

UNDERSTANDING AND EVALUATING THE USE OF

# Public-Private Partnerships for K-12 Public School Facilities

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While public-private partnerships (known as “P3s”) have primarily been used in the U.S. for transportation and water projects, they’ve recently been touted as a way to repair, replace, or build new K-12 public school facilities. Many public school facilities nationwide are in need of major maintenance or replacement. The American Society of Civil Engineers rated 24 percent of public schools as being in fair or poor condition, with 53 percent in need of rehabilitation. This translates to an estimated \$38 billion annual funding gap.<sup>1</sup>

To help fill this gap, some local governments and school districts are considering P3s that use private capital to finance public projects. In the U.S., using P3s to construct public buildings, such as courthouses and higher education facilities, is relatively new. When it comes to public school facilities, very few P3 contracts have been signed. However, the experiences of governmental entities using P3s for other types of projects—such as transportation and water infrastructure—and other countries using P3s for public school facility projects, particularly Canada, are instructive. Numerous case studies show that inserting private interests into the development and maintenance of public school facilities has proven to be difficult and even counterproductive when equity considerations and standards aren’t included, and adequate care isn’t taken to protect the public interest.

**This guide aims to help advocates, policymakers, and other stakeholders better understand and analyze public school facility P3 proposals, contracts, and related legislation.** We describe critical issues and include key questions stakeholders can raise to ensure that a given project advances the public good. While this is not an exhaustive list of questions, it provides a useful framework to examine P3 deals involving public school facilities.



## WHAT ARE PUBLIC-PRIVATE PARTNERSHIPS (P3S)?

“Public-private partnership” or “P3” is an imprecise term that refers to different types of contractual arrangements between a governmental entity and a private entity. In the contractual agreement, the private entity agrees to design, build, finance, operate, and/or maintain a public building. In many cases, the governmental entity pays the private entity regular lease payments or payments called “availability payments.” For some buildings, such as a dormitory at a public university, the private entity may be repaid through the right to collect rent payments directly from students, instead of lease or availability payments.

For the rehabilitation or reconstruction of existing public school facilities or the construction of those that are new, a P3 typically uses the availability payment structure. The locality or school district is responsible for regular payments to the private entity, typically after construction is completed, for the life of the contract. These contractual arrangements often last decades, typically between 20 and 50 years.


<sup>1</sup> American Society of Civil Engineers, “2017 Infrastructure Report Card – Schools.” <https://www.infrastructurereportcard.org/cat-item/schools/>

For more information about availability payments, please see In the Public Interest's publication: [Availability Payments in Public-Private Partnerships: Issues and Implications](#).


## RISKS OF P3S FOR K-12 PUBLIC SCHOOL FACILITIES

While P3s have received much attention as a way to combat our country's infrastructure woes, they are no panacea. A closer examination raises issues that warrant careful consideration for decision makers looking to undertake a P3 for public school facilities.

### LOSS OF PUBLIC CONTROL OVER POLICY AND PLANNING DECISIONS

 In P3 arrangements for public school facilities, some contracts may contain clauses that incentivize or require actions contrary to the public interest, or that limit the government's ability to make policy and planning decisions often decades into the future. These clauses may guarantee corporate profits by insulating the company from risks. While no school district in the U.S. has yet to fully complete construction on school facilities using a P3 project, Canadian provinces have experimented with this approach. For example, in 2007, Alberta signed a P3 to build 18 schools. Not only did costs eventually triple from the original estimated budget, but the contract also strictly limited access to the new school facilities. Community groups couldn't use the schools after hours for activities like child care and sports leagues.<sup>2</sup> In Saskatchewan, P3 contracts have limited teachers from using classroom walls to post student work, decorations, and other materials. A staff guide instructs teachers to treat the facilities as "leased spaces."<sup>3</sup>

### INCREASED COSTS TO PUBLIC BUDGETS

 P3 arrangements can be more expensive for governmental entities when compared to traditional finance and delivery methods. One important difference between availability payments and government bonds is the cost of capital. Private equity financing is significantly more expensive than traditional tax-exempt municipal financing, and a portion of an availability payment is allocated for returns for investors. The experience of the Long Beach, California, courthouse P3 project is instructive. In 2013, the state courthouse was the first major public building constructed in the U.S. using the P3 method. The P3 arrangement proved to be very pricey, costing Californians \$53 million annually for 35 years.<sup>4</sup> The California Legislative Analyst's Office estimated that the project may have been as much as \$160 million more expensive because the city had used a P3.<sup>5</sup> Because of the considerable expense, other state courthouses may not be able to be built. As Sacramento-based Superior Court Judge Steve White explained in 2016, the Long Beach courthouse came "at a cost so exorbitant that it has resulted in many counties needing courts and not getting them."<sup>6</sup>

<sup>2</sup> Canadian Union of Public Employees 737, "Keep Manitoba Public: Why P3s are the wrong director for our schools." [https://cupe.mb.ca/files/2018/03/Backgrounder\\_P3\\_schools\\_2018\\_02\\_08.pdf](https://cupe.mb.ca/files/2018/03/Backgrounder_P3_schools_2018_02_08.pdf)

<sup>3</sup> Ibid.

<sup>4</sup> "Judges say high cost of Long Beach courthouse is depriving other areas of courtrooms," Long Beach Press Telegram, May 18, 2016. <https://www.presstelegram.com/2016/05/28/judges-say-high-cost-of-long-beach-courthouse-is-depriving-other-areas-of-courtrooms/>

<sup>5</sup> California Legislative Analyst's Office, "Maximizing State Benefits From Public-Private Partnerships," November 8, 2012. [https://lao.ca.gov/reports/2012/trns/partnerships/P3\\_110712.aspx](https://lao.ca.gov/reports/2012/trns/partnerships/P3_110712.aspx)

<sup>6</sup> "Judges say high cost of Long Beach courthouse is depriving other areas of courtrooms," Long Beach Press Telegram, May 18, 2016. <https://www.presstelegram.com/2016/05/28/judges-say-high-cost-of-long-beach-courthouse-is-depriving-other-areas-of-courtrooms/>

## CUTTING CORNERS



In an effort to contain costs and maximize profits, private entities may skimp on quality of materials, quality of building maintenance, number of workers, and other important inputs. For example, school administrators in Edmonton, Canada, experienced problems with the private entity in a P3 contract not responding to maintenance requests in a timely manner, in effect forcing school district employees to perform the work. Moreover, important systems, such as electrical systems, experienced issues from the beginning. The contractor's work failed inspection, and school district staff ended up making repairs. The local school board ended up paying twice to get the work done right and on time.<sup>7</sup> It is important to note that proponents of P3s often claim that the model is superior because it will ensure that the facility is properly maintained for the life of the contract. However, long-term planning and financial commitment by the governmental entity can ensure that the facility is publicly maintained over its lifetime without utilizing a P3 model, while allowing for greater public control over maintenance standards and responding to problems that occur. In other words, the governmental entity can simply commit to and budget for maintaining the facility with public employees.

## REDUCED LABOR STANDARDS



Cost savings often derive, at least in part, from reduced wages and benefits for construction workers who build infrastructure and permanent workers who operate and maintain school facilities. In a P3 arrangement, school janitorial and building maintenance positions can change into private sector positions with lower wages and less health and retirement benefits than their public sector counterparts. In the U.S., a number of school districts have experimented with outsourcing custodial and building maintenance services, and in many cases contractors reduced wages and benefits for the affected positions to lower operating costs. For example, when Chelmsford, Massachusetts, schools outsourced custodial jobs, wages were slashed from \$19 per hour to around \$8.50 per hour.<sup>8</sup>

## FINANCIAL RISK AND UNPREDICTABLE PROJECT TIMELINES



Many P3 projects come with complex financial risks that are difficult for governmental entities to mitigate, sometimes extending project timelines beyond expectations or forcing the public to pick up the pieces, which can be costly. For example, in 2017, an Indiana toll road project launched by then-Governor Mike Pence failed as the financial firm behind it slid toward bankruptcy. Halfway built, it was taken over by the state after two years of construction delays that caused increased traffic accidents and commute times. In 2019, Denver, Colorado, decided it would take over the operation of a P3 rail project itself after the first phases were plagued by skyrocketing costs, delays, dramatic breakdowns, lawsuits, and operational issues that put passengers at risk. In 2021, Maryland rebid a P3 for a transit line after the contractor pulled out of the project citing delays and rising costs, adding \$250 million to the overall cost and four years to the project timeline. School districts are acutely impacted by these types of financial and timeliness issues, as cost overruns and longer than anticipated construction timelines directly impact a district's ability to safely and effectively educate students.

## LOSS OF TRANSPARENCY AND PUBLIC INPUT



Many P3 projects are marked by scant transparency and proceed with little or no opportunities for public input, including input from school staff, students, parents, and the broader community directly impacted by the contract.

Additionally, many of these issues are present in P3s for other types of public buildings. In the Public Interest has published a guide that examines these issues: [Understanding and Evaluating the Use of Public-Private Partnerships for Public Buildings](#). Additionally, ITPI has published a guide that examines issues with P3s for all types of public infrastructure: [Understanding and Evaluating Infrastructure Public-Private Partnerships \(P3s\)](#).

<sup>7</sup> Canadian Union of Public Employees, "Case study: Alberta P3 schools," July 18, 2014. <https://cupe.ca/node/33119>

<sup>8</sup> Martin Z. Braun & William Selway, "Pension Fund Gains Mean Worker Pain as Aramark Cuts Pay," Bloomberg, Nov. 20, 2012

## WHAT ISSUES DO P3S RAISE?

Below is a list of questions that identify key issues in proposed privatization deals involving public school facilities. This is not a complete and exhaustive list, but the questions provide a framework for evaluating proposals for the potential privatization of a public school facility. Please note that while we use the singular version of “facility” in these questions, P3 proposals may bundle multiple facilities into a single deal. These questions would also apply to a bundle of multiple facilities.

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### CURRENT STATE OF THE PUBLIC SCHOOL FACILITY, CURRENT AND FUTURE NEEDS AND ISSUES

- ▶ How does the current public school facility (if the scope of the proposal requires one or more current facility to be rehabilitated or reconstructed), meet educational and community needs? Does the facility successfully provide the space to promote the learning and well-being of students in the community?
- ▶ Are there problems with the current public school facility? Has there been a thorough analysis of these issues, including causes of the issues and possible solutions? Potential issues to examine include:
  - Are there maintenance needs and/or additions to the public school facility that need to be addressed?
  - Is the public school facility accessible to workers, teachers, students, the public, or other users?
  - Does the public school facility provide a healthy environment without the presence of dangerous toxins, molds, etc., that can endanger human health?
  - Is the public school facility resilient to extreme weather events, natural disasters, climate change, and other changing environmental conditions?
  - What is the demographic make-up of the workforce that operates the public school facility? For example, does the workforce represent the diversity of the community?
- ▶ What problem(s) does the proposed privatization seek to solve? Has there been an analysis of how the governmental entity can address these problems without privatization?

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### CURRENT AND POTENTIAL FUNDING AND FINANCING

- ▶ Has an analysis been done to understand capital needs for the rehabilitation or construction of the public school facility?
- ▶ Is there a thorough understanding of the governmental entity’s financial position and ability to take on new debt via municipal bonding, given the governmental entities’ current bond rating and current debt load? Are there problems with the governmental entity accessing tax-free municipal bonds as a source of financing for the proposed project? Tax-free municipal bonds are a much cheaper source of financing than private equity financing, which can have an interest rate three to five times higher than traditional municipal bond financing.
- ▶ What other governmental funding and financing streams can be used to meet capital needs?
- ▶ Does the private entity have the financial capability to adequately maintain constructed public school facility and/or finance necessary future improvements?

## TO P3 OR NOT TO P3 – COMPARING OPTIONS AND CONTRACTUAL CONSIDERATIONS

- ▶ Has the governmental entity prepared an economic analysis describing potential revenues and expenses if the facility remained in public hands? The analysis should account for any anticipated improvements to the public school facility that would increase efficiencies, decrease maintenance costs, etc.
- ▶ Has the governmental entity performed or retained an outside firm for an analysis of various procurement options? In design, build, finance, operate, and maintain (DBFOM) projects, governmental entities rely on a Value for Money (VfM) analysis to compare lifecycle costs of designing, building, financing, operating, and maintaining an asset when using various procurement methods. A VfM analysis typically compares traditional procurement such as design bid build (DBB) or design build (DB) to a procurement approach with greater private sector involvement, such as a DBFOM.
- ▶ What are the specific assumptions in the VfM regarding cost savings and could they impact quality of service or workforce compensation, or inhibit public policy options? Methodology can dramatically alter the results of the VfM analysis. It may be necessary to get outside expertise to review the VfM analysis, including the assumptions used, identified risk factors, and calculation details. For example:
  - Are there assumptions about differences in cost of maintenance or operations workforce between the traditional procurement and P3 models?
  - Are there assumptions around maintenance of the asset between the traditional procurement and P3 models? Some VfMs assume that the government entity will not adequately maintain the asset and use this assumption in their financial analysis. But long-term planning and financial commitment by the governmental entity to publicly maintain the asset may result in lower costs than privatized maintenance.

For additional information about VfM analyses, see ITPI's publication: [Issues and Considerations for Value for Money Analyses](#).

- ▶ If the governmental entity must use private financing, has it considered the option of using direct public employees for some or all of the maintenance and operation of the facility instead of outsourcing these functions as part of the contract?
- ▶ Does any cost analysis/comparison consider non-financial public interest criteria including social and economic impacts; accessibility of the infrastructure to low income communities; job quality; environmental impacts; and accountability and transparency measures?

## IMPACTS ON THE GOVERNMENT'S BUDGET

- ▶ How will the governmental entity compensate the private entity in the proposed P3? Will the governmental entity provide regular lease or availability payments to the private entity? Will there be other payment mechanisms and/or a hybrid approach of more than one compensation scheme?
- ▶ What are the estimated annual payments that the governmental entity will have to pay? How does the availability payment formula work? Are there provisions in the contract that allow for this payment to fluctuate or rise?
- ▶ How does the governmental entity plan to ensure timely payment of the availability payment? What sources of funds will be used for repayment and how will this be accounted for in the budget for the life of the contract?
- ▶ Are there any anticipated or even somewhat likely events that could cause challenges to the governmental entity's ability to make timely payment at any point in the long-term contract period?

- ▶ What are the transaction costs that the governmental entity will incur with a P3 approach, such as costs associated with the procurement process and oversight of the contractor for the life of the contract? Are these costs accounted for in the cost comparison/analysis?
- ▶ Will the governmental entity incur hidden costs with a P3 approach? For example, private sector maintenance jobs that pay low wages or fail to provide health insurance benefits may result in an increase to another part of a governmental entity's budget, as the need for social safety net services will increase.
- ▶ How will the proposed privatization deal impact the governmental entity's bond rating? Are there risk factors associated with the deal that could impact the governmental entity's future cost of borrowing?

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## IMPACT ON USERS

- ▶ What are anticipated impacts of the proposed P3 arrangement of a public school facility on students, teachers, maintenance staff, and others? Will the contract impact the ability for educators to implement learning best practices? For example, does the contract limit the ability of educators to use classroom wall space to display teaching materials, student work, etc.?
- ▶ How will the proposed privatization proposal impact the broader community? For example, does the contract limit community use of the facility, such as limiting a governmental entity from allowing local youth sports leagues to use the facility after school hours?

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## LEGAL, REGULATORY, AND EXISTING CONTRACTUAL CONSIDERATIONS

- ▶ Are there existing state laws that apply to privatization or P3s that must be taken in account in any potential procurement?
- ▶ Are there local, state, or federal regulations or programs related to the public school facility or the services provided within the public school facility that could apply to or impact a potential privatization arrangement?

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## DEMOCRATIC CONTROL AND INCENTIVES

- ▶ Does the contract limit the governmental entity's ability to use the facility for public events such as a school fair or carnival, sporting event, polling station, vaccination site, emergency shelter, etc.?
- ▶ Does the contract contain clauses that could run counter to future school planning and policy decisions? For example, will the contract allow for the school to make future improvements to the facility, such as installing solar panels? If statutory requirements change for building climate resiliency measures, will the private entity allow for and implement required facility improvements?
- ▶ How long is the contract? Many of these contracts can last for decades.
- ▶ Does the contract include termination and "buy back" clauses, which lay out how the governmental entity can take back control of the public school facility? Does the contract specify how the amount the governmental entity would pay to buy back full control of the public school facility will be calculated?

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## CONTRACTING STANDARDS, OVERSIGHT AND MONITORING, AND AGENCY CAPACITY

### *Agency Capacity*

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- ▶ Does the governmental entity have the necessary experienced staff to negotiate a good deal for the public?
- ▶ Does the governmental entity have the necessary and experienced staff to ensure that outside analyses performed by consultants, etc., are fair and sound?

### *Consultants*

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- ▶ Will the governmental entity hire consultants to assist with parts of the deal?
- ▶ How are contracts with consultants, lawyers, and other third parties structured? Do they collect fees for services rendered or for successful completion of deals, regardless of the outcome for the governmental entity?
- ▶ Do the consultants, lawyers, or other third parties have any conflicts of interest? What is their track record and background with these types of contracts?
- ▶ Have the private contractors, investors, or consultants made campaign contributions to relevant decision makers?

### *Contract Standards*

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- ▶ Does the contract contain specific operations and maintenance standards, including a hand-back provision that specifies the minimum condition for the public school facility when it is returned to the public at the end of the contract term?
- ▶ Does the contract include performance standards that ensure timely and quality maintenance and/or operations?
- ▶ Does the contract include provisions related to default and bankruptcy of a private contractor to protect the state and the public in case the project or a private entity financially fails?

### *Oversight and Accountability*

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- ▶ Does the contract contain robust oversight provisions, including establishing regular reporting requirements and rights of the governmental entity to inspect and audit the public school facility?
- ▶ Does the governmental entity have a sufficient number of well-trained staff to oversee and monitor the privatization contract for the life of the contract?
- ▶ What rights does the governmental entity have to review and restrict refinancing, or sale of interest, by the private entity?

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## PUBLIC PARTICIPATION

- ▶ Does the contract contain appropriate and accessible mechanisms for members of the community, those who work/learn in the facility, and others who utilize the facility to provide feedback and comments for the life of the contract?
- ▶ Are there adequate and meaningful forums for public input during the initial proposal stage and any subsequent procurement, such as public hearings or public comment periods?
- ▶ Does the school district, school board, city council and/or other decision-making bodies have access to the information they need to evaluate the privatization proposal?



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## PUBLIC HEALTH AND ENVIRONMENTAL SUSTAINABILITY

- ▶ Does the contract include requirements for building an environmentally sustainable and resilient facility?
- ▶ Does the contract include requirements and performance standards related to public health and safety of the facility throughout the life of the contract?

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## WORKFORCE BENEFITS AND STANDARDS

- ▶ What will be the potential impacts on the existing and/or future workforce, including both the construction workforce and the long-term operations and maintenance workforce?
- ▶ Are the workers currently unionized and does the Collective Bargaining Agreement or government policy contain clauses that require workforce retention, retraining, or labor peace?
- ▶ How many jobs will be created and what will the wages and benefits be for these jobs? How will the number of jobs and compensation change once control is shifted to the private sector?
- ▶ Who will receive any new jobs? Are there opportunities for a proposed project to include policies, programs, or agreements that ensure that residents in surrounding areas, especially those in nearby low-income urban or other disadvantaged communities, are offered employment and career training opportunities?

