**The Real P3 Delivery Model: Perception, Process and Politics**

**Laura:** Thanks for coming out to hear about “The Real ‘P3’ Delivery Method: Perception, Process, and Politics.” Before we get into the meat of it, let me introduce the presenters.

Doug Younger is a partner in a Canadian law firm that specializes in corporate and project finance law. Doug has a lot of experience because his firm – and he in particular – focuses on P3 transactions. He has been the lead counsel on many of those and he advises – government, bidders, funders, and design-builders – on all aspects of the project on major transactions. Now he is going to be advising architects, so he can add that to his resume.

Buddy Johns is the CEO of CGL, a planning, design, PM, FM, and finance firm. Buddy has 30 years of experience in the construction and development industry, including the development, building management of about ten million square feet of industrial and correctional space.

He has a background in land acquisition and sighting and a six-year experience with an accounting firm as a CPA. Buddy has pretty much got all of the ingredients that go into this kind of a P3 initiative, and he’s spearheading that effort for CGL.

I’m Laura Maiello. I’m a planner with CGL. Corrections is my thing. For the last 25 years, I’ve been working with jurisdictions at both state and local levels – and probably will be now globally – and really helping owners shape their facilities based on planning, operations, best practices, and mission.

We have a couple of unique and yet integrated perspectives on this. We’re looking forward to hearing from you all as well, as we move forward.

As I was preparing for my introduction here, I said, “What is a P3 anyway?” After a day at this, everyone probably has heard a lot of different definitions. But, I went to the source: I googled it.

The definition in its broadest sense is that it’s a government service or private business venture that’s funded and operated through a partnership of government and one or more private sector companies.

I said, “That’s pretty generic. That really can apply to any P3 project.” But let’s look at that definition in the context of how we apply that to the field of justice and the field of corrections, in particular.

I said, “What can private/public partnerships do?” In some respects, this may be our first P: is it perception or is it reality? We’ve had a lot of spirited debate – particularly yesterday morning, in Rob’s session.

Certainly, P3s can make the project a reality when often there are jurisdictions that are struggling because they don’t have the finances to do it.

Can it be delivered sooner? Maybe once it’s off the ground, but it takes a lot of time to get everything in order before a P3 project can even be let out. It certainly does transfer the risk. There’s been a lot of discussion about how that is evaluated and with which metrics, but certainly that’s been seen as one of the things that P3 can do.

Can it deliver greater efficiency? We heard yesterday that P3 projects can really encourage innovation, and in a competitive market, that often is an output of that. But, we also heard that P3 RFPs can stifle innovation when they’re prescriptive. So the jury is still out on that a little bit, and I think we want to explore that.

It certainly can improve accountability and compliance, because once the risk is transferred to the partnership, then the risk is evident and it needs to be considered over the long term of the building, because for 30 years, this entity will be responsible for that building.

And then does it reduce costs? What did we hear yesterday? “Yes, sometimes, maybe,” and it depends on the metrics that are being utilized. There are a lot of factors that are being evaluated relative to P3.

What I came away with is how are we going to answer these questions if we can’t even get consensus on whether it’s “P3,” “3P,” or “PPP”? I think there is a lot to discuss. Not to make light of it – I think it’s a very serious discussion.

I think that this organization and the architects who comprise it and the community at large really need to have a voice in how we move forward in this country, in particular, with P3 projects. We want to talk a lot about that.

Our presentation is not so much about exploring the items that I just went through – I think we’ve had some great panels that have done that – it’s really to talk a little more about broadly understanding the process, but more in terms of where does the team come together? What is the role of the architect? And how do we ensure that these mission-critical buildings are still viewed in terms of their operational requirements and that those at the table who are part of the P3 team continue to bring thought leadership and continue to have a voice in these projects as they’re developed?

**Buddy:** Before Doug starts, as this is a presentation, I would like to suggest that we make this interactive. As you guys have thoughts during thepresentation, you should probably ask those questions, because according to my wife and children, I can be really long-winded and boring, and we don’t want you guys to feel that today. Let’s go ahead and talk back and forth as we go along.

**Doug:** Good morning. I’m Doug Younger, as Laura mentioned. I’ve been working in the P3 field for about 15 years now.

As you’ve probably heard maybe many times over the course of the conference so far, the United Kingdom was really the incubator of what we consider P3s – they call it “PFI” there. I worked in the United Kingdom for several years in the late ’90s, early 2000s, at an investment bank where we specialized in project finance and, in particular, PFI transactions.

Since returning to Toronto in 2002, I’ve led the P3 teams at a couple of major law firms, including the one I’m at now, and probably 90% to 95% of my practice involves acting on P3 transactions of one kind or another.

As I’m sure you’ve also figured out, this area is full of acronyms and buzzwords, not unlike investment banking. You hear, “P3,” “PPP,” “DBFM,” “DBFOM,” “hard FM,” “soft FM,” “hard mini-perm,” “soft mini-perm.” You say, “What does it all mean?”

It reminds me of a cigarette commercial that ran on TV when I was a kid many years ago. Two guys are sitting in a room talking. One guy takes a puff on a cigarette, inhales, and says, “Tastes good like a cigarette should.” His friend says, “Don’t you mean ‘Tastes good *as* a cigarette should’?” The first guy says, “What do you want, good grammar or good taste?”

As my talk progresses, I’m going to use the term “financeability” – sometimes “bankability” is the term you’ve heard. Buddy challenged me on that yesterday and said, “That’s not a word, is it?” It reminded me of that TV commercial.

The first part of my discussion is going to talk generally on the differences between conventional infrastructure procurement and P3 procurement. As you may have heard, although P3s really started in the U.K. and Australia, Canada is probably now the leading jurisdiction of the world when it comes to P3 transactions.

We’ve added yet another acronym to the lexicon, and that’s “AFP.” The current government in Ontario was elected seven or eight years ago, and they actually campaigned against P3s because the predecessor conservative government was doing a couple of them. They slammed it during the election campaign as “Margaret Thatcher privatization.”

They came to power, and they realized they really needed to be doing it, too, so they did what governments usually do these days – they appointed a study group, they invited contributions from the public, they got their contributions, and after a discrete period of time, they brought in their own P3 program. But they couldn’t call it “P3,” so they call it “AFP” – “Alternative Financing and Procurement.”

It actually does cover a multitude of sins, because it includes more than what I would consider a pure P3. Laura’s definition was very general, and it’s true – public-private partnerships can effectively mean any transaction and project that involves public sector and private sector collaboration – but we use the term in a more precise way: to really mean a long-term concession under which a government or governmental authority enters into a contractual arrangement with a private sector party to design, build, finance, maintain, and/or operate a particular facility for a lengthy period of time – typically 20 or 30 years, sometimes longer, sometimes shorter, but a long period of time – at the end of which, the facility is handed back to the government.

When I talk about P3s, that’s really what I’m talking about. I’m not talking about outsourcing contracts, I’m not talking about generic arrangements between governments and private sector parties, and I’m certainly not talking about conventional construction projects where a government wants to build a hospital or a road and it enters into a contractual arrangement with a construction company to build the road.

That actually segues into what I want to talk about first, which is the very familiar design-bid-build model. Of course, I’m talking form a Canadian perspective, but I imagine it’s much the same in the U.S. and elsewhere.

The public sector party will engage a design team, which will complete designs to tender quality documentation. That’s where the architects come in. I’m sure it’s a pretty nice, secure mandate when you are retainedby a government to do a design.

The government then goes out to bid, issues an RFP, and may prequalify bidders – in our experience in Canada, it’s typically in the range of three to ten bidders, depending on the project.

The government will then select a preferred bidder, a construction company to build whatever the piece of public infrastructure might be, based on the public sector’s design, and typically the bidder offering the lowest price wins. It’s a pure tender situation.

The construction price will be paid by the public sector to the company, usually by way of monthly progress or milestone payments against an architect’s or engineer’s cost-to-complete certificate. No third-party data is required by the contractor, except for its normal operating lines.

Typically, the constructer is required to provide performance, labor, and material bonds as security for its obligations under the contract. Sub-contractors will be paid out of the construction draw, so there’s a limited need for external financing between draws.

Then the construction company builds the piece of infrastructure – the road, the courthouse, the prison, or whatever it might be – finishes the job, gets paid, and walks away from it. There might be a one-year or two-year warranty period or something, and that’s that. Then it’s up to the government to maintain the facility or the infrastructure over its useful life. That’s the conventional government procurement model for infrastructure.

Under Ontario’s AFP program – remember I said it covered a multitude of sins – at one end of the spectrum is the Build-Finance model, or it could be Design-Build-Finance. We’re doing more of those these days. That’s a hybrid model, somewhere between conventional government infrastructure procurement on one hand and full-blown P3s on the other.

The Build-Finance model – I won’t dwell on it too much – effectively is similar to the conventional model, except that during the construction period, Project Co., the construction company that is building the infrastructure, has to provide its own financing so it’s taking construction period risk. Then the financing will be repaid once the project hits substantial completion.

That’s the Build-Finance model. As I said, under that model, there’s a little more private sector risk than there is under conventional procurement, but nowhere near the risk that there is under a full P3.

Then we come to the Design-Build-Finance-Operate-and/or-Maintain model. In Canada, many of the projects that are being done now are DBFMs. They don’t include operations. The principle reason for that is we’ve done a lot of hospital deals, and in Canada – as I’m sure you know – we have socialized medicine, so clinical operations and clinical services are always provided by the public sector. It’s absolutely verboten to even conceive that private sector parties would be providing those services.

As a result, a P3 project for a hospital is something less than the fullest possible P3 model, because there are no operations. You might include what we call “soft FMs” – soft facilities management – so things like catering services, perhaps, or portering services, running the parking lot, and that sort of thing.

That would apply to prisons, too. When we do P3 prisons in Canada, the operations are always handled by the government department or ministry responsible for corrections. Typically, our projects have been DBFMs, though not always. Sometimes, there is an operational component as well.

With a DBFM project, the way the procurement process is handled is that generally there is a request for qualifications. Nowadays, the Canadian market is so mature and there are so many participants from all over the world that for all but the most unconventional projects, we’re seeing seven or eight teams assemble to respond to the RFQ. In the old days, it was probably only four or five.

Invariably, we only shortlist three. It doesn’t matter what province you’re in. Typically, it will be no more than three teams that are shortlisted. Frankly, the bidders like it that way, because the pursuit costs, as you know, can be significant and they don’t want to incur massive pursuit costs if their odds of winning are one in four rather than one in three.

Those three will then be issued the RFP. The RFP will have the draft project agreement attached to it. The project agreement would be part of the RFP. The winning bidder – we call it “Project Co.” – will be selected through the RFP process. In selecting the winning bidder – different provinces do it differently – generally there is a range of criteria that will be applied in evaluating the bids.

Price is one of those criteria. It’s an important criterion, but it’s not the only one. Design is also very important. Design probably plays a bigger role in selecting the preferred bidder in British Columbia than it does in Ontario, but even in Ontario, the weighting is usually at least 50/50 between design and price, if not 60/40.

Though, of course, there are nuances to that, because it depends on the leveraging and the price. You can have 60% of the marks awarded for design, but with variance within a very narrow margin on design, it really comes down to price anyway, but that’s a subject for another day.

The financing solution is also part of the evaluation mix usually. That was more important in the early days of P3. The experience in the U.K. has been – and I think it still is, but it was certainly this way when I was there – that the lenders didn’t get engaged in the process until quite late in the day.

What would happen would be at the RFP stage, the lenders might be asked to comment on the formal project agreement, which of course is a critical document in all of this. They would say to the equity sponsors, “Are you going to provide me with legal counsel?” The equity sponsors would say, “No, we don’t know if we’re going to win, so we don’t want to retain lenders’ legal counsel yet.” As a result, the lenders would say, “Fine, we’ll give you some generic comments, but we’re really going to hold our fire until you win.”

Then, the bidder wins and then the lenders get fully engaged, and they want to renegotiate the entire project agreement, and without exaggerating it too much, it causes the process to drag on and on.

One of the very earliest seminal projects in Canada was a highway in British Columbia. For those who know British Columbia, it runs between Vancouver and Whistler. Whistler is a big ski result where the Olympic skiing events were held. The highway had to be redone in time for the 2010 Winter Olympics.

They were using a P3 model. They really hadn’t done any before – maybe one – so they were very considered as to whether it would work. They retained us because we were about the only lawyers in the country at that time who had any experience doing this stuff from our U.K. days. One of the first things they wanted to know was, “How are we going to engage the lenders at the outset?”

The lenders in these deals – I’ll come to that in the second part of my talk – are usually providing 85% to 90% of the financing. The lenders are, in a way, far more at risk than anybody else – far more at risk than the equity, actually.

They say, “How are we going to engage the lenders? We can’t afford to have this closing dragging on for months and months after we select a preferred bidder. We have to get people committed. What are you going to do?” We came up with some ideas for them, a couple of which are still being used, actually, in British Columbia.

The financial advisors in the project were adamant that there needed to be committed financing at the time of bid submission. Well, who would do that? What bank or bond underwriter is going to commit for 180 days or something? There’s going to be a price to be paid. No bank credit committee, no bond underwriter is going to commit to financing when they have to hold their price for 165 or 185 days after preferred bidder selection. They’re not going to do that except by charging for it.

There was great doubt as to whether or not lenders could or would commit to financing at the time of bid submission. Obviously, if they’re not committed, there’s a huge risk, because you could select a preferred bidder only to find the preferred bidder either doesn’t have a financing solution or the financing solution has changed after selection.

Long story short, we did manage to put in place a process that resulted in getting committed debt financing at the time of bid submission. The Canadian model has been extraordinarily successful in this regard. We continue to get committed financing at the time of bid submission – even after the 2008 financial meltdown.

First of all, that enhances security – the security of the process, the certainty of the process – and it also ensures that you can have a very rapid closing once you have selected your preferred bidder.

One of the reasons that process has worked effectively is that points are awarded in the RFP evaluation process for the degree of commitment of your financing and your financing solution. It’s not a majority of the points – it might be 5%, 10%, or 15% out of 100% – but it’s enough to focus minds and ensure that bidders do in fact have committed financing when they submit their bids.

Once you have selected a winning bidder, the winning bidder is required to – well, not required to, but they invariably do; they wouldn’t win the bids otherwise – finance their bids through a combination of long-term debt and equity. I say they wouldn’t win the bids otherwise because in order to remain price competitive, you need to have a very substantial element of senior debt in your bid. Senior debt is a lot less expensive than equity is.

If equity returns on these deals are in the range of the IRRs – and the range I think now are about 11% or 12% on Canadian deals – you’re paying 5% for your debt, maybe less. You need debt and equity. As I said, the leverage on these deals is significant – a lot of debt.

Generally, no milestone or progress payments are paid by the authority during the construction period, which is one of the great incentives to completing projects on time and on budget. Now, there is some modification of that. British Columbia does pay some milestone payments, but you really have to make sure that you calibrate that properly. If your milestone payments are too great, you’re significantly reducing the private sector construction risk and devaluing the benefit of the P3 model.

Generally speaking, in the U.K., Ontario, and elsewhere, no milestone payments are paid during the construction period. In Ontario, once substantial completion is achieved, the government does pay a significant substantial completion payment, usually in the order of around 50%. It could be less or it could be a bit more. It’s debatable as to whether that provides optimal value for money, but the Ontario government thinks it does. In Britain, it doesn’t work that way. You don’t get any substantial completion payment.

In any event, during the construction period, the rule of thumb is that there are no payments from the government. Payment stream only commences upon substantial completion, and substantial completion is certified almost invariably by an independent certifier – a party who is jointly appointed by both Project Co. and the governmental authority, paid for 50/50 by those two parties, and in effect is beholden to no one party in particular. That model seems to have worked very well so far.

Once the independent certifier certifies substantial completion, the payment stream then commences. The ongoing service payments commence once the independent certifier certifies substantial completion.

No party is entitled to dispute through the dispute resolution mechanism the independent certifier’s determination that substantial completion has occurred. If he says substantial completion has not yet occurred, Project Co. can dispute that through the DRP mechanism.

If he says substantial completion has occurred, the reason that that’s not subject to the dispute resolution procedure is you don’t want governments dragging out the commencement of payment stream by raising frivolous or capricious arguments that substantial completion hasn’t occurred.

It’s important to understand with P3s that there are two basic payment mechanisms. User fees is one – tolls on a toll highway, for example – and availability payments are the other. The availability payment model is the preferred model in both Canada and the U.K. when it comes to P3s. In part, that’s because tolls are generally not acceptable in Canada and the U.K. That may well change over time, but so far, when you’re talking about transportation P3 projects in particular, tolls are generally not very palatable.

Availability payments are structured as monthly service payments commencing on substantial completion, and they’re sized so as to cover debt service, operating and maintenance costs, and an equity return. The monthly availability payments are, of course, subject to deductions for unavailability and performance failures, which keeps the private sector party honest.

I think it’s been quite an effective mechanism. I remember being in the U.K. and going to a meeting with one of my commercial colleagues once. We were using the Jubilee line in London, for those of you who know the London Underground. It’s a relatively new line and of course, one of the big escalators was out of service. He said, “If this was a P3 model, there would be payment defaults.”

This is a standard structure. This is a very rudimentary typical structure. At the top, you’ve got the governmental authority. The authority enters into a project agreement with the party in the middle, Project Co.

On the left of Project Co. are the lenders, who are providing 80% or 90% of total financing, as a rule. The lenders will enter into a direct agreement with the authority, which effectively prevents the authority from terminating the project agreement without giving prior notice to the lenders and the opportunity to cure the default.

Then on the right side of Project Co., you have the equity funders, sometimes called the project sponsors. The equity funders provide 10% to 20% of the money, and typically, they will put that in during the construction period. They typically don’t put it in all at once, so they secure their obligation by way of an equity letter of credit in favor of the lenders.

Project Co. will then enter into two principle subcontracts: one with the design builder and one with the O&M or FM provider. Each of those, of course, renders into subcontracts. The one you’re most interested in, I imagine, is the subcontract right there, under which your architectural services are contracted by the Design-Build joint venture.

I’m just going to say very quickly because I’m going to address it in more detail later, P3 transactions are what are called “project finance.” They’re highly leverage, as I’ve mentioned. Debt financing is provided on a limited or nonrecourse basis to a special purpose vehicle – that’s Project Co. on my chart. That special purpose vehicle has no other assets. It may or may not have any employees – as likely as not, it won’t.

The lenders will have repayment rights only against Project Co., not the project sponsors. You could have a huge company or companies that own Project Co., but there’s no recourse to their business. They’re not putting their balance sheet on the line in these projects.

“Okay,” you say, “why would a lender ever do that?” The lenders are looking to the cash flow. That’s where the credit worthiness of the payer – the governmental authority, whoever it is – comes into question.

We did some work in Puerto Rico a year or so ago. The Puerto Rico government’s credit rating certainly isn’t AAA. They have a P3 program lined up, waiting to go, including a couple of detention facilities, I believe. We were actually acting for them on a juvenile detention facility that has since been cancelled.

It’s going to be more of a challenge in a jurisdiction like that – or elsewhere in the Caribbean, for example – to put these deals together because the lenders are going to say, “Wait a minute. We’re looking to the project agreement. That’s our only security. We don’t have security over the asset, or probably over the real estate. Our only security, fundamentally, is our rights under this project agreement – our rights to Project Co.’s payment stream from the government.

“How credit-worthy is the government? How assured can we be that the government is actually going to pay under that project agreement?”

Now the other side to that is the project risk. You have the credit risk on one hand – is the government going to pay? – and project risk on the other. Project risk is “Can Project Co. and its subcontractors perform without incurring payment deductions or without the project agreement being terminated for nonperformance?”

Because the lender’s principle security is against that project agreement, an assignment of the project agreement, it is absolutely imperative that that project agreement and the risk allocation embedded in it is acceptable to the lenders. Financeabilty, bankability is of paramount concern when settling the terms of the project agreement with the government. More about that later.

**Buddy:** Before we move on, I would like to make some comments. As a developer who’s out there trying to implement all of these definitions and all of the descriptions that Doug just had, I have a bunch of comments that I would like to make, more from a very practical standpoint.

First of all, this whole conference and all of the discussions that I’ve heard, everybody is trying to define the P3 model. There absolutely is no definition. Every single one of them is completely different. There is no such thing as a canned package. It’s impossible to just google it and come up and say, “This is what we’re going to do.”

That’s why guys like this are making tons of money in the world, trying to figure out how all of these things get done. As I hear definition, definition, definition, I want to make sure everybody understands that there’s not.

The other big thing: as Doug was describing all of the different normal models – the Design-Bid-Build, the Design-Build, and now the P3 model – what does that mean to the architect? Actually, if you really break it down, it’s who you’re working for.

Historically, on a Design-Bid-Build, you were working for the government agency that you were dealing with. That was your comfort zone. You liked that, because then you get to understand their operations. You get to do what you want to do, making sure that you have this good building that is fulfilling the needs and the operational needs of that customer. Then you finish that building, and you get paid for it.

Then you get into the contract administration. These contractors start building it and they say, “You guys don’t know what you’re talking about. You don’t know what you’re doing. You designed it wrong. That’s too expensive, this is too expensive.” Historically, that creates conflict between the contractor and the architect, mostly over cost.

At the end of the day, it’s all the mighty dollar that everybody is arguing about as to what needs to be done, how much it’s going to cost, and the buildability – if that’s a word – of the design and everything that you architects missed in the drawings that the contractors did better. That’s the historical thing that’s happened.

You get through all of that, you build the building, and at the end of the day, everybody moves on and the government is stuck with what is designed and built through all of that conflict. It actually has worked out great over the last several hundred years. We’ve all done it.

Then, along comes Design-Build. In the ’80s, ’90s, and early 2000s, everybody is doing Design-Build. Now, all of the sudden, the architect is working for the contractor, because the contractors figured out that if you combine it all, a lot of times, yes, you can get it done faster.

Then there’s the opposite thinking: “Am I working for the contractor? Who is paying me? Am I going to design what’s good for the contractor, or am I going to design what’s good for the owner?” There’s that conflict, which is generally dependent upon the expertise of the owner and understanding what’s going on in that process how they manage it, or the program manager that the owner happened to hire. It all gets very complicated on who’s doing what and who’s responsible for what.

Design-Build does work on many occasions, but the more complex a project is, I think the less effective a straight Design-Build is – and what I mean is complex from the operator’s standpoint. Corrections facilities are relatively complex from the operator’s standpoint. Therefore, it happens, but I’m not sure it’s all that successful for the owner.

The P3 model or the Alternative Delivery models where now the architect and the contractor are basically working for the developer and investor, the guy who’s putting his name and all of his money in, the equity portion. He’s telling the government, “I can give you your operational efficiencies and I’m going to invest in it. I know that I can.”

Mow, all of the sudden, there’s another party that’s introduced to this equation. Dependent on who that developer and that investor is, that can either simplify it greatly or complicate it extensively. If it’s not an educated developer, all of the sudden, you have a person in there who potentially does not understand the operational needs of the correctional facility, which is paramount, as far as I’m concerned.

If you’re going to develop, you better know what you’re doing. If you don’t, there’s going to be all kind of problems. If they do or do not know construction, that could be an absolute nightmare, and the same thing with design.

As an architect, when you start moving into these different models and thinking about who you are offering your services to and how much you’re going to be compensated, a lot of times, you’re sitting there thinking, “Is my fee going to be 5.5% or 8%? What is my scope? Who am I working for?” You’re thinking of all these things.

But you need to now understand the capacity of the person you are working for and if they can accomplish the goals that they say they’re going to set out, because that’s going to determine whether you’re going to have a successful project or not.

It really comes down to their ability to complete it and their ability to manage all of those conflicts that we talked about between the architect, the contractor, and the owner. They don’t go away. They just get managed differently. It really depends on who’s managing the scenario.

In my mind, as we’re looking at the different models historically and what we’re moving towards, hopefully, through the P3 models, that’s what you need to understand.

Again, knowing that partner even gets a little bit further. Doug started to mention the debt and equity structure that you have. If you’re doing work for our federal government or the Canadian federal government, whether they have AAA credit – or AA, hopefully, or whatever we have nowadays – if you have that type of a contract, then that credit rating is what the debt market is looking towards when they’re repaying.

At the end of the day, if it’s a really strong credit like that, a 90% or 95% debt leverage works out easily. The higher the debt leverage that you can get, the more competitive you’re going to be in your pricing. The lower the cost, the better the pricing.

However, when you get to less credit – BBB+ credits, smaller counties or smaller states, where they don’t have quite the credit that they have – the debt markets are going to say, “Wait a second. I’m not giving you 95% or 90%. Now, I’m going to give you 80% or 70%.” Now your project is either 70%, 80%, or 85%, leveraged with a 5% debt, and you have that equity return at 12% or 14%. Now, the cost that you’re delivering to that more extensive project is more difficult.

The better the developers, the strength of their balance sheet, and the strength of their historical completion and their successes will make that debt-equity ratio better. If you have BBB credit and you have one developer that can get a 70% to 30% leverage, and another developer that can get an 85% to 15% leverage on that same project, the 85% to 15% is going to be significantly more competitive.

Again, as an architect – we’re going to talk about teams later – when you’re looking at these $400 million projects, these $50 million projects, or whatever they are, and when you’re putting your teams together, most of you are putting your teams together with people that you know and have worked with before. “I did the Design-Bid-Build for that one. He beat me up less than this guy did, so that’s who I’m going to work for,” or, “I have a longer term relationship,” or whatever it might be.

I’m suggesting that you have a lot more work to do now to understand who the whole team is, what the whole package is. Quite honestly, if the developer that you’re working with isn’t willing to tell you, “Here’s my balance sheet. Here’s how I’m doing the debt equity. Here’s what we think it’s going to be. Here’s what’s going to make us more competitive,” you better question whether or not you’re going to be working with that developer.

More than likely, if they’re not willing to share how powerful they are and what their historical ability to complete large P3 projects is, the likelihood of them being competitive is less, so you might be wasting your time putting things through.

The other thing, the user fee versus availability payments for corrections – forget the user fee, because there is no user fee. It’s all the availability payments. At the end of the day, you either get paid by the government or you don’t. There’s no in-between, so that’s where it is.

This organization chart is almost comical to me, because we’re working on several P3 projects. If there is ever one P3 project that’s that simple, ever… I think that there’s a legal course for attorneys that they have to do just on organizational charts, because ours have 30 or 40 boxes on them, and it looks like spaghetti.

**Doug:** You need different lawyers, Buddy.

**Buddy:** You’re probably right. This is a great example of what it is, but there’s a lot more to it than meets the eye there. Again, as architects or contractors, you’re not expected to understand the details of it – and to be quite honest with you, I don’t understand the details of it. It’s tax reasons. We’ve got places in Delaware, Netherlands, and the Caribbean, money going everywhere, trust funds, and this, that, and the other.

When you get it all boiled down, though, at the end of the day, the government is going to pay the developer for doing this work for a long period of time, transferring the risks that you talked about. Do we take on the schedule risks? Are we taking on the finance risk? Are we taking on the operational risk? What are they? That’s defined in that contract.

That developer, then, is working with contractors, the vendors, and the subcontractors, and they are the single point of contact with the government and the single point of management for all of the effort that has typically been dispersed among other folks.

**Participant:** Two of the project types included in this besides just correctional, like sports parks and also performing arts. Sometimes more simple **[41:30 inaudible]** income streams on those,but that suggests that you really also lose income streams of municipality or other authorities, as well. It’s not just as simple as they’re buying **[41:40 – 41:44 inaudible]**. It’s complicated.

**Buddy:** Exactly. Actually, when you start looking into those user-fee based projects, the risk is a lot higher, because whether or not there are 1000 cars coming into the parking lot a day or the new theater has enough shows a year to cover the costs of what we’re doing, once the developer has taken that risk on – and we’ll be talking about later moving into the shoes of the owner – that risk level is significantly higher, not only for the equity portion as the owner, but it significantly shrinks the debt market.

Right now, from an availability payment on AAA credit, the market is giant. Then you say, “Well, it’s BBB credit,” it gets a little bit smaller. Now you go to a theater, and most of your income or half of your income for that isn’t availability payments but user fees, and there’s a risk whether or not they’re going to show up at the door. Now, your market for debt gets much smaller and the rates become higher, and it’s much more difficult to accomplish.

**Doug:** You won’t get anywhere near the gearing that you will for an availability payment. You’ll be lucky to get 70% debt on those deals.

One of the deals I did when I was working in Europe was a wind farm company. The bank I was working for took an equity stake in a wind farm in Germany. It had all the wind studies and so on. They bought the thing ,and it was a loser from the get-go because the wind didn’t blow as much as the experts said it would.

The same thing is true of toll road studies. If you’re doing a P3 toll road where your only revenue is the drive-through tolls generated, there can be massive differences between what the experts doing the toll studies tell you the road can generate and what it actually generates.

There’s a famous example in Sydney, Australia, where they were building an underground tunnel to move traffic through the middle of Sydney. It was a toll road, and I think Macquarie **[? 43:44]** was the developer. The project went under, because it turned out that they couldn’t generate the toll revenue.

Part of their deal with the government was that the government actually closed off the other roads that would take you through Sydney to the beach. Even still, it wasn’t generating the toll revenue that had been projected. Those deals are much riskier.

We’re working on project financing fertilizer plant in western Canada right now. It’s never been done before, actually. That project will be financed completely out of revenues from offtake agreements. The percentage of debt that will be available – if any is available – is going to be significantly less, and it’s a billion-dollar project.

There is a great deal more financing risk with user-fee projects, but they can still be done. Lots of them are being done. There is a lot of asset monetization going on in the U.S. To the extent P3 deals are being done here, a lot of it is asset monetization – long-term leases on the Chicago Skyway, the Indiana Toll Road, and that kind of thing. Some consortia are paying big dollars to buy those things. They’re banking on the tolls.

That leads nicely into the next part of my talk, which has to do with risk, allocating risks in P3 transactions. As I’m sure you probably heard ad infinitum by now, risk allocation is fundamental to P3s and to having workable P3s.

The value for money analyses that you may have heard about that governments do prior to commencing a project in order to justify using a P3 approach rather than a conventional approach – we were discussing this over dinner last night – to a large extent, these value for money analyses place a value on risk.

What’s the monetary value to the government of the assignment of risk to the private sector? That’s art rather than science. That is a significant component of what’s been used to justify using a P3 rather than a conventional approach.

It has to counter the argument frequently raised by opponents of P3s – in particular labor unions – that argue that P3 financing is more expensive. A government with a good credit rating can borrow at a lower rate than a private-sector entity can borrow, and there’s no equity component if the government is financing the project. Financing is more expensive.

However, what they don’t tell you in that argument – it’s a simplistic argument – is that government borrowing rates are effectively the risk-free cost of capital. Why? Because there is perceived to be an unlimited taxpayer base that will fund any cost overruns and any problems with the project. That’s why governments can borrow at a lower rate than the private sector. What are you doing to counter that? You’re allocating all of this risk to the private sector.

There is a monetary value – no question about it – to the assignment of risk. The question is, what is that monetary value? From a government’s perspective, if you’re an owner, you want to transfer as much risk as you can to the private sector. The problem is if you transfer too much risk, the deal will be unfinanceable, unbankable, and no lender will finance it, and you may not get the equity, either.

You have competing interests: on the one hand, governments want to allocate as much risk as they can to the private sector. On the other hand, the private sector – and the lenders in particular – need to limit that risk.

This goes back to my comment at the end of the last piece, where I said that, effectively, the lenders’ only security – certainly, their principle security – is their rights under the assignment of that project agreement. If the project agreement contains very onerous risk allocation, you massively increase the risk that the parties performing that project agreement will be unable to comply with it, and that will lead to payment deductions or ultimately termination of the contract.

The basic premise – the mantra – of risk allocation is that the party best able to manage the risk should bear the risk. Those of us involved actively in the field know that that’s lip service. It’s a bit of a joke.

We’re acting for a government right now in a large transportation project, and I can tell you there are all kinds of risks that we think should be properly born by the government, if you believe this premise, because the government is the one that’s in the better position to bear that risk. It might be due diligence risk, it might be geotech risk, it might be development risk, zoning risk, or that kind of thing.

The typical reaction of P3 agencies in mature markets is, “We’re not going to take on any more risk other than what our standard template documentation contemplates, because we financed umpteen of these projects previously with this risk transfer, and we see no need to take back further risk on this project.” But that is supposed to be the underlying premise of these deals.

For example, if you’re dealing with a P3 project on a brownfield site – when I was in the U.K. we worked on a historical building that was the medical school for a major university in the U.K. – there’s latent defect risk there, which there isn’t on a greenfield site. In those circumstances, it’s often recommended the government should take back some of the risk.

The classic case, which turned out to be a very unsuccessful PFI project in the U.K., was the London Underground Project. The London Underground has been around for over a century. There’s no way that anyone could have done due diligence to the extent of having any certainty whatsoever as to potential problems and latent defects.

In those circumstances, governments should take back some of the risk. Whether they do or not is another matter. Of course, it’s often unclear how, in principle, you would apply that premise that the party best able to manage the risk should bear it.

The optimal risk allocation therefore involves allocating sufficient risk to project code to justify a P3 approach and value for money without allocating so much risk that the project can’t be financed or is prohibitively expensive.

What types of risks are allocated to Project Co.? In a broad sense, due diligence risk. Even if Project Co. doesn’t have much of an opportunity to go and examine the site or do geotech boreholes in the site prior to its bid, nonetheless, the proponents are still generally asked to bear most if not all of the due diligence risk.

Of course, they bear the financing risk, the design risk. So if the design fails to satisfy the performance specifications, the output specifications, Project Co. will be responsible for fixing the problem.

Construction risk: Project Co. is responsible for construction flaws during the entire term of the project agreement. Now, its Design-Build subcontractor won’t be, but Project Co. itself is responsible for that. If there is a construction problem that pops up five years into the project, at which point the constructor’s warranty may have expired, Project Co. is responsible to coming up with the money to fix the problem. If it can’t fix the problem, it runs the risk that the project agreement will be terminated.

Project Co. typically bears most of the permitting risk. You can get into some complicated discussions with governments about which permitting or zoning risks should reside with the government versus what’s allocated to Project Co. Certainly, in places like Ontario and British Columbia, almost all of the permitting risk is now delegated to Project Co., whether it should be or not.

Change-in-law risk is born by Project Co., except for discriminatory or what are called “specific changes in law.” If you are building a hospital or a detention center and the laws change that pertain generally to correctional facilities in the United States, that would be a specific change in law. Usually, there is some compensation that would be payable or some relief provided to Project Co. But most changes to law are Project Co. risk.

Of course, the danger in these deals where you’re being paid through an availability payment mechanism is that your payments are largely fixed, except for certain inflation adjustments. Your payment stream is fixed. It’s not like Walmart. If taxes go up, for example, Walmart theoretically can pass that extra costs through to consumers by raising its prices. You can’t do that on an availability payment deal, for the most part.

Operating risk, facilities maintenance, and lifecycle risk are typically borne exclusively by Project Co. Many projects in Canada, at least, have components involved in equipment purchase installation and maintenance. Again, that’s generally a Project Co. risk.

Human resources: for example, if you’re building a new correctional facility but there are employees of the old facility, and typically these will be unionized employees, and they need to be transferred to the new facility, under the Ontario approach and the approach in the U.K., there are rules, either contractual or statutory, that require the transfer of the existing unionized or non-unionized government employees, and they have to be offered the same pay and benefits as they were making previously.

I suppose that’s a bit of an impediment to increasing efficiencies in your P3 project, but in order to maintain labor peace and limit the opposition to P3 projects, that’s usually the approach that’s taken.

There are some shared risks. For example, if it’s an availability payment deal, the government has to provide the availability payments, but the payment stream only commences on completion of construction. Prior to that, it’s entirely Project Co.’s risk, and Project Co. has to borrow the money and put in its own equity to fund the upfront construction.

Failure points and payment deductions will be made if the project is unavailable or if there is substandard performance during the operating period. Then there are what we call “supervening events,” which are things that you would commonly consider force majeure events. If there’s a flood, earthquake, terrorist act, a power failure – these types of things, what kind of relief should be provided to Project Co?

In the project agreements, there is a complicated taxonomy that distinguishes between what we call “compensation events,” “relief events,” and “force majeure events.” Depending on what type of event it is, Project Co. may only be entitled to time relief – i.e., an extension of the period during which it’s supposed to do whatever it’s supposed to do – or time plus money.

Contamination and geotech risk is commonly a shared risk. The government may take responsibility for pre-existing contamination or contamination that couldn’t have been discovered by Project Co. through normal due diligence. Geotech risk, similarly. Though, again, depending on the nature of the project, a greater portion of geotech risk may be born by one party or the other.

On the Sea-to-Sky Highway that I mentioned earlier, there was a more complicated approach to geotech risk, because you’re building a highway between the sea and the mountains. It’s not a standard project. There are all kinds of geotech challenges, and so we devised a scheme with a sliding scale of risk, with the first part being born by the government, and there was also some kind of a geotech baseline that we eventually agreed to.

Discovery of artifacts or fossils: that’s a much bigger problem generally in the U.K., where you’re digging and you come across some Roman ruins, than it is in Canada. On the other hand, in parts of Canada, you can easily come across native burial sites and that sort of thing.

Generally, there is a shared risk when it comes to dealing with that, under which Project Co. is responsible for stopping work, protecting the site, and dealing with the artifacts, but they’re compensated by the government for doing that and provided with time relief, as well.

Asset condition at the end of the project term: again, that’s a shared risk. At the end of the project term, the asset will have to be handed back to the government in a pre-agreed state of repair. There’s usually a more or less complicated mechanism put in place, so in the period leading up to the end of the term, certain payments may be withheld that go into a reserve account to fund any repairs or upgrades that are needed.

In terms of government risk, as a general rule, there are very few purely government risks. Even the government payment risk, to some extent, is a shared risk. At most, (1) the government is responsible for making availability payments, and (2) it’s responsible for providing access to or rights over the site.

Just to say a word about that, in the early days of PFIs in the U.K., there were quite a few lease and leaseback deals that were done, where the government would actually lease whatever the site was to Project Co., and Project Co. would then lease it back to the government in return for availability payments.

Generally now, both in the U.K. and across Canada, we’ve come to the point where there’s no discussion about it anymore. It’s just a license. It’s a purely contractual right that’s granted to Project Co., giving Project Co. access over the site to the extent necessary to perform the project operations, whether construction or operations and maintenance. Project Co. has no interest in the real estate itself, as a rule. It’s not always the case, but as a rule, that’s the case.

Now, it may have to be structured differently in the U.S. I think the Long Beach Courthouse may have been structured differently. You may need to do it differently to deal with things like appropriations risk, which I think is a greater concern here than it is in Canada or the U.K.

Project finance: as I mentioned earlier, these deals are what’s known as project finance – nonrecourse financing. The equity sponsors – CGL, whoever it might be – nonrecourse to the equity sponsors. Their only money at risk is their investment in Project Co. Whatever their equity is in Project Co., that’s it. No one can sue the equity sponsors above and beyond that if Project Co. defaults.

The counter party, Project Co., is a special-purpose vehicle. In Canada, generally, it’s a limited partnership or a general partnership. As Buddy was mentioning, it very much depends on the tax rules. In the U.K., they’re generally single-purpose corporations. It really just depends on what the optimal structure is from a tax point of view.

They will have no other assets and very few, if any, employees. The principle security, as I mentioned earlier, is the project agreement and the payment stream under the project agreement, as a result of which, it is absolutely critical that the risk allocation to Project Co. not threaten the payment stream under the project agreement.

Lenders won’t finance projects if unacceptable or indeterminate risks are imposed on Project Co. Lenders hate uncertainty. The most important principle is that there can’t be anywhere stranded liabilities. Project Co. itself, being a special-purpose vehicle with limited funds, limited human capital, and limited experience, frankly, is not able to carry out most of its obligations under the project agreement by itself.

It’s critical that Project Co pass its risks – if you remember my chart – down to the design-builder, on the one hand, and the operator on the other hand. As Buddy was mentioning, it’s of critical importance that each of those principal subcontractors (a) be experienced and (b) be credit worthy. Those subcontractors are going to have to provide performance security of one kind or another in favor of Project Co. and the lenders.

Generally in Canada now, the rule of thumb is that contractors and design-builders have to provide liquid security in the form of letters of credit. The amount may be negotiable, but again, the rule of thumb is in the order of 10% of the construction cost. They may also have to provide things like performance bonds and parent company guarantees.

In general, that’s the type of performance security that has to be provided by the contractor. The FM provider may or may not have to provide a letter of credit. It will certainly have to provide a parent company guarantee in the appropriate circumstances.

Most design and construction risk in the project agreement has to be dropped down to the design-builder, and most of the operating risk has to be dropped down to the O&M provider. When these contracts are being negotiated, each of those subcontracts is going to be almost a mirror image of the project agreement itself.

Change-in-law risk needs to be limited. There shouldn’t be discriminatory taxation. Project Co. should not be liable for consequential loss for breach of the project agreement. Certain significant events that may delay construction – the supervening events – or impair Project Co.’s ability to provide the services must be compensable.

The government needs to pay acceptable compensation on termination of the project agreement. I’ll just say a word about that quickly: the way these deals work is that you’re building the government a brand new asset that may cost hundreds of millions of dollars upfront, but you’re only being paid for it over time. The government, in effect, is making mortgage payments to you once the asset is completed.

If the government terminates the contract for Project Co. default after five or six years, let’s say, the government has a new asset but it hasn’t paid for it. That would lead to what lawyers call unjust enrichment. As a result of that, it was decided relatively early on in the U.K. that governments needed to compensate the defaulting project company and its lenders if it terminated the project agreement for default.

It seems counter-intuitive that you would pay the other party when it defaults, but if payment wasn’t made, there could be an unjust enrichment in favor of the government. The early highway deals in the U.K. did not involve compensation for Project Co. default, but now I can’t think of a deal that doesn’t.

Appropriate and balanced risk transfer will result in significant benefits for both parties, public and private. Public sector benefits: projects are built on time and on budget, with a concomitant limitation on pass through of cost overruns to taxpayers; it incentivizes the private sector to take a longer-term approach to design and construction, which theoretically should lead to innovation and efficiencies; and a whole life cost approach encourages long-term value for money.

**Buddy:** I want to comment on a couple of these risk factors before I get started on the project team. I’m sure Laura is sitting here, thinking, “Oh no, Buddy’s got the mic. There’s no chance of him shutting the heck up.” I’ll try to be as quick and brief as possible.

The risk factors that Doug mentioned – he talked about all the design risk issues, construction risk issues, developer issues, and finance issues – from our perspective as Project Co., all of those risks are ours – 100% of them – and that’s what we’re selling to the government agencies.

Then he talked about how we’re going to mitigate our risk by passing it down to the contractor and the architects as we move along. The thought process of how those risks are mitigated, at the end of the day, is – again, we’re going to talk about project team – who is the right team that you should be partnered with, and how do we mitigate those risks?

Long story short, from a contractor’s standpoint, if we’re bidding on a $400 million project and we don’t know what the design drawings are at this point, how can I ask a contractor to give me his contract number of $350 million or $400 million if there are no design drawings or no construction drawings at that time?

If you’re a contractor and you’re sitting there saying, “Look, I’m going to be party with this financer and this developer, and he’s asking me for a number today,” you probably shouldn’t do that.

However, if that developer and that investor is sitting there saying, “Look, this is a team effort. We’re all going to work together. By the way, I’m going to give the architect a stipend of $400,000 to get us to 50% design drawings, knowing that it won’t cover all the cost in design drawings, but it’s all of us working together to get to a point that we have a number that we’re happy with,” and if I’m asking, based on that 50% design drawings, for a concrete, absolute price from the contractor, that’s probably incorrect, too.

What we’re probably going to work with is say, “Let’s use a budget number. That’s what we’re going to bid on this thing.” If we get the job and we’re moving forward to construction design, the timing of the mitigation of the risk becomes a major factor in what the architect is going to design and how far they’re going to go before we have guaranteed maximum pricing, so that we share those risks all along the timeframe.

The other thing I wanted to point out, too: it sounds really nice when he talked about debt. He said there is nonrecourse debt to Project Co. It sounds like that means all we do is just invest whatever the equity number is and we don’t have any more risk. That’s not really true, either.

The only reason banks give nonrecourse debt is because if they didn’t give nonrecourse debt, it would be impossible to finance it. If it’s a $500 million project and you have an equity group or Project Co. putting in $50 million, or 10%, we’re at risk. That $50 million is a lot.

For the bank to sit there then and say, “We want to give you the $450 million for the rest of the project, but we don’t want any risk. We want your balance sheet for the full $450 million,” no company could do that, because then they would be in danger of taking down the whole company for one project.

We’re not the bank. That’s what the bank’s business is. Nonrecourse debt sounds so soft, but it’s not really soft. It would be impossible to finance these large P3 projects without it.

I’m going to move on quickly. We have 15 minutes left, so I’m going to take my 15 minutes and make it about six.

Project team: who, what, where, when, why? Again, I’ve mentioned it a couple of times now: We just wanted to talk about who the team members are, what the roles and responsibilities are of the team members, and where those team members need to be. I’m going to talk specifically about what that means. When should these teams be formed? Why do you, as architects, want to be part of a P3 team at all?

Again, it’s the usual suspects who need to be part of the team, and then we have added the investor portion of this and the developer portion. We, as developers and investors, are the umbrella over the entire team. We are taking all of the risks in being the umbrella, but all the same team members have to be there.

We mentioned early that there is a political play – that’s one of our Ps in this environment today. When we talk about political, it’s obviously the government relations and public relations portion of any of these projects. As you know, if any government is going to enter any $50 million, $500 million, or $1 billion project in a different format, there is going to be stakeholders that are going to be opposing that one way or another.

Early on, as developers, probably before we have architects involved, we’re worried about our government relations, lobbyists, public relations, communications with the community, and the political stakeholders in the government.

At the end of the day, all P3 projects are very political. There is not one that we’re working on that doesn’t have a major political atmosphere. That’s not just the government agencies, but all of the community that’s in play, and we need to deal with that.

Again, when you’re thinking about your partnerships, you need to ask the questions: how far down the chain are we going to go with specialty contractors and making sure that we have them onboard early on, so we aren’t left holding the bag for major specialty contracting work at the end of the day? How much are you going to get from them on a design assist standpoint as we get through the early stages of P3 development? How strong is this developer, this investor, this Project Co., in the community they’re trying to do business in? What is it that they need to do to make sure that you’re comfortable that we can accomplish the goals that we’re setting up to do?

The roles and responsibilities: typically, 95% of everything that you’re doing is the same disciplinary roles that you’ve always had. If you’re an architect, your major role is to design the facility and make sure that it gets designed appropriately.

The biggest change that I think that you have from an architectural standpoint when you get into a P3 project is there’s a really strong likelihood and a probability that you’re not the only architect on the project. Especially the larger the project gets, the likelihood of you doing everything from start to finish is probably not going to happen.

There are lots of reasons. One major reason –we’re going to get into the “where” – is because of where it is. If you don’t have a very strong presence in the community that you’re doing the business in, even though we need your expertise at the justice level to come down to that local community, you still need to have local community expertise.

We’re going to demand it as Project Co., because we want to make sure the entitlement process goes smoothly as well. There are a whole bunch of reasons why you would have potentially two, maybe three – and I’m on a project right now where we have four – different architectural companies because of the size and the complexity of the project.

The other big thing that’s going to change for all of us – architects and contractors – is the team effort. You think you’re part of a team on a Design-Build – and you are, I get it – but now, we have taken on, as a team, much more risk.

I can’t just sit there as the developer and say, “I’m going to take this risk and give it to the architect, I’m going to take this risk and give it to the contractor,” because they are all interrelated. It’s a team effort that you need to start from the very beginning all the way through the process to be a successful P3 team.

The other major factor is it’s a much longer-term engagement for you. I’m not talking about the building cycle. I’m talking about the procurement cycle. From the very beginning, if you’re going to be a successful P3 developer and investor, you have to know about what’s going on in the market way before you typically need to know as an architect: the planning stages of what’s going on, the government relations affairs – we’re looking at budgets for next year, the year after, and the year after – and issues within systems. What’s wrong in a system’s current budget? What are their needs? We’re looking at what’s happening in 2015, 2016, and 2017.

Our business cycle is five to seven years, from a developer’s standpoint. Typically, a construction cycle is 18, 24, or 36 months – whatever that might be. The architects are generally trying to get out there about a year before. We’re trying to get out there two or three years before.

The better the project development team, the better and more advanced you are. As good project developers, we’re going to be asking for architects to participate at a much earlier level in the procurement process.

The flipside of it is that we, and most P3 companies, don’t partner on a one off basis. As an architect and a contractor right now, if you’re going to do a Design-Build, you’re going to do it for a county or a state. A county might do one very 30 years, a state might do one every eight to ten years. Hopefully, we’re doing seven, eight, nine, or ten projects every year.

From a project developer standpoint, if you think about what we’re building as a developer, we have a 20-year project that we’re asking you to help us design and help us mitigate our cost for those 20 years. You do that with us and we’re saying that if it works well, we’re going to be working together again next year on the next project, and then next year on the next project.

If we’re six years down the road on a project we did six years ago and there’s an issue, because of our cost, we may ask you to come back as an architect and say, “Can you help us redesign this? By the way, this is all out of pocket. I can’t pay you full fee on this one.” So your relationship isn’t a one-time deal. It’s a 20-year deal. You can make it a one-time deal – it’s your option if you want – but it won’t happen that way if things go right.

More importantly, I said this earlier: we’re stepping in the shoes of the owner in a lot of parts and pieces of these projects. When I say “we,” I don’t refer as Project Co. I say “we the team” are stepping in the shoes of the owner. You have to understand this is a team effort in a long-range project.

Where are the team members from? Again, it really depends on the size, the complexity, and the risk factors that are involved and how we’re going to share all of those risk factors. I mentioned the greater the size and complexity, the more likelihood that national and international expertise is going to have to come to the local projects to get the projects done.

But you still need that local expertise and local representation, no matter how small or how large that project is. To me, it needs to happen. That doesn’t mean you have to have a separate architect, absolutely, on every project. That just means you may have to have your architects in the local presence at a given project.

We live in this virtual world, and we all talk about how virtual this is. However, a corrections facility in a local community is a very personal thing. Your commissioners, your mayors, and your governors, every one of them looks at this as being very personal. If you think you can do this over the phone and if you think you can do this on video conferencing for everything, you’re probably not going to win.

You need to make sure that if you’re going to go after these projects, you have the time and ability to make yourselves, as the designers with the contractors and the developers, to develop a team that’s going to be in front of the customer for a very long period of time.

When are the teams formed? I talked about this. It’s going to be very early on.

Why do you want to be a partner in these teams? Why do you want to do this? Again, I think that the P3 model domestically, and I know internationally, is going to be a much larger model and a much larger space in the market over the next 10 to 15 years.

If you want to participate in those projects, you’re either in the marketplace as an architect and a designer or you’re not. You can’t say, “I’m going to maybe do it,” and think that when the RFP comes out, “Now, I can jump in with two feet.” It’s way too late, if you’re looking at when the RFP is being drafted or coming out.

It’s basically a growing market. It’s an absolute need to be team sellers. If a developer says, “I won a project,” he’s an idiot. The chances of him winning it by himself is not going to happen. You need to the expertise of the architects who are in this room and the expertise of the general local architects. You need the general contractors who understand the business. You need the planning function to understand what the operational needs are of your customer, because at the end of the day, we’re taking that responsibility on.

Again, very briefly, once you are established in the marketplace and you’re going after the P3 projects, the pipeline is full. You’re working with developers on a continuing basis to get those projects. Thank you.

**Laura:** I want to leave some time for discussion, so maybe I can prompt some of that with a real quick intro.

Buddy talked about what I think is very pertinent to everyone in the room, in terms of who, what, where, when and why. I want to pose another question, and that question is, how? What I mean by that is not a technical “how,” but in this new paradigm, how does the architect – and I mean the individual, the firm, and the architectural community – really continue to have a significant voice in shaping the effort of a project?

Those of you who chose this as a specialty niche and those of you who participate in AAJ have been a loud and very successful voice in the future direction of corrections planning and design. I’d like to propose that this is another opportunity for that, so that as P3 does become more and more prevalent in the U.S., as Buddy predicts, that the architect can continue to play a really significant role, not only from a technical standpoint, but in terms of shaping the essence of the end product.

How do we do that? I think what liberated me was that I realized that I don’t have all of the answers, because I think this is the beginning of a journey. But I think one of the first things to consider, as we do when we approach a traditional corrections project or even a Design-Build project, is that correctional facilities are different.

They’re very different from the P3 projects that have really opened up this market. We’re not a hospital, we’re not a school, and we’re certainly not a highway. We’re different, and one of the things that makes these facilities so different is that they are mission specific, and that operations drives design.

Even within what might be a very apparently prescriptive RFP, I believe the architect has to be the voice of ensuring that we are looking at mission of facility, that we can provide as much input, flexibility, and innovation as we can moving forward in terms of operations, which certainly has a practical cost, as well.

Even if the team is not going to operate the building, in terms of long-term cost, how those operations impact staffing is going to be of interest to the owner, if they’re maintaining that responsibility – and then how is that translated into a design?

The other thing that I think is probably most important in my mind: Buddy said, “Step into the shoes of the owner.” Step into those shoes, because when all is said and done, we’re not a car driving down the highway and paying a toll. This is the consumer of the product that we’re delivering.

It’s very important, and I believe this is really the community that needs to continue to speak the voice of creating normative environment of bringing to projects evidence-based practices and really being the compass, if you will, of the project.

Within the constraints of an RFP – and it varies in terms of how much flexibility the team is provided with – we still need to look at who will the facility serve, relative to mission? In many instances, a need assessment or bridging documents have been done. But Buddy talked about a long-range approach. If we, as architects, are interested in being on a team, learn a lot about that population.

In my mind, if there are points that are based on cost, why can’t we think about a concept where points are awarded because we’ve right-sized the building for them by looking at other opportunities that can reduce footprint or reduce bed space?

I would like to be provocative about that. The best example for me had to be six or seven years ago, when Beverly Prior, and I, and many others said, “Getting the LEED points doesn’t really work for justice.” The Green Building Counsel doesn’t recognize that it’s a different building type – 24/7, security requirements, so on and so forth. This community put out the white paper for Sustainable Justice and talked about looking at sustainability not only in terms of building efficiency, but sustainability to the individual, to the community, and so on.

I’m proposing that as part of the introduction of P3, maybe a role that we should consider as an architectural and planning community is how do we shape P3? I think the challenge is that we have 50 different states and a gazillion different municipalities or jurisdictions. We don’t have one common entity.

But neither did we when we talked about sustainable justice and began to put out white paper and, I think with the example of LEED, influencing with the LEED Jdocument. I’m not quite sure how far along it is, but as a thought process for where the voice can continue at that level – not at the technical level but at that level – I think is really an important issue for this architectural community to really engage on.

How should the facility operate? Certainly. They are operationally driven facilities. As architects and planners on the P3 team, we need to really think about that. If the RFP is not prescriptive about how things are provided, are we providing certain services in a decentralized manner or centralized manner? What’s the impact of that on staffing? Whether the team is bearing those costs or whether the owner will be bearing the cost of staffing, it’s going to be significant. How much escort might be required? What are the operations that drive the critical adjacencies?

In some respects, as Buddy said, you’re still doing the same design role, and I would like to suggest that we’re still doing the same role in terms of the holistic approach brought forward in this new paradigm and then creating the best design response in terms of direct supervision.

If an RFP tells you, for example, they need X number of beds, and they might even give you a classification or a custody level – minimum, medium, maximum – there’s an opportunity there to introduce concepts, like direct supervision with a solid rationale in the application as to why, to think about what those bed types are.

I think that this is still evolving. My hope is that the team you put together really recognizes the importance of those elements. In the interest of time, we won’t get into a lot of the detail on those.

We talked about the three Ps, and we introduced perception, process, and politics. But maybe the three Ps that we need to consider as we move forward in this new paradigm are program, physical plan, and people – the people who are within these facilities.

With that as food for thought – beyond “I don’t know whether to go to law school or accounting school” – in terms of where is the voice, where can the architectural community really continue to shape this moving forward, and what the proper vehicle of that might be, I think that’s what I would like to leave you with.

I think you have gotten a lot of technical, really good, detailed information and understanding of the process and of the risks and the benefits, but I think we also need to think about how we can continue to have the voice that we’ve always had in the corrections community.