David Little

# Q&A

Q: What is "risk transfer" in a Public-Private Partnership?

## Ask a Lawyer

A: Every project has risk. When a business needs a building or other facility for its operations, it must find debt and equity financing, obtain land and development approvals and bear the risks of design, construction, operation, maintenance and residual asset value and condition.

In traditional project delivery, the owner usually transfers risk to its consultants and its construction contractor and maintenance service providers to the extent of their respective professional and contractual obligations (e.g. price, schedule, indemnities, guarantees, liquidated damages). Different contracting models (e.g. cost-plus, fixed price, design-build) have different risk transfer. For example, a design-build contract passes design and construction risk to one contractor, with benefits to the owner.

Note that risk does not just stay with the original parties. Contractors usually pass obligations and risk down to subcontractors. Also, both owners and contractors buy insurance to spread risk (e.g. theft, fire) to the insurance market.

When it comes to a Public-Private Partnership (PPP), think of it as a single extensive bundle of work and services procured by the government. Most PPPs start with design-build and from there may expand to operations and maintenance services. Payment may vary by performance or project revenue. When PPPs include financing, the private sector project company takes financing risk, even with today's liquidity problems. PPPs are designed to transfer maximum risk to the private sector - for a price that makes sense for the deal.

A change in mindset is needed. The point is that PPPs are different from traditional projects, the risk transfer follows from the extensive scope of the project, and all parties should ask the right "what if" questions to assess the risk transfer and potential benefits and impacts to them.

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