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NSW NEW SCHOOLS II PPP PROJECT CASE STUDY

In December 2005, the New South Wales (NSW) government's Department of Education and Training (DET), appointed Axiom Education to design, construct, fit-out, commission, finance, operate and maintain school facilities in 10 nominated locations. The Project achieved financial close on 28 February 2006. With the project taking only 7 months from the issue of the request for detailed proposal documentation to financial close it sets a bench mark in Australia as to how fast a PPP deal can be done. David Templeman, Partner at Freehills examines the project.

Introduction

This was the second schools PPP project to be undertaken in NSW. The first project, also won by Axiom Education, achieved financial close in March 2003. A recent report by the NSW Treasury on the first project noted that the PPP delivery enabled a faster response to demographic needs, delivered value for money and that the outcome of the tender process was positive and an improvement on traditional delivery. A report by the NSW Auditor General on both schools projects in March 2006 concluded that the contracts "were established and let in a way that greatly assists their potential for delivering value for money."



Parties

Axiom Education is sponsored by ABN AMRO (75%) and Babcock & Brown (25%). ABN AMRO also underwrote the debt. The builders are St Hilliers (for high schools and a special purpose school) and Hansen Yunken (for primary schools). Spotless are the facilities manager.

Project Description

The planned new schools are located in areas of urban growth, generally on the growing edges of Sydney. The selection of locations for the schools by the government was based on the government's assessment of long term enrolments.

The project documents for this PPP provided that the government would grant a licence to the Project Company to enable them to construct the schools. Upon completion of construction the Project Company would then lease the schools from the State for the purpose of carrying out their operation and management obligations and sublease them back to the State for education purposes. The facilities management role of the Project Company includes building and grounds maintenance, cleaning and waste management, energy management and security. The State remains responsible for the delivery of education.

At the end of the contract term, possession of the schools must be passed back to the DET in a pre-determined condition with the contract providing for a retention account regime in the final years of the term to ensure required work is performed.



Advantages of Using a PPP For This Project

The advantage for the Government using a PPP for this project was that it was able to simplify the process of managing construction of infrastructure, provide potential for innovation, lower procurement costs, ensure assets are maintained to their required standard, and transfer risks for the whole of the life of the project to the Project Company where it was deemed that the Project Company was in a

better position to manage and control a risk.

The particular flexibility of the PPP structure was emphasised by the inclusion in the Project of the replacement of Kelso High School, an existing high school west of Sydney which burnt down after the initial scoping of the project. The other schools included in the Schools I and Schools II projects were all green fields developments. However the inclusion of Kelso showed that the project documentation, which had been developed from the School I contracts, was flexible enough to allow the inclusion of the what was, in effect, a brown fields development with minimal alteration to the documents.

Documentation

While the documentation for the Schools II project was based on the contracts from the first Schools project in NSW, the State had applied their lessons learnt from the initial project and also updated the contracts to reflect changes in the market. As such the deal was not as much of a cookie cutter as it might have been, although the parties were seeking to achieve effectively the same outcome. Accordingly there were some changes in risk transfer. For instance while for Schools I the State insured the schools (as it does for public schools generally) for this project Axiom Education had to arrange the asset insurance and take the risks in this area.

What Risks were Transferred?

The manner in which some of the significant risks were managed in this project is described below:

Site Risk

Regardless of the fact that the sites have been selected by the State, the Project Company generally takes the risk of the site subject to some risk sharing in respect of matters such as the discovery of artefacts and native title issues. Site risks could generally be passed down to the builders.



Design and Commissioning Risks

The Project Company was responsible for all aspects of risk associated with the design, construction, and operation of the schools and accepted the risk that the schools will be of an acceptable standard and that the project would be completed on time and on budget. This risk could be passed down to the builders. The experience of the first Schools project and the broader experience of the builders selected by Axiom Education in the construction of schools minimised this risk.

Employee Risks

As is to be expected the Project Company was responsible for ensuring that each employee of the Project Company and each subcontractor engaged in works and services was appropriately qualified and skilled. However, given the nature of a school, the Project Company also accepted the risk of having checks performed where there was any likelihood of exposure to children to ensure the employee was an appropriate person for the job they were employed to do.

Demand Risk

This project is different to other PPP's in that the Project Company does not carry demand risk. That is, the Government is considered as the party best able to carry the risk of the level of usage of the schools and as such it accepts the risk that the number of school children will be more or less than expected.

The Schools projects contain a unique regime for dealing with fluctuation in student numbers over the term. The expected student numbers over the term for most of these schools is a bell shaped – total student numbers increasing then decreasing again. Rather than have the Project Company build a school to the size needed for the maximum numbers or to expand the school during the term, the Government has elected to treat these schools similar to other public schools. The State makes demountable class rooms available to the Project Company as required to supplement the buildings constructed by the Project Company. The Project

Company takes the responsibility to install and maintain them and returns them to the State when no longer required.

Whilst the schools have to be available for use by the government and the community when required, the Project Company is entitled to allow third parties to use the schools when not required by the government and charge a fee for this use. After accounting for any costs incurred by the Project Company in relation to this use, the contract then provides for this fee to be split between the Project Company and the State.

Force Majeure and Uninsurable Event Risks

The risk of force majeure and the occurrence of an uninsurable event is shared between the parties, with the project documents providing a mechanism to deal with such an event.



Value for Money

In order to evaluate whether the government was achieving value for money in a PPP structure for the project the government compared the preferred bid to its benchmark known as the Public Sector Comparator (PSC). The PSC is a hypothetical risk-adjusted costing of the governments full costs of supplying the whole of life infrastructure project itself.

The Auditor General's report found notional savings against the PSC for the Schools I project of 7% and of 23% for Schools II.

As noted by Erwin Elstermann, Executive Director of structured Finance at ABN AMRO "As set out in the Auditor General Report, the private sector was able to beat the Public Sector Comparator for the delivery of the these new schools to the State, compared with the traditional procurement model. From the State's perspective, the PPP process has allowed the procurement of new schools to be brought forward, with the private sector delivering 19 new schools over a 6 year period which is considerable faster than what would have been achieved via the traditional methods."

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