ONE SIZE DOES NOT FIT ALL

DELIVERING TRANSFORMATIVE PUBLIC BUILDINGS FOR THE FUTURE

WHAT IS SOCIAL INFRASTRUCTURE?

K-12 SCHOOLS
ACADEMIC FACILITIES
STUDENT LIFE FACILITIES
ENERGY PLANTS

HOSPITALS
MEDICAL BUILDINGS
CLINICS

COURTHOUSES
POLICE STATIONS
PRISONS

PUBLIC OFFICES
LIBRARIES
CONVENTION CENTERS
PARKING GARAGES

PUBLIC HOUSING
STUDENT HOUSING
MILITARY HOUSING

STADIUMS
SPORTS FACILITIES

PUBLIC AGENCIES FACE SIGNIFICANT CHALLENGES IN PROVIDING HIGH QUALITY SOCIAL INFRASTRUCTURE

Schools, libraries, hospitals, courthouses, and government buildings serve as the cornerstone of society and facilitate core functions of democracy. These are places where children's minds and bodies are shaped, ailments are treated, safety and security are safeguarded, justice is dispensed, and where other important government services are delivered to the American public. Despite the critical role these facilities play in our daily lives, our public buildings, often referred to as social infrastructure, are crumbling. The American Society of Civil Engineers (ASCE) assigned a grade of D+ to the nation's infrastructure in its 2017 Infrastructure Report Card[1], which includes public buildings, such as schools and parks and recreation facilities. A significant portion of our public buildings are past or nearing the end of their expected useful lives and are in major need of rehabilitation and modernization. Over 14 million children attend schools that are deteriorated[2]. Justice facility-focused architect CGL estimates that jails and correctional facilities nationwide have accumulated $16-32 billion in deferred maintenance with no clear path to funding[3].

Public agencies face several challenges in their efforts to provide high quality, functional social infrastructure, principally in the following three areas:

- **Financial Constraints:** Competing priorities in public budgets limit public institutions' ability to fund the renovation of functioning facilities or replacement of obsolete ones. Moreover, many states and municipalities do not have the ability to borrow at levels necessary to address their deferred maintenance and capital improvement needs without violating debt caps or impairing their credit rating.
- **Extended Construction Schedules and Cost Overruns:** Traditional construction methods often fail to deliver critical projects quickly enough to serve public needs and are often not on-budget, due to inefficient procurement processes and a lack of incentive mechanisms to encourage innovation.

With investment needs that far outstrip available public funding, government agencies should consider new tools to modernize the schools, public buildings, and healthcare facilities that are essential to our quality of life.

- **Poorly Performing Buildings:** Traditional procurement methods sometimes rely on the least costly bid rather than seeking the best value, which can result in substandard building quality. Once facilities have been delivered, competing priorities often divert funds and personnel from maintaining them optimally. The mounting backlog of deferred maintenance facing many agencies further reduces the long-term performance of these facilities.

With investment needs that far outstrip available public funding, and regulations that do not optimize facility delivery and maintenance, states, cities, counties, and other government agencies should consider new tools to efficiently and cost-effectively fix the schools, upgrade the government buildings, and modernize the healthcare facilities that are essential to our social well-being, quality of life, and the future of our society. To that end, this paper explores:

1. Public-private partnerships (P3s) and alternative financing and delivery models to attract private capital and innovation to address social infrastructure needs;
2. Common themes observed across various delivery models; and
3. Common factors in successful alternatively financed and delivered social infrastructure projects.

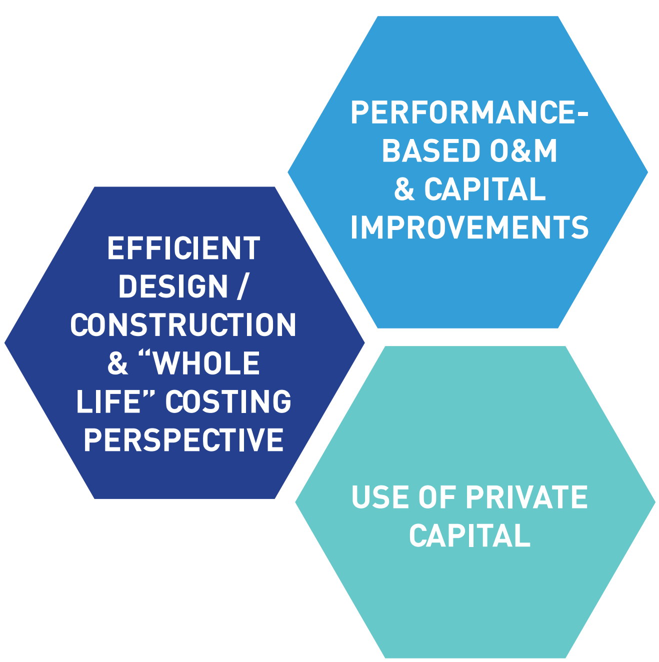
These topics are viewed through the lens of two recent justice facility projects being delivered using distinct alternative financing and delivery models. Champions of the Howard County Circuit Courthouse and Travis County Civil and Family Courts Facility sought creative approaches to complete long overdue social infrastructure projects when traditional methods could not meet public goals.

HOW ALTERNATIVE SOCIAL INFRASTRUCTURE DELIVERY AND FINANCING MODELS CAN ADDRESS THESE CHALLENGES

Alternative social infrastructure delivery models and P3s like design-build-finance-operate-maintain concessions, design-build-finance, and performance-based contracts, have the potential to provide critical social infrastructure "better, faster, cheaper" when viewed over the long term. When structured and executed properly, these models can deliver more value to taxpayers due to three contractual components:

1. More efficient and integrated design and construction
2. Performance-based standards for operations and maintenance
3. The additional oversight demanded by at-risk private sector capital

A project need not include all three components to achieve better outcomes than traditional government capital project delivery methods. Detailed analyses should be performed for each project to determine which components are required to appropriately allocate responsibilities and risks between the public and private sector in order to achieve desired project outcomes.



Value Drivers

Efficient private sector design and construction methods and "whole life" costing perspective

In a typical Design-Bid-Build procurement process, unrelated firms are separately hired by the public entity for each of the design, construction, and operations and maintenance ("O&M") phases of a project. Even when a "best value" approach is taken to procuring each of these phases, the solutions developed by the winning bidders typically do not deliver the originally desired project scope on-time and on-budget.

When viewed from a project "whole life" perspective, delays, cost overruns, and sub-optimal construction will likely result in higher overall life-cycle costs when compared to alternative delivery and procurement methods. This is because alternative procurement methods provide the opportunity to:

1. Shift risks (including cost overruns and schedule delays as well as interface and coordination risks) to the private sector parties
2. Realize innovations and synergies associated with combining some or all of the design, build, operations, and/or maintenance into one private sector entity, who is incentivized to optimize costs across the whole life of the asset. (e.g., the private sector entity may choose to use more expensive materials or construction techniques that are more durable and cheaper to maintain over their lifetime to reduce life-cycle costs.)

Alternative finance and delivery projects can leverage integrated design and construction, performance-based operations and maintenance, and/or private capital, but do not need to include all three to be successful.

Performance-Based standards for operations, maintenance, and out-year capital improvements

The benefits of the performance-based standards used in some alternative procurements arise from:

1. Allowing flexibility and innovation in the method of delivering and maintaining the asset/service, resulting in continuous improvement over time
2. Ensuring that maintenance will occur when it should, based on standards – eliminating deferred maintenance
3. Requiring that adequate resources or reserves are available for out-year capital investments in the asset for optimal performance over its useful life.

Use of private capital

Finally, one of the most common criticisms of alternative project delivery is that it involves the use of private capital, which is more expensive than municipal borrowing. While it is true that private sector capital is generally more expensive (however, moderately so in the ongoing low interest rate environment), it also brings the benefit of the private sector having "skin in the game."

When the private sector has at-risk invested capital, the financial impact of under performance in delivery and operating inefficiency is compounded, as the private sector developer/operator will not only lose operating profit, but also risks a loss on its invested capital, thus "doubling down" on the impact of non-performance.

To mitigate this risk, private parties (and counter-parties) will impose greater oversight and financial discipline to avoid and resolve unexpected challenges or improve under performance.

In addition, the use of private capital can, in some circumstances, free up funds in the project owner's budget to enable other projects and can reduce pressure on debt caps when appropriately structured.

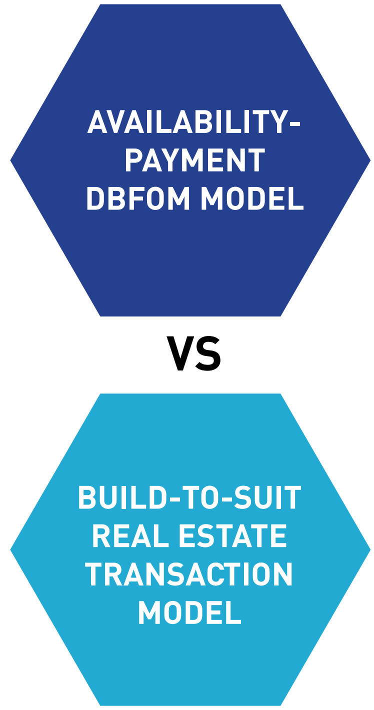
In alternative project delivery, the savings from transferring certain project risks to the private sector such as cost overruns and schedule delays, combined with life-cycle cost savings, have the potential to offset the higher cost of private capital.

Howard County

Travis County

HOW TWO SUCCESSFUL ALTERNATIVELY DELIVERED PROJECTS ADDRESSED COMMON THEMES TO MEET DIFFERING PUBLIC NEEDS

Howard County, MD and Travis County, TX both needed new court facilities and sought alternative financing to transfer risks and ensure timely completion of their new facilities. However, both projects were successfully delivered using quite different alternative delivery models: Howard County used an Availability-Payment DBFOM model and Travis County used a build-to-suit real estate transaction model or "progressive design build". The delivery models developed for each project share common themes but differ on some of their alternative delivery and procurement features, demonstrating that social infrastructure projects can be delivered using a variety of innovative structures. The courthouse case studies diverge in the structure of each owner's control, risk transfer, the use of competitive pressure and collaboration, financing structure, and the counties' approach to market sounding.



Delivery Methods


Howard County


Travis County

Howard County

Travis County

CASE STUDY BACKGROUND

HOWARD

The old Howard County Circuit Courthouse opened in 1843 and has been renovated a few times during its history. The necessary redevelopment of the courthouse had been delayed numerous times over the past two decades. The building did not allow for the State approved 6th judge, technology enhancements, and required Federal and State mandates for case administration and processing. Engineering studies concluded that the existing building could not be further renovated to solve space inadequacies and that developing a new building was the only viable solution. The County did not have sufficient capacity in the capital budget to afford the $140 million (M) Courthouse in the near term but did have future capacity within its debt cap.

After analyzing different project delivery options, the County staff and Spending Affordability Advisory Committee, supported by experienced advisors, recommended delivery of the new Courthouse using a hybrid P3, using partial public financing and partial private financing, with a private delivery of design, build, and operation and maintenance of the Project for a 30-year term.[4]

In March 2017, County Council decided to move forward with the project and deliver it under the hybrid P3 model, expecting that model would result in a high-quality facility not only after completion, but for the following 30 years, as well as predictability of costs associated with the Courthouse.[5]

TRAVIS

When the Heman Marion Sweatt Courthouse opened in 1931, it was designed to hold four courtrooms. By the 1950s, County needs outgrew the courthouse, leading to several additions, the last completed over 50 years ago. Today, the facility is cramped with 19 courtrooms and the County projects a need for 10 more by 2035.

In 2006, Travis County led a search for optimal replacement sites, ultimately purchasing a block downtown, which offered regional accessibility and efficiencies for the lawyers and County staff already located in the Central Business District. This 2010 purchase launched the County's first attempt at delivering a modern courts facility. With architects and a program manager on board, the County prepared for a design build project that would leverage the value of commercial development on a portion of the site to offset the cost of the courthouse. The issuance of general obligation bonds to fund the courthouse required a bond referendum in 2015, which was narrowly defeated, based on public concern over the cost and location of the project.

The failed referendum spurred a new analysis of site location, design, and delivery method, all supported by experienced advisors. The County launched a site search and revised programmatic requirements to reduce costs. Ultimately, the County Commissioners Court approved a build-to-suit real estate transaction delivery approach (sometimes called a progressive design build) for the ~$330M courts facility. This method uses public funds to purchase land and a completed facility, for which design and construction are privately financed and managed.[6]

THEME 1: OWNER'S CONTROL

By their very nature, alternative financing and delivery models transfer risks and responsibilities from a public agency to a private developer. Public leaders new to alternative financing and delivery models sometimes express concern that transferring risk will require a loss of control, which may be problematic for project owners, particularly for design control of public facilities. The fear of ending up with an undesirable courthouse is understandable.

Howard and Travis Counties' concerns were not limited to each facility's exterior, but also – and more importantly – the functional design of the buildings, including adjacencies of the various court functions and public circulation. Alternative financing and delivery models, when properly structured, should not lead to a complete loss of control, but instead balance that control in a way that is different from conventional delivery, where the agency is fully in charge of the design process.

Every P3, regardless of the exact structure and the nature of the public building– including the Howard and Travis County Courthouse projects – establishes (design) control using three main levers:

Evaluation criteria in the procurement

Because all bidders aim to win in a competitive process, evaluation criteria can be used to focus the bidders on the public sector objectives. To do that, evaluation must not be just price-based, but value-based (economically most advantageous bids).

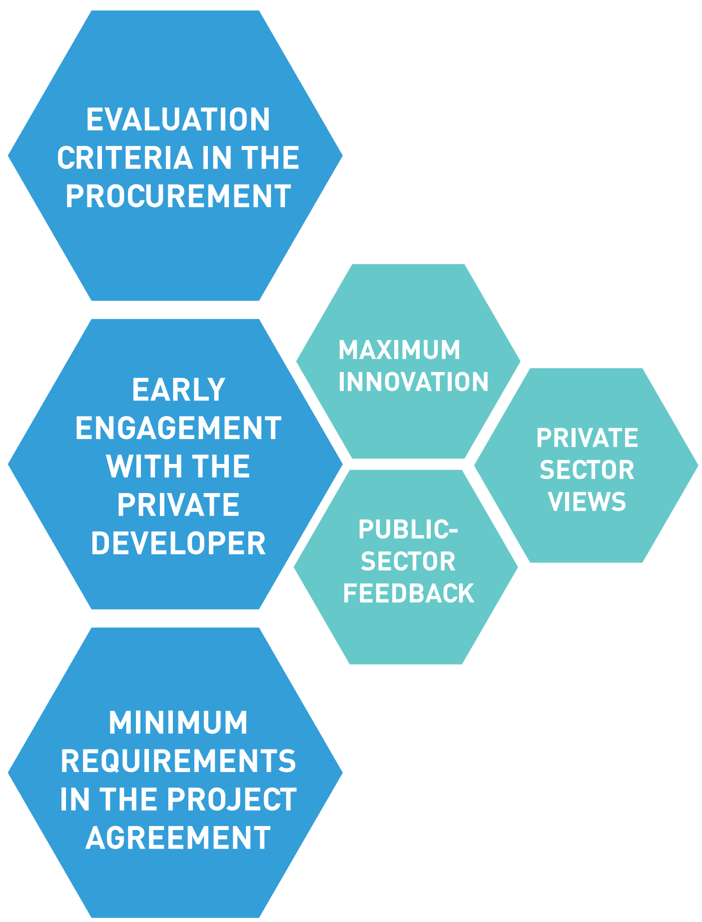
Early engagement with the private developer

Projects with significant complexity and uncertainties may benefit from the inclusion of a private partner(s) early in the project development process. This two-way engagement can provide key benefits while studies and permitting processes are still underway - before designs are too advanced - allowing for:

1. Maximum innovation
2. Public sector feedback on conceptual designs
3. Private sector views of life-cycle considerations, risk allocation, constructability, cost, and financeability

Minimum requirements in the Project Agreement

The Project Agreement stipulates the minimum requirements the private developer must meet, typically distinguishing between the design and construction standards and operations and maintenance standards.



Main Levers of Owner's Control

HOWARD

Minimum requirements: The appendices to the Project Agreement describe the design and construction requirements and the facility management standards that must always be met. Non-compliance will lead to deductions, a default process with opportunities to cure, and can eventually even lead to termination.

Evaluation criteria: The "best value" evaluation was based on a combined financial and technical score. The financial score formula calculated the net present value of 30 years of proposed availability payments and translated it into points. The technical score was broken down into four main components: project approach, design approach, construction approach, and facilities management approach. By assigning 20 of the 100 points to the financial proposal, the Project Team communicated its preference for a superb technical solution over a very low price. Upfront clarity about the dollar value per point, breakdown of technical proposal score, and a detailed definition of the quality of the technical proposals helped bidders to find the right balance between investing in quality and reducing the price.

Early engagement with the developer: Over a period of four months, the County organized three rounds of one-on-one meetings with all shortlisted bidders. The one-on-one meetings were a venue to discuss risk allocation and bring up opportunities for increasing value-for-money for the Project. The first round of one-on-one meetings were each four hours long and the second and third rounds of one-on-one meetings were each eight hours long. Each round was typically split evenly between technical and design discussions and commercial discussions. Throughout the meetings, the County and its advisors remained open to considering changes proposed by the bidders and accepted some of the changes if they determined that it would improve the delivery and value-for-money for the Project. For the County, finding the right balance between providing specific feedback to individual bidders while maintaining consistency between bidders was a delicate issue. This issue was particularly relevant to the architectural design of the building and site layout, where each bidder had a different approach.

Howard County

TRAVIS

Travis County was legislatively restricted from entering a long-term operations and maintenance contract with a private partner, so influence over the proposed site and facility design comprised their primary control concerns.

Minimum requirements: Embedded within the project Request for Proposals, the County offered to bidders a facility criteria package, including design criteria, a program of requirements, and performance criteria. Following updates throughout the design process, these criteria are included in the executed contract and must be delivered to ensure County acceptance of the completed facility, and thus final payment to the developer.

Evaluation criteria: Proposals were evaluated based on four primary criteria: desirability of the proposed development site; responsiveness to the County's facility criteria package; team experience and qualifications; and financing approach. Citing specific land and transportation features, as well as preferred nearby amenities, guided bidders to select optimal sites, while offering a level of control to the County, and ensuring that a highly qualified team with a poor land parcel would not score well. Conceptual designs and detailed narrative responses to the facility criteria package allowed the County to assess the life-cycle costs of proposed designs and select a bidder whose facility would provide flexibility for future building configurations and limit operating costs.

Early engagement with the developer: The County selected a single development team and conducted all design and pre-development activities with that team under an Exclusive Negotiating Agreement. Collaboration was key to Travis County's approach, beginning with a day-long Partnering Meeting, where the developer outlined the scope of the project, structure of the team and the array of stakeholders, how communication would occur, how decisions would be made, and how risk would be mitigated. County finance and facilities staff, who would ultimately be responsible for operations, met weekly with the collocated development and design team to advance design until finalizing a guaranteed maximum purchase price. County judges and court staff were briefed at major design milestones and invited to offer minor alterations to the design. This transparent collaborative design process enabled the County to retain significant control over the facility design, while holding them accountable for weighing the trade-offs between cost and specific finishes and amenities.

Travis County

THEME 2: BALANCED RISK TRANSFER

Risk allocation between a public agency and private developer is one of the core principles of alternative financing and delivery models. The purpose of risk allocation is to optimize which risks are carried by the public agency and the private developer. This is accomplished by ensuring that each party is allocated the risks which it is best positioned to manage, leading to the overall most efficient and cost-effective way to deliver the project.

The risk of long-term performance of the courthouse is one of the key risk areas that Howard County was concerned about. The County wanted to avoid the deferred maintenance, high governmental risk retention, and construction delays that characterized conventional delivery, as the chairman of the Spending Affordability Advisory Committee put it in his recommendation of the P3 delivery to County Council.[4] Travis County was motivated by the desire to secure a firm occupancy date and worked to transfer the risk of construction delays to its private partner. Typically, in alternative delivery models, the developer takes most of the risk of non-performance, even if the cause of non-performance falls outside the developer's control. Accordingly, much time is spent analyzing the risks that could arise during the term of the contract, ways of mitigating such risks (including insurance), and the extent to which the developer should be relieved from poor or non-performance caused by "supervening events", i.e. events that are beyond the control of the parties. This is usually accomplished through:

Balance & Optimize Risk Transfer

Compensation Events

Events for which the agency compensates the private developer using pre-determined mechanisms. The agency pays compensation to the developer and gives any other form of contractual relief required to leave the developer in the position that it was in before the relevant compensation event occurred ("no better, no worse"). Examples include public sector-initiated change orders or stop work orders.

Relief Events (often called delay events where they occur during construction)

Events for which the developer is expected to take financial risk but is given relief from other consequences of non-performance that such events cause (e.g. extension of time). These are, by nature, events that are either insurable or not expected to continue for many days. Examples include a strike or differing site conditions from expected.

Force Majeure Events

Events beyond the control of the parties that render the performance of all, or a material part, of one party's obligations impossible. The definition often focuses on events that are uninsurable, outside of the control of either party, and are catastrophic in nature. Each party will typically bear its own consequences of a Force Majeure Event. Examples include severe weather events.

The purpose of risk allocation is to optimize which risks are carried by the public agency and the private developer

CASE STUDIES
THEME 2: BALANCED RISK TRANSFER

HOWARD

The Project Agreement allocates all risks associated with delivering the courthouse by the required completion date and maintaining the facility according to the technical standards for the entire term of the agreement, with a few exceptions, specified in the supervening events clauses. The County retained the interest rate risk between bid date and financial close. Risks associated with site conditions and force majeure events were shared between the County and the developer.

TRAVIS

The County's transaction documents allocate all risks associated with construction costs, entitlement, and scheduled completion to the developer. Additionally, the team must deliver the court facility as described in the agreement. To reduce this risk, the County is monitoring project completion at each milestone, but is not responsible for making a final acquisition payment until all facility requirements are met. The County retained interest rate risk until financial close. Risks associated with site conditions and force majeure events were shared between the County and the developer.

THEME 3: COMPETITION & COLLABORATION

Early stage private sector involvement is expected to lead to better projects through:

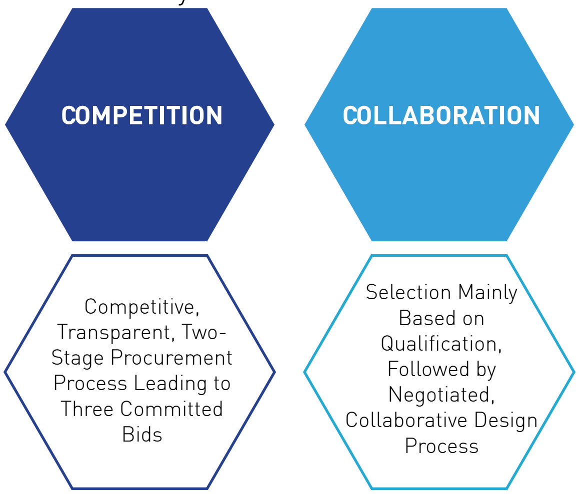
1. Increased information sharing
2. Greater technical and financial innovation
3. Improved risk management

Public agencies leveraging alternative financing and delivery can use a variety of mechanisms to enhance opportunities for early involvement of the private sector during project development. These mechanisms are likely driven by the procurement paradigm that is emphasized most: competition or collaboration.

Howard County opted for a two-stage competitive procurement, with an intensive series of one-on-one meetings, leading to three committed bids. This approach maximized competition and allowed the County to reach commercial and financial close quickly and smoothly after selecting the preferred bidder. The County could do so, as it was able to define its requirements upfront and knew it would be able to attract a significant number of interested bidders (nine consortiums expressed their interest in the procurement).

Travis County decided to focus more on collaboration through a competitive solicitation that resulted in an exclusive negotiation agreement. This collaborative approach enabled the County to customize its facility design by working alongside its developer, architect, and contractor, but also generate sufficient market interest despite perceived political risks.

Both paradigms – competition and collaboration – can contribute to getting the "best bang for your buck," but in different ways. Which paradigm to emphasize depends on local project circumstances, including expected changes in requirements and market appetite—which is a function of, among other factors, political and other uncertainty and transaction costs.



Competition & Collaboration

CASE STUDIES
THEME 3: COMPETITION & COLLABORATION

HOWARD

Howard County decided to run a competitive procurement that would result in three committed bids. The County believes that the competitive process with a limited number of highly qualified teams brought them the optimal "best value" solution.

The fact that the County was able to define its requirements and criteria upfront, made it possible to run a competitive process.

The nine expressions of interest that the County received were an indication of the significant market interest in the project, requisite for running a robust competitive process. Bidders explained that the main drivers for their interest in the project were that the County Council had clearly decided on the hybrid P3 procurement, after considering all the options, thereby limiting political risk, and also that the County had laid out a realistic and efficient procurement process and had experienced advisors, thereby minimizing proposal costs.

TRAVIS

Recognizing the unique local political environment that had thwarted the courts facility project in the past and understanding that project costs might shift due to design choices and market conditions, Travis County opted for a real estate procurement that would facilitate a flexible, collaborative negotiation and result in an optimal product for their needs.

Rather than selecting based on committed bids, the County evaluated team qualifications, risk mitigation plans, and expected changes of requirements. During a Best and Final Offer process, bidders locked in transaction cost values and calculation methodologies, such as developer fees, construction management fees, and capital market placement fees, and committed to a method for splitting project contingency funds remaining at completion.

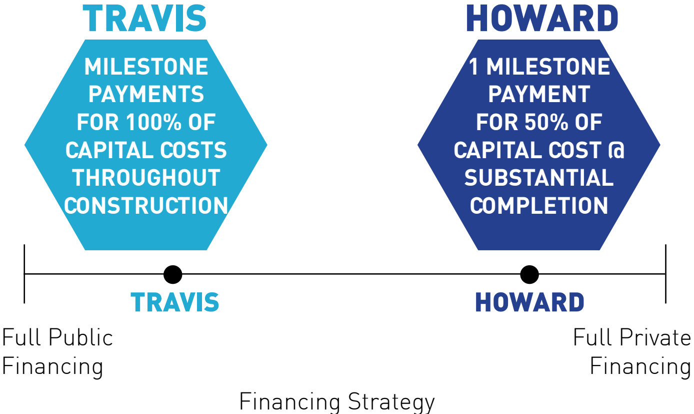
Having experienced advisors to support the County gave comfort to bidders that the collaborative, negotiated process could be efficient, timely, and successful.

THEME 4: FINANCING

Unlike a conventional delivery model that requires a public agency to fully fund a project throughout construction, a developer in an alternative delivery model is typically responsible for financing (a portion of) the capital cost of the project during construction and/or operational phases.

The developer either borrows money (debt) and/or invests its own funds (equity) to fund construction of the project. Having "skin in the game" motivates a consortium to complete the project on time and on budget and/or to deliver a high-quality performance throughout the term of the agreement. Whereas Howard County wanted to use that mechanism to ensure long term performance, it also felt that full private financing was not necessary to achieve that goal. The County decided to use a hybrid financing approach that combines attractively-priced public financing with risk-taking private financing. For Travis County, the main financing goal was to leverage low cost public financing, while still transferring the full completion risk, leading to a financing structure with milestone payments during construction and short-term financing by the developer.

Alternatively financed and delivered social infrastructure projects allow for flexible financing structures with varying degrees of public and private financing



CASE STUDIES
THEME 4: FINANCING

HOWARD

The County will make a $75M milestone payment at substantial completion of construction, after which it will make monthly availability payments over the remaining term of the agreement. The availability payment of approximately $10.3M (2019$) per year consists of (1) a fixed capital component in respect of the financing of the project and (2) an inflation-adjusted facilities management services component. The availability payments will be subject to deductions for failure to achieve performance requirements of the project agreement. With this structure, the County combines the attractively-priced public financing of the milestone payment with the "skin in the game" and resulting incentive to deliver a high-quality facility throughout the life of the project agreement that comes with private financing.

TRAVIS

Travis County's AAA credit rating ensured that they could command the lowest cost of capital. To leverage this advantage, the County is funding the full cost of acquiring the $333M courts facility over 12 milestone payments. To comply with public finance regulations, with each milestone payment the County purchases a component of the project, such as land, a prepared site, and a superstructure. This ensures that the County does not expend funds without receiving a like-valued product.

To fund initial project costs, as well as those between milestone payments, the developer secured short-term, revolving financing. Both the developer and general contractor committed to a 10% retainage, effectively reducing the County's milestone payments to 81% of the construction value they receive at each milestone. The retainage represents the developer's "skin in the game".

THEME 5: MARKET SOUNDING

Any market outreach effort for an innovative transaction will be a balance between

1. Assessing the current market environment
2. Soliciting feedback
3. Marketing the project

More innovative first-of-their-kind projects and structures typically require more emphasis on the assessment of the market environment and soliciting feedback. Because Travis County and its advisors had developed an innovative financing and delivery model, it sought industry feedback early in the process through a Request for Industry Comments (RFIC). Responses to the RFIC informed and validated the County's innovative delivery and financing model. Later in the process, the County organized an Industry Day to further market the project and ensure robust responses to a Request for Proposals.

More mainstream transactions require more emphasis on marketing, as too much focus on soliciting feedback would make bidders less confident about the capabilities of the agency to develop and implement a successful project. Exactly for that reason, Howard County decided to organize a well-prepared pre-bid meeting just before the release of the Request for Qualifications. The County and its advisors had substantially fleshed out the Project Agreement and Request for Proposals already and were therefore well-positioned to answer any and all questions potentially interested bidders had and demonstrate broad support for the project.[7] Bidders later indicated that this approach convinced them to invest resources to pursue this project.

CASE STUDIES
THEME 5: MARKET SOUNDING

HOWARD

Howard County chose to organize a pre-procurement industry day or pre-bid meeting, in which it convincingly demonstrated that the County was serious about the project and had thought carefully about the structure and how to mitigate potential risks. The request for expressions of interest (EOI) was released shortly after the industry day and served as the official launch of the procurement.

The market engagement continued throughout the procurement during the draft RFP process that the County used to solicit input from the pre-qualified bidders on the RFP and project agreement. Incorporating feedback from pre-qualified bidders on the draft RFP helped the County clarify its needs and objectives and ensure an optimal allocation of project risks and responsibilities.

TRAVIS

Because Travis County's financing and delivery model was innovative and untested, the County encouraged early stage market involvement through a formal Request for Industry Comment (RFIC). The seven responses to this RFIC validated and enhanced the proposed structure.

Being a real estate transaction that sought both land and a build-to-suit facility, the County's advisors broadly and transparently introduced developers to local land owners to facilitate strong RFP responses that met the County's goals. The County's advisors hosted an Industry Day to further develop these relationships. Confirming market acceptance of an unproven transaction structure and supporting the marriage of unlikely business partners (land owners and public facilities developers) resulted in a set of bidding teams that met and exceeded the County's expectations.

KEY SUCCESS FACTORS IN IMPLEMENTING ALTERNATIVELY FINANCED AND DELIVERED SOCIAL INFRASTRUCTURE PROJECTS

Across both the Howard County and Travis County court facility projects, and in the broader alternative financing and delivery environment, there are common factors repeated in successful projects. Public agencies and institutions should take note of these factors as they explore alternatives to traditional procurement and construction practices.

Do your homework

Public agencies must carefully prepare for alternative financing and alternative delivery projects before inviting private development teams to submit proposals. Specifically, agencies must identify and agree on project goals, procurement process, and prepare an appropriate level of design and facility requirements. Agencies are advised to avoid pursuing projects that are ambiguous regarding the institution's goals and requirements and for which viability has not been validated by financial analyses such as a value-for-money or a feasible development budget and operating proforma. Howard County first did a detailed financial analysis and value-for-money assessment, based on which the Spending Affordability Advisory Committee concluded that the hybrid P3 option was the most attractive delivery model from the County's perspective.[4]
Entities exploring less common transaction structures should confirm the viability of proposed financing and delivery methods with potential partners through a request for industry comments or information. Having a financial and transaction advisor that is well-versed in alternative financing and delivery structures can expedite this pivotal due diligence process and result in faster and more certain transaction execution.

Mind the political process and timing

The political process and the length of time from project conception to closing presents one of the largest risks to project success. Identifying one or more champions who can secure buy-in and continue to support the project politically is critical. Finding creative ways to expedite approvals within the bounds of a political environment can keep project efforts on schedule. In the case of Travis County, elected officials opted to de-politicize approvals by delegating significant decision-making authority to staff, while preserving approval rights over major partner selection, structure, and funding decisions. Stakeholder engagement, which varies based on the project, financing, and delivery model, should be addressed early and often throughout the planning and development process to avoid detractors.

Be Transparent and Communicate Often to the Public

Like many government projects, for an alternative financing and delivery model to succeed, project sponsors must maintain transparency to the public, end users, and the private development industry. Both Travis and Howard Counties' staff and advisors held regular public meetings with elected officials to describe the transaction prior to closing and provide progress updates throughout development. Despite the difference in delivery models, both projects strategically interacted with end users, seeking approval for the eventual facility at important project milestones.

DETAILED PROJECT FEATURES

FEATURES	HOWARD COUNTY	TRAVIS COUNTY
Size (SF & $)	238,000 SF / $150 million	430,000 SF / $333 million
Type	Courthouse	Courts Facility
Location	Columbia, Maryland	Austin, Texas
Procuring agency	Howard County	Travis County
Public stakeholders involved	County Executive, County Council, Administrative Judge, Court Administrator, and various department staff	County Commissioners Court, District Judge, Court staff, Community Advisory Committee
Advisors	IMG Rebel; Hawkins Delafield & Wood LLP; Arcadis and Grimm + Parker / Ricci Greene JV	Alvarez & Marsal; AECOM; CBRE; Winstead LLP
Project champion	County Executive Alan Kittleman and Circuit Court Administrative Judge Lenore Gelfman	County Judge Sarah Ehardt and District Judge Lora Livingston
Project Delivery Model	Design, build, finance, operate, maintain (DBFOM) with milestone and availability payments	Design, build, finance, transfer (DBFT) and land acquisition
Key motivations for Project Delivery Model	The complete redevelopment of the courthouse had been delayed numerous times over 20 years and could no longer be renovated to meet needs	Replace 84-year old courthouse using alternative financing after voters rejected a bond measure to fund the project
Contract term	30 years following occupancy readiness	4 years
Financial Structure	Private partner responsible for short term and 50% of long term financing; short-term financing will be repaid with milestone payment from the County	Private partner to finance construction; County to self-finance milestone payments and final purchase
Land/site/real estate	27-acre County-owned site	77,000 sf private acquisition
Legislative restrictions	Needed County Council bond authorization for milestone payment and approval of multi-year contract. Upfront County Council Resolution was not required, but was provided to demonstrate County's support	Restricted long-term operations and maintenance Bond funds must purchase complete project components

FEATURES	HOWARD COUNTY	TRAVIS COUNTY
Public responsibilities	Building security operations; payment of utility costs; payment of construction milestone payment, moveable FF&E payment, and service fee	Own, operate, and maintain facility and land upon transfer from private partner
Private responsibilities	Design, construction, routine and lifecycle maintenance, and facilities management. 50% of long-term financing	Design, construct, and deliver facility and land
Risk allocation	Public: Procurement/political; Private: Design, construction, permits, operations & maintenance; Shared: Site conditions, Force Majeure	Public: Procurement/political, operations & maintenance; Private: Site conditions, design, construction, permits Shared: Site conditions, financial, Force Majeure
Procurement process/timeline	Expressions of interest, request for proposals, and fully committed bids / 11 months from issuance of draft RFP to financial close	Request for industry comments, request for proposals, exclusive negotiating agreement, purchase and sale agreement/ 15 months
Evaluation criteria	Responsiveness of technical and financial proposals; "best value" evaluation based on financial and technical score; Net present value (NPV) of 30 years of availability payments; project, design, construction, and facilities management approaches; preference for superb technical solution over low price	Land can physically and legally support courts facility and location offers access to amenities, transit, and required infrastructure; reasonable facility criteria package; relevant development, design, and construction expertise; sound financial approach
Shortlisted Bidders	3	3
Private partner(s)	Edgemoor-Star America Judicial Partners LLC (single purpose entity formed by Edgemoor Infrastructure & Real Estate LLC and Star America Fund GP LLC)	Hunt Companies Chameleon Companies

Alvarez & Marsal ("A&M"), a leading global professional services firm, was founded in New York City in 1983 to support organizations facing strategic, operational, and financial challenges. A&M now has over 4,000 professionals in 52 cities and 20 countries.

Alvarez & Marsal (A&M) offers a full range of Public-Private Partnerships, real estate and financial analysis services, providing customized solutions that address clients' unique fiscal and operational needs. A&M implements strategies to deliver public buildings, capture value in underutilized assets and structures P3 projects to attract industry expertise and private capital with transparency and public accountability.

A&M provided P3 real estate advisory services, market analysis, developer solicitation/selection, financial feasibility analysis, and transaction structuring /negotiation to Travis County. The Courthouse project leveraged financial return from 308 Guadalupe, a prime mixed-use development in downtown Austin.

IMG Rebel (www.imgrebel.com) is a leading infrastructure advisory firm with extensive US and international experience in alternative financing and project delivery structures, including P3s and other innovative approaches. We provide a full array of transaction support services, from market analyses and opportunity assessments to feasibility and valuation analyses, solicitation support, bid evaluation and negotiation assistance. We, and our RebelGroup affiliates, have provided transaction advisory services to governments and private bidders on over 75 P3 transactions globally in every area of public-use infrastructure. Our interdisciplinary experience with both public and private sector clients provides a unique perspective from which to address P3s.

The IMG Rebel team served as the P3 financial and transaction advisor for Howard County, MD on its Circuit Courthouse, and is advising on courthouse projects for Miami-Dade County, the State of Delaware, and Clackamas County, OR.

Endnotes

1 American Society of Civil Engineers Infrastructure Report Card
https://www.infrastructurereportcard.org/

2 National Education Association, Crumbling schools don't provide strong foundations for America's students
http://www.nea.org/home/49988.htm

3 CGL – Deferred Maintenance Crisis Predicting Negative Effects
https://www.cglcompanies.com/wp-content/uploads/2018/09/CGL_WhitePaper_DeferredMaintenanceCrisis_DIGITAL.pdf

4 Report from Spending Affordability Advisory Committee
https://www.howardcountymd.gov/LinkClick.aspx?fileticket=-nLkTsWFt1Y%3d&portalid=0

5 Council approval of P3 Agreement
https://www.howardcountymd.gov/LinkClick.aspx?fileticket=77xP7xFv-sU%3d&portalid=0

6 Commissioner's Court approval of alternative finance transaction
http://traviscountytx.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1788&Inline=True

7 Council support for project and P3
https://www.howardcountymd.gov/LinkClick.aspx?fileticket=sTsQHQkWFvs%3d&portalid=0