues derived from the completed project, health care revenue is far more complex. Revenues at health facilities are often derived from various sources (*e.g.*, patient fees, insurance reimbursements, and government funding). These funds are often subject to conditions that may restrict a construction partner from receiving such funds.

- State Legislation – Some states, such as Hawaii and North Dakota, have enacted P3 legislation as applied to health care services and facilities. Such legislation typically outlines the roles and responsibilities of all parties involved in the P3. States may also establish guidelines for the bidding process, project approval, financial arrangement, risk allocation, and more.

In summary, P3s hold significant potential for fostering innovation and expanding health care services, as well as offering construction firms more flexibility and the potential for a greater return on investment. However, given the intricate nature of the health care sector, it is crucial for construction companies to consider engaging legal counsel with specialized knowledge in the health care industry before embarking on a P3 project. The health care sector is often subject to greater governmental scrutiny, with stringent laws governing agreements and processes, which may ultimately impact the negotiation and operation of the P3 project.

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