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PPP ALTERNATIVES

Global Economic Crises Pushes New PPP Alternatives for Prisons

By Jeff D. Baize

The worldwide economic crises have affected us in ways that are both obvious and more insidious. At a time when society can ill afford any further deterioration in the housing of its inmates, we are witnessing how global fiscal challenges are further hindering the ability of many nations to meet their infrastructure needs. Inadequate, poorly maintained correctional facilities are falling into further disrepair while construction of new prisons is being halted due to lack of capital. Budget cuts have also meant eliminating programs, reducing prison staff, languishing prison health care and a declining quality of rehabilitation. This in turn has resulted in greater recidivism and higher rates of crime.

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At the recent Annual International Conference of the Royal Institute of Chartered Surveyors (RICS), I spoke to an audience consisting of delegates from all over the world. The topic of focus was the use of public-private partnerships (PPPs or P3s) as an alternative way of meeting the global need for infrastructure. The audience was in accord — all were seeking alternatives to meet their growing demand for desperately needed new infrastructure.

One of the delegates I found particularly intriguing was an academic from Greece where the economy has been hit by the most severe of the European sovereign debt crises with a complete loss of debt capacity. He spoke of how his government's interest in PPPs has increased commensurately with the increase of their financial woes over the past two years. Currently, 40 countries use PPPs to fund and deliver infrastructure.

Here in the U.S., it is generally accepted that we lag behind the rest of the world in pursuing PPPs, primarily due to our lack of consistent PPP-enabling legislation combined with polarized political interests. However, this is not the case for prisons. Of the 209 prisons that have privatized their operations globally, 181 are in the U.S. Privatization of prisons has become a big, multi-billion dollar business in America, with prison corporations being publicly traded on the New York Stock Exchange. These corporations often generate their profit through greater private sector efficiencies brought to operations. A 2009 survey of 30 large U.S. corrections agencies found that contracted prisons are 28 percent lower in cost than state-run facilities.

Baize

The most populous state in the U.S., California, is facing its own correctional facility crises. The California Legislative Analyst's Office found that one in every seven state employees was a correctional officer, yet these employees account for a disproportionately large 40 percent of state's spending on personnel. Adding to the dilemma, the California prison system was designed to house 84,000 inmates yet currently houses 133,000 in very overcrowded conditions. Facing its worst deficit in history, the state enacted a law in 2011 that would transfer its low-level offenders to county jails while releasing 40,000 inmates. However, a new Reason Foundation-Howard Jarvis Taxpayers Foundation study finds that modest expansion of California's current use of PPPs in corrections would save state taxpayers nearly $2 billion in inmate housing over the next five years.

But internationally, a number of media reports have presented a negative picture for prison PPP projects. A primary reason they cite is the private partner's inability to maintain cost control and delivery schedule during the prison's construction. But there are three important aspects of PPPs that these critics often fail to recognize.

First, the development of any large-scale correctional facility is very complex, particularly given the level of design and construction quality necessary to maintain a high level of prison security. Experienced builders know that the development of prisons carries a far higher risk of cost overruns than most other projects. But we must recognize that these risks are inherent to all new prison construction regardless of whether a PPP or standard delivery model is used. The difference, however, is that in a PPP the private partner bears the preponderance of the delivery risks. Those who claim a particular PPP project is a failure solely because of cost overruns demonstrate a misunderstanding of PPPs. One of the most important public benefits of PPPs is the transfer of risks from the public sector to the private sector. Budget busts alone do not determine whether a PPP prison project has failed, but rather the ability or inability of the private partner to absorb the unplanned additional costs. And if the private partner does bear those costs, then from the public's perspective, the PPP delivery method must be deemed a success, not a failure.

Second, any delivery method can only be called a success or failure when there is a standard for comparison. For PPPs, that standard is the traditional model of government funded, built and operated facilities. According to a UK National Audit Office report, PPP projects are three times more likely to be delivered within budget and on schedule than the traditional government delivered approach. Any objective determination of performance of a given PPP project must be balanced by considering the historical performance of the respective government in its past delivery and management of such projects.

Inmates in Privately-Operated State and Federal Prisons

Privately Operated Federal Prisons

Year:	2000	2009	2010
Number of Inmates:	9,381	25,318	25,201

Average Annual Change (2000-2009): 11%
Percent Change: -0.5

Privately Operated State Prisons

Year:	2000	2009	2010
Number of Inmates:	71,845	95,246	94,365

Average Annual Change (2000-2009): 3.1%
Percent Change: -0.9

Source: Correctional Population in the United States, 2010; Bulletin December 2011; Bureau of Justice Statistics

And third, we must not view PPPs as a static, unchanging, one-size-fits-all model as they encompass a diverse range of contractual structures and varying relationships between the public and private partners. Global acceptance of PPPs, which was sparked by the United Kingdom upon its enactment of the Private Finance Initiative in 1992, is a relatively young movement. The contractual structures and relationships of the respective parties have continued to improve, resulting in a higher degree of collaboration and cooperation.

This evolution was documented in a 2010 Victorian Auditor-General's Report in Australia that examined PPP management contracts for prison facilities, and contrasted those executed before and after 2001. Their findings showed that weaknesses in PPP contract provisions and shortcomings in the public partner's contract management practices had significantly improved over time. These contractual improvements included, among other things: better defining the services to be rendered by the private partner; specifying the condition of the prison facilities to be left upon contract termination; active monitoring by the public partner of the private partner's adherence to performance benchmarks; and, increased flexibility to accommodate both innovation and the likelihood that circumstances and government objectives will change during the contract term.

Even the most ardent advocates of PPPs will tell you they are not the panacea to the fiscal challenges our world faces in meeting its infrastructure needs. RICS studies reveal that the usage of PPPs is still relatively low, accounting for only 4 percent of infrastructure projects in Europe and between 10 percent and 15 percent of infrastructure in the UK. But the benefits offered by PPPs are very alluring. Access to private capital, transfer of construction and operating risks from the public to private sector, private sector efficiencies, lower whole-of-life (life cycle) costs, and value-for-money remain compelling reasons PPPs continue to attract attention from the international community in meeting the global need for correctional facilities.

Jeff D. Baize is CEO of Brookhurst Development, a national firm that specializes in public-private partnership and is considered an authority on P3s.