


CASE STUDY: WHAT A DECISION IN TEXAS SAYS ABOUT US COURT P3S

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A Hunt-led consortium managed to sidestep political flip-flopping with a design-build-finance approach in Travis County. Can stripping out the operations, maintenance and long-term financing unlock social infrastructure P3s elsewhere? Jon Berke reports

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A nearly decade-long effort to construct a new courthouse in Austin, Texas came to an end in April when a Hunt Companies-led consortium reached financial close to design, build and finance (DBF) a new facility. The team is now tasked with developing a new 430,000 sq ft courthouse projected to be operational in 2022.

While the deal came with the many twists and turns familiar in the US public-private partnership (P3) sector, its successful close provides something of a road map for other courthouses and social infrastructure seeking assurances around state-led procurement decisions.

US states and municipalities have always looked at, but ultimately been at odds with the concept of a true public-to-private partnership (P3) – grappling with both privatizing a public asset and convincing their voter constituencies of the merits of raising taxes to pay for such projects. On top of this, there is the risk that private sector bids can often exceed what the city is willing to pay.

In Austin, the county and its advisors on the [Travis County Civil and Family Courts Facility](#) evaluated multiple avenues of procurement and multiple locations, ultimately landing on a DBF process for the new facility.

So why the almost ten years wait, and what does the decision mean for other US court and social infra P3s currently moving through procurement?

Twists and turns

In Travis, between bid selection (July 2018) and financial close this April, the winning consortium (including Hunt, Amber Infrastructure and Chameleon Companies) worked with multiple jurisdictions ranging from the district attorney's office to the police department to agree on design and capex. This marks a contrast with some past attempts at social infra P3s such as projects in Michigan and Indiana, in which the grantor and bidders were brought on-board only to meet resistance from other constituencies.

"Every stage is going to have issues amongst stakeholder groups that have to be reconciled continuously as the design evolves," said Rodney Moss, senior vice-president for Hunt.

The fate of the Travis courthouse follows a growing trend for flip-flopping on procurement models at state authority level. The [Michigan Consolidated Labs P3](#) was suspended in late 2018, after teams were shortlisted for the project, following resistance from state government agencies set to share the modern laboratory facility. These agencies took issue with the space they were allotted in the designs presented to them under the RFQ, say multiple sources.

Political resistance also doomed a P3 for a new courthouse in Indianapolis. A winning consortium was selected in late 2014 for a courthouse DBFOM which later lined up a private placement to finance the project. Six months later, the Indianapolis City-County Council narrowly [rejected the project](#) even after the bidders, which included Meridiam, Walsh and Balfour Beatty, agreed to reduce the cost of the project.

Along similar lines to Travis County, Hunt also made a DBF pitch for Miami-Dade's new courthouse project. Ultimately, its consortium was [not shortlisted](#) for a project that has already seen a site change, new financial advisers and ultimately a rebid from teams shortlisted for the project.

"These types of complex public-private real estate transactions require constant communication between the people running projects and key decision-makers and stakeholders," says Jay Brown of Alvarez & Marsal, which advised Travis County on the project. "A disconnect often causes delays or cancellation."

Down in Travis

Travis County also faced a series of obstacles and U-turns leading up to procurement.

The county appointed AECOM as project manager for the courthouse, purchased a 500,000 sq ft site and was ready to go with a formal procurement for a DBFOM in 2012. But a year later, the Travis County Commissioners in Texas reversed course and sought a DB instead. That process stalled after a bond referendum failed in 2015. In 2017, Travis County sold the site to a real estate developer and – with the assistance of real estate broker CBRE – found a new site.

The county's advisors [launched](#) an RFIC in December 2017 and made it clear this would be a two-step process in which a winner will be selected, but would then have to negotiate with the county on a maximum price for "the conveyance and delivery of the court facility." Hunt was selected over three other parties.

"We submitted target pricing based on similar projects, including courts that our contractor built in Denver and San Jose," says Rodney Moss, senior vice-president for Hunt, adding that during selection and execution of the pre-development agreement there was no firm pricing in the proposal other than "indicative pricing" with proposed fees applied to it. In essence, the final price on the contract would ultimately change based on how the ultimate design was negotiated among the consortium and the jurisdictions involved in the process.

The design during the pre-development period followed the customary three-stage architecture process, building on the conceptual design established in the proposal, according to Hunt's Moss.

At each stage, the county's advisers set a process where the design-build team could take their design and cost estimates to the judges and facilities staff. This allows for validation and input so that the design and construction budget at financial close can be fully vetted with key subcontractors competitively bid and ready to start construction, according to Jenifer Boss, a director with A&M.

Once public and private parties were confident financial targets would be met, the lender's legal advisor Norton Rose was appointed and financing documents drafted. An RFP was then issued for financing and KeyBank was selected to provide USD 75m revolver.

The financing argument

Each stage involved building up a cost model for the various components of the courthouse in concert with all stakeholder groups. Scoping adjustments included increasing the overall square footage to 448,000 from 426,000 sq ft with appropriate trade-offs from the original specifications. The 100% construction documents final phase occurs after financial close as part of an early milestone payment and involves a full technical review by the county and lender and their advisors to confirm that the completed design meets the contractual design requirements.

The fact that operation and maintenance were not included in the procurement helped ease the financing process, according to people spoken to for this article.

With a full capex budget, the winning consortium was able to get a USD 75m construction revolver with KeyBank that matched the length of the construction period. The revolver itself carried 10 milestones through the 44-month loan of construction. Separately, Citigroup issued USD 330m in certificates of obligation that would effectively pay down the construction loan and allow the city to buy the facility over time in installments with a USD 34m final acceptance payment.

US Court P3s in the Spotlight	State	Status	Amount (USD m)	Procurement
Travis County Courthouse	Texas	Financial Close	344	DBF chosen after multiple procurement avenues considered
Miami-Dade County Civil and Probate Courthouse	Florida	Shortlist	361	DBFOM
Howard County Courthouse	Maryland	Financial Close	137	DBFOM
Miami-Dade County Civil and Probate Courthouse (Initial RFQ)	Florida	Cancelled	361	DBFOM cancelled to launch new procurement
Milwaukee County Justice Center	Wisconsin	Pre-launch	unknown	Not specified - P3 explored in policy report
Las Vegas Courthouse	Nevada	N/A	55	P3 considered but rejected for "Construction Manager at Risk" option, with city owning facility and paying for construction
Chatham County Courthouse Complex	Georgia	Cancelled	N/A	DBFOM cancelled

Source: *Inframation Deals*

An O&M contract with long-term financing would have added complexity to the project, since it would involve securing additional capital over the course of the concession to pay the contract, according to Hunt's Moss. Such perceived complexity may yet impact plans for other court P3 around the US.

Maryland's Howard County Courthouse project was also praised for having a much cleaner procurement in which Edgemoor Infrastructure & Real Estate & Star America were selected as preferred proponents, according to an infrastructure fund manager familiar with the process. However, a key difference was that the consortium financed the entire capital budget, but the county took out a portion of the private financing with a USD 78m milestone payment. The upfront payment paid for the land and reimbursed pre-development costs, including design fees at close.

The Travis County Courthouse is an example of what can be done in the P3 market when a grantor is willing to align with both the contractors and ultimate occupants with a pragmatic approach. It may now serve as a test case for other social infrastructure P3 over the next year, including another long gestating project the Miami-Dade's County Civil and Probate Courthouse and the Los Angeles Civic Center process, which is due to conclude next year.