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Glossary

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Public-Private Partnerships

Terms Related to Building and Facility Partnerships

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Public-Private Partnerships

In recent years, governments at all levels have struggled to limit costs without reducing services. At the federal level, various initiatives have been aimed at rethinking the role of the government in managing its buildings and properties, initiatives that in many cases mirror efforts at the state and local level as well as efforts in other countries. To meet these fiscal demands, federal agencies are increasingly interested in managing buildings in a more business-like manner, including exploring the formation of partnerships between the federal government and the private sector.

These partnership initiatives have engendered the use of a wide variety of terms, many of which overlap but may have subtly different meanings. This glossary is intended to facilitate a better understanding of public-private partnership related terms as they are used in the federal and private sectors. This document was prepared at the request of Representative Steve Horn, Chairman, Subcommittee on Government Management, Information and Technology, House Committee on Government Reform, and Representative Bob Franks, Chairman, Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation, House Committee on Transportation and Infrastructure.

Our objective was to describe the most commonly used terms, practices, and techniques currently employed by the government and private sector asset management community. The private-sector party can be involved in a variety of ways, from designing the public-purpose facility to undertaking its financing, construction, operation, maintenance, management, and/or ownership.

As we developed this glossary, we relied primarily on six glossaries already in print, as well as on other information published by experts and practitioners. We identified common terms in the glossaries and in the literature, and we developed working definitions from these sources reflecting current federal usage. The six glossaries are (1) Environmental Finance Program: A Guidebook of Financial Tools, Environmental Protection Agency, 1997; (2) The Privatization Primer, National Council for Public-Private Partnerships, 1996; (3) Dictionary of Business Terms, Second Edition, Barons Educational Series, Inc., 1994; (4) Glossary: Terms Related to Privatization Activities and Processes (GAO/GGD-97-121, July 1997); (5) A Glossary of Terms Used in the Federal Budget Process, Exposure Draft (GAO/AFMD-2.1.1, Jan. 1993); and (6) Glossary of Real Estate Terms, Federal National Mortgage Association, 1997. In addition, we consulted the following sources: The Language of Real Estate Appraisal, Dearborn Financial Publishing, Inc., 1991; and the Office of Management and Budget's (OMB) Circular A-11. This glossary is an expanded version of a glossary originally published in our report entitled Public-Private Partnerships: Key Elements of Federal Building and Facility Partnerships (GAO/GGD-99-23, Feb. 3, 1999). Asset management experts from the following companies also reviewed this glossary and provided important input: (1) the law firm of Shaw, Pittman, Potts, & Trowbridge, (2) LaSalle Partners, Inc.; (3) Bostonia, Inc; and (4) Signet Partners, Inc.

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Glossary

Types of Public-Private Partnerships

Build-Own-Operate (BOO)	Under a BOO transaction, the contractor constructs and operates a facility without transferring ownership to the public sector. Legal title to the facility remains in the private sector, and there is no obligation for the public sector to purchase the facility or take title. A BOO transaction may qualify for tax-exempt status as a service contract if all Internal Revenue Code requirements are satisfied.
Build/Operate/Transfer (BOT) or Build/Transfer/Operate (BTO)	Under the BOT option, the private partner builds a facility to the specifications agreed to by the public agency, operates the facility for a specified time period under a contract or franchise agreement with the agency, and then transfers the facility to the agency at the end of the specified period of time. In most cases, the private partner will also provide some, or all, of the financing for the facility, so the length of the contract or franchise must be sufficient to enable the private partner to realize a reasonable return on its investment through user charges. At the end of the franchise period, the public partner can assume operating responsibility for the facility, contract the operations to the original franchise holder, or award a new contract or

franchise to a new private partner. The BTO model is similar to the BOT model except that the transfer to the public owner takes place at the time that construction is completed, rather than at the end of the franchise period.

Buy-Build Operate (BBO)

A BBO transaction is a form of asset sale that includes a rehabilitation or expansion of an existing facility. The government sells the asset to the private sector entity, which then makes the improvements necessary to operate the facility in a profitable manner.

Contract Services

Operations and Maintenance

A public partner (federal, state, or local government agency or authority) contracts with a private partner to provide and/or maintain a specific service. Under the private operation and maintenance option, the public partner retains ownership and overall management of the public facility or system.

Operations, Maintenance, and Management

A public partner (federal, state, or local government agency or authority) contracts with a private partner to operate, maintain, and manage a facility or system providing a service. Under this contract option, the public partner retains ownership of the public facility or system, but the private party may invest its own capital in the facility or system. Any private investment is carefully calculated in relation to its contributions to operational efficiencies and savings over the term of the contract. Generally, the longer the contract term, the greater the opportunity for increased private investment because there is more time available in which to recoup any investment and earn a reasonable return. Many local governments use this contractual partnership to provide wastewater treatment services.

Design-Build-Operate (DBO)

In a DBO project, a single contract is awarded for the design, construction, and operation of a capital improvement. Title to the facility remains with the public sector unless the project is a design/build/operate/transfer or design/build/own/operate project. The DBO method of contracting is contrary to the separated and sequential approach ordinarily used in the United States by both the public and private sectors. This method involves one contract for design with an architect or engineer, followed by a different contract with a builder for project construction, followed by the owner's taking over the project and operating it.

A simple design-build approach creates a single point of responsibility for design and construction and can speed project completion by facilitating the overlap of the design and construction phases of the project. On a public project, the operations phase is normally handled by the public sector or awarded to the private sector under a separate operations and maintenance agreement. Combining all three phases into a DBO approach maintains the continuity of private sector involvement and can facilitate private-sector financing of public projects supported by user fees generated during the operations phase.

Developer Financing

Under developer financing, the private party (usually a real estate developer) finances the construction or expansion of a public facility in exchange for the right to build residential housing, commercial stores, and/or industrial facilities at the site. The private developer contributes capital and may operate the facility under the oversight of the government. The developer gains the right to use the facility and may receive future income from user fees.

While developers may in rare cases build a facility, more typically they are charged a fee or required to purchase capacity in an existing facility. This payment is used to expand or upgrade the facility. Developer financing arrangements are often called capacity credits, impact fees, or exactions. Developer financing may be voluntary or involuntary depending on the specific local circumstances.

Enhanced Use Leasing (EUL)

An EUL is an asset management program in the Department of Veterans Affairs (VA) that can include a variety of different leasing arrangements (e.g., lease/develop/operate, build/develop/operate). EULs enable the VA to long-term lease VA-controlled property to the private sector or other public entities for non-VA uses in return for receiving fair consideration (monetary or in-kind) that enhances VA's mission or programs. (See 38 U.S.C. § 8161, et seq.)

Lease/Develop/ Operate (LDO) or Build/Develop/ Operate (BDO)	Under these partnership arrangements, the private party leases or buys an existing facility from a public agency; invests its own capital to renovate, modernize, and/or expand the facility; and then operates it under a contract with the public agency. A number of different types of municipal transit facilities have been leased and developed under LDO and BDO arrangements.
Lease/Purchase	A lease/purchase is an installment-purchase contract. Under this model, the private sector finances and builds a new facility, which it then leases to a public agency. The public agency makes scheduled lease payments to the private party. The public agency accrues equity in the facility with each payment. At the end of the lease term, the public agency owns the facility or purchases it at the cost of any remaining unpaid balance in the lease. Under this arrangement, the facility may be operated by either the public agency or the private developer during the term of the lease. Lease/purchase arrangements have been used by the

General Services Administration for building federal office buildings and by a number of states to build prisons and other correctional facilities.

Sale/Leaseback

A sale/leaseback is a financial arrangement in which the owner of a facility sells it to another entity, and subsequently leases it back from the new owner. Both public and private entities may enter into sale/leaseback arrangements for a variety of reasons. An innovative application of the sale/leaseback technique is the sale of a public facility to a public or private holding company for the purposes of limiting governmental liability under certain statutes. Under this arrangement, the government that sold the facility leases it back and continues to operate it.

Tax-Exempt Lease

Under a tax-exempt lease arrangement, a public partner finances capital assets or facilities by borrowing funds from a private investor or financial institution. The private partner generally acquires title to the asset, but then transfers it to the public partner either at the beginning or end of the lease term. The portion of the lease payment used to pay interest on the capital investment is tax exempt under state and federal laws. Tax-exempt leases have been used to finance a wide variety of capital assets, ranging from computers to telecommunication systems and municipal vehicle fleets.

Turnkey

Under a turnkey arrangement, a public agency contracts with a private investor/vendor to design and build a complete facility in accordance with specified performance standards and criteria agreed to between the agency and the vendor. The private developer commits to build the facility for a fixed price and absorbs the construction risk of meeting that price commitment. Generally, in a turnkey transaction, the private partners use fast-track construction techniques (such as design-build) and are not bound by traditional public sector procurement regulations. This combination often enables the private partner to complete the facility in significantly less time and for less cost than could be accomplished under traditional construction techniques.

In a turnkey transaction, financing and ownership of the facility can rest with either the public or private partner. For example, the public agency might provide the financing, with the attendant costs and risks. Alternatively, the private party might provide the financing capital, generally in exchange for a long-term contract to operate the facility.

Other Terms Related to Public-Private Partnerships

Air Rights

Air rights provide the right to use, control, or occupy the space above a designated property. Air rights can often be leased, sold, or donated to another party.

Anchor Tenant

An anchor tenant is the major tenant that attracts or generates traffic within a commercial operation. Anchor tenants are strategically placed to maximize business for all tenants. The type of anchor tenant depends on the type of commercial activity.

Asset Sale

An asset sale is the transfer of ownership of government assets to the private sector. Usually legislation or an Executive Order defines the transfer price distribution and recoupment priorities. In general, the government has no role in the financial support, management, or oversight of the asset after it is sold. However, if the asset is sold to a company in an industry with monopolistic characteristics, the government may regulate certain aspects of the business, such as utility rates.

Capital Lease

A capital lease is a lease that must be reflected on a company's balance sheet as an asset and corresponding liability. Generally, this applies to leases where the lessee acquires essentially all of the economic benefits and risks of the leased property. (Contrast with Operating Lease.)

Cash Flow	Cash flow is cash receipts minus cash disbursements from a given operation or asset for a given period. A cash flow statement shows all sources and uses of cash reflected in the balance sheet cash account from one period to the next.
Concession Benefits	Concession benefits are rights to receive revenues or other benefits for a fixed period of time. (Also see franchising.)
Cooperative Agreements	A cooperative agreement as set forth in 31 USC 6305 is the legal instrument an executive agency uses to reflect a relationship between the U.S. government and a state, a local government, or other recipient when (1) the principal purpose of the relationship is to transfer a thing of value to the state, local government, or other recipient to carry out a public purpose of support or stimulation authorized by U.S. law, and (2) substantial involvement is expected between the executive agency and the state, local government, or other recipient in carrying out the activity contemplated in the agreement.

Equity	Equity is the difference between fair market value of the property and the amount still owed on its mortgage.
Fee Simple	A fee simple is an absolute and unqualified estate providing the owner with all incidence of ownership, including the unconditional power of disposition.
Franchising	Under the franchising of external services, the government grants a concession or privilege to a private-sector entity to conduct business in a particular market or geographical area—for example, operating concession stands, hotels, and other services provided in certain national parks. The government may regulate the service level or price, but users of the service pay the provider directly.
Ground Lease	A ground lease is a lease for the use and occupancy of land only, usually for a long period of time. It is also called a land lease.
Lease	A lease is a written agreement between the property owner and a tenant that stipulates the conditions under which the tenant may possess the real estate for a specified period of time and amount of rent.

Leasehold Estate	A leasehold estate is an estate in real property held by a lessee/tenant under a lease.
Leveraged Leasing	In leveraged leasing arrangements, the owner of a capital facility obtains the tax benefits of ownership of an asset by arranging debt financing and leasing the facility to a party who pays rent from revenues generated by the facility.
Operating Lease	An operating lease is a type of lease, normally involving equipment, whereby the contract is written for considerably less than the life of the equipment and the lessor handles all maintenance and servicing. Also called service leases, operating leases are the opposite of capital leases, whereby the lessee acquires essentially all the economic benefits and risks of ownership.
Partnership	A partnership is a legal relationship existing between two entities contractually associated as joint principals in a business.
Public-Private Partnership	Under a public-private partnership, sometimes referred to as a public-private venture, a contractual arrangement is formed between public- and private-sector partners. These arrangements typically involve a government agency contracting with a private partner to renovate, construct, operate, maintain, and/or manage a

facility or system, in whole or in part, that provides a public service.

Under these arrangements, the agency may retain ownership of the public facility or system, but the private party generally invests its own capital to design and develop the properties. Typically, each partner shares in income resulting from the partnership. Such a venture, although a contractual arrangement, differs from typical service contracting in that the private-sector partner usually makes a substantial cash, at-risk, equity investment in the project, and the public sector gains access to new revenue or service delivery capacity without having to pay the private-sector partner.

Public Purpose Debt

Public purpose debt is debt used to finance a project intended to be of value to the general public. Such debt can include ordinary government securities, such as general obligation bonds or revenue bonds, as well as qualified private activity bonds.

Request for Proposals (RFP)

An RFP is an announcement, often by a government agency, of a willingness to consider proposals for the performance of a specified project or program component. A request for proposals is often issued when proposals for a specific research project are being sought.

Request for Qualifications (RFQ)

An RFQ is a procurement tool routinely used by state and local governments and the private sector to select partners in major systems acquisitions, mainly those involving real estate development transactions. This approach differs from the traditional request for proposals approach in that it places greater emphasis on the actual qualifications of the potential contractor—his or her track record—rather than how well the potential contractor responds to detailed project specifications and requirements.

Revenue Bonds

Revenue bonds are bonds (instruments of indebtedness) issued by the public sector to finance a facility or equipment purchase, which, unlike general obligation bonds, are not backed by the full faith and credit of the government. Instead, their revenues are generated from the facility or equipment that they finance. Because they are state or local government bonds, their interest earnings are tax exempt under the Internal Revenue Code.

Revolving Funds

Revolving funds are accounts authorized to be credited with collections that are earmarked to finance a continuing cycle of business-type operations without fiscal year limitation. For intragovernmental revolving funds, collections primarily come from other government agencies and accounts. A revolving fund can be used to finance an initial revenue-producing infrastructure project, and as revenues are generated by the completed facility and returned to replenish the fund, they can be used to finance subsequent rounds of project development.

Revolving funds can help agencies accumulate the resources needed to make capital acquisitions over time, but should only be established when agencies have a record of sound financial management and when fund purchases are small and routine enough to warrant reduced scrutiny by Congress and OMB.

Risk Unbundling

Risk unbundling is a means of facilitating the development of public-private partnerships for the development of capital improvement projects. It calls for the segregation of private and public risks, with the private sector preferring to assume those risks that are of a commercial nature and can be appraised and controlled, leaving the residual risks to governmental entities.

Sublease

A sublease is an arrangement whereby a lessee leases the property to a different end user while the lessor maintains ownership. Under such an agreement, the lessee retains all of its obligations under the lease.

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