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Federal Official*

Honorable Stephen L. Johnson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

Earlier this year, the Environmental Financial Advisory Board (EFAB) submitted a report to the Agency on the subject of Public Private Partnerships (PPPs) for the water sector. As that report was being completed, the Board learned of the aggressive and innovative approach being taken to PPPs in Canada. Although laws, institutions, and intergovernmental relationships differ between the United States and Canada, the Board decided to prepare a brief summary of the Canadian experience for the Agency's information and use. That summary is enclosed, with the title "Public Private Partnerships in the Provision of Water and Wastewater Services: Brief Comments on the Canadian Experience." If you are not already aware of the program described, we believe that you will find this brief report to be very interesting.

In the event that the Agency decides to further examine the lessons of the Canadian initiatives, we can suggest several lines of inquiry:

- Canada compares PPPs to public sector alternatives with the aid of formal analytical models: the "Public Sector Comparator Model" in British Columbia and the "Alternative Financing and Procurement Model" in Ontario. We understand that these models are used to determine such key parameters as "value for money," the allocation of risk between public and private sectors, the appropriate level of public control/ownership, and accountability. A better understanding of these models and their use might be very helpful in identifying issues and otherwise shaping the Agency's approach to facilitating PPPs in the U.S.
- The most relevant transnational comparison of Canadian to U.S. practice would be to contrast the Canadian province-level initiatives to state-level programs in the U.S. In this connection, it may be useful to seek out those states which have been most active in removing barriers and facilitating PPPs, then compare the selected state programs to the Canadian programs. In addition to suggesting further enhancements of the programs in active states, such a comparison could also result in a credible template for other states to follow.

We also note that our prior report included an overview of PPP programs underway at the U.S. Department of Transportation. As the DOT initiatives gather experience, it may be helpful to the Agency to look more closely at which programs are working and which are not, with the purpose of identifying specific initiatives which may be relevant to the Agency's mission.

As always, the Board stands ready to assist the Agency with any of these studies in any way that you may find helpful. If you or your staff have questions about this report, or would like to arrange a meeting, please let us know. We greatly appreciate the continuing opportunity to serve the Agency.

Sincerely,



A. James Barnes
EFAB Chair



A. Stanley Meiburg
EFAB Designated Federal Official

Enclosure

cc: Marcus Peacock, Deputy Administrator
Ben Grumbles, Assistant Administrator for Water
Lyons Gray, Chief Financial Officer

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Public-Private Partnerships in the Provision of Water and Wastewater Services: The Canadian Experience

This report has not been reviewed for approval by the U.S. Environmental Protection Agency; and hence, the views and opinions expressed in the report do not necessarily represent those of the Agency or any other agencies in the Federal Government.

August 2008

Printed on Recycled Paper

Environmental
Financial Advisory Board

PUBLIC PRIVATE PARTNERSHIPS IN THE
PROVISION OF WATER AND
WASTEWATER SERVICES: BRIEF
COMMENTS ON THE CANADIAN
EXPERIENCE

August 2008

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I. INTRODUCTION

In 2006, EPA asked the Board to consider the potential for public private partnerships (PPPs) to alleviate chronic funding problems in the drinking water and clean water industries. The Board approached this task by examining the role of PPPs in the US water sector, the kinds of PPPs that had been implemented or proposed, and the barriers that may discourage or prevent implementation. The Board concluded that a potential benefit from wider use of PPPs is well demonstrated, the mechanisms for considering and structuring these arrangements are known, and success stories and model applications are available. In its April, 2008, report to EPA, the Board made a number of recommendations for action by Congress and by EPA.¹

As the April report was being completed, a member of the Board learned about certain government initiatives in Canada, in particular in the Province of British Columbia, designed to promote PPPs in Canada. These initiatives have been innovative and aggressive, and have succeeded in expanding the role of the private sector in providing public infrastructure. In the hope that this experience may attract some interest in EPA, this addendum summarizes the main features of the Canada's national and provincial programs.

II. PPP POLICY IN CANADA

A central focus of activity in Canada is the Canadian Council for Public-Private Partnership (Council). This member-sponsored organization was founded in 1993 with the objective of fostering innovative forms of cooperation between the public and private sectors for the benefit of all Canadians. The membership includes government agencies as well as private sector firms. As described on its web site, the Council “conducts research, publishes findings, facilitates forums for discussion and sponsors an Annual Conference on topics related to PPPs, both domestic and international.”² The Council's Board of Directors is comprised of senior representatives from business, government and labor across Canada.

Increased use of PPPs is also advocated by Infrastructure Canada which, together with Transport Canada, provides grants to local communities as part of the Building Canada program. These grants are available for wastewater infrastructure, public transit, green energy, and solid waste management projects. For the 2007-2014 period, Canada has allocated CAD33 billion for all grants, of which CAD1.25 billion is available for support of innovative PPP projects.³

1 Environmental Financial Advisory Board, “Public Private Partnerships in the Provision of Water and Wastewater Services: Barriers and Incentives,” submitted to the Administrator, US EPA, April 2008, 39 pp.

2 <<http://www.pppcouncil.ca>>

3 <<http://www.buildingcanada-chantierscanada.gc.ca>>

Early in 2008, the Canadian government formed a new Crown Corporation, PPP Canada, Inc., which appears to have a mission similar to that of Partnerships, BC, described below. In a recent review of PPP activity in British Columbia, the Council noted that “British Columbia has emerged as a leader in the development of public-private partnerships in Canada.”⁴

III. PPP POLICY IN ONTARIO

In 2006, the Province of Ontario responded to a growing infrastructure deficit by merging two existing agencies to form a new crown corporation, Infrastructure Ontario.⁵ The new agency is described as an arm's length corporation dedicated to the renewal of the province's hospitals, courthouses, roads, bridges, water systems and other public assets. As an arm of the provincial government, Infrastructure Ontario provides local governments and other public bodies with access to affordable loans and other assistance with infrastructure projects. But a key strategy is the use of an Alternative Financing and Procurement Model (AFP) to evaluate and implement PPPs.

The AFP model is intended to insure appropriate public control and ownership, while using private financing to strategically rebuild vital infrastructure, on time and on budget. In evaluating PPP proposals, five principles are observed:⁶

- Public interest is paramount,
- Value for money must be demonstrable,
- Appropriate public control and ownership must be preserved,
- Accountability must be maintained, and
- All processes must be fair, transparent and efficient.

It is interesting to note that the AFP procedure for assessing “value for money” includes an explicit examination of risk and the way in which risk is allocated between public and private partners.⁷

In a 2007 presentation, Infrastructure Ontario reported closing 10 PPPs in the previous 20 months, with a total project cost of CAD2.05 billion.⁸

4 The Canadian Council for Public-Private Partnerships, “Responsible PPP Procurement for British Columbia,” April 2005, p. 1.

5 <http://www.infrastructureontario.ca/>

6 <http://www.infrastructureontario.ca/en/projects/afp.asp>

7 “Assessing Value for Money: A Guide to Infrastructure Ontario's Methodology,” Infrastructure Ontario, Queen's Printer for Ontario, 2007, 23 pp.

8 Livingston, J. David, “Alternative Financing and Procurement: Ontario's Infrastructure Delivery Model,” presented at Goldman Sachs Infrastructure Conference, New York City, September 19, 2007.

IV. PPP POLICY IN BRITISH COLUMBIA

The active promotion of PPPs has been evident in British Columbia for at least 10 years. In 1998, the province's *Municipal Act* was amended to allow the following:

- Public funds could be used to grant assistance to a private sector firm involved in a PPP.
- Local governments are permitted to acquire or dispose of property necessary for a PPP.
- Contracting procedures similar to those used in the private sector are permitted.

This expanded opportunity was quickly exploited by the provincial government in a series of steps. First the Ministry of Municipal Affairs issued a guidebook for local governments interested in implementing PPPs.⁹ Shortly thereafter, the Ministry published a guide to project finance for local government which fully integrated PPPs as one of a number of strategies for funding public projects.¹⁰

In 2002 the provincial government created Partnerships BC, a corporation wholly owned by the British Columbia government. This step reflected the government's stated intention "to modernize government to find more efficient and effective approaches to the provision of services and infrastructure"¹¹ Partnerships BC is charged with using PPPs to deliver "capital projects that meet public needs at minimum life-cycle cost with an optimum sharing of responsibilities among the partners."

Partnerships BC provides the following description of its mode of operation:

*Partnerships BC serves its public sector clients by providing core expertise on analyzing, structuring and managing partnership contracts. As a centre of expertise, Partnerships BC can develop and transfer learnings from one project to the next.*¹²

Project evaluation is centered around a "value for money" concept, which requires a showing that the PPP provides a better ratio of value to net life cycle cost than the best feasible public sector strategy. This comparison utilizes a "Public Sector Comparator" model which estimates the life cycle costs of the alternative public sector project.

In the case of major projects, a PPP initiative is considered to be the base case.¹³ Public

9 British Columbia Ministry for Municipal Affairs, "Public Private Partnership: A Guide for Local Government," May 1999, 99 pp.

10 British Columbia Ministry for Municipal Affairs, "Development Finance Choices Guide," October 15, 2000.

11 <<http://www.partnershipsbc.ca>>

12 <<http://www.partnershipsbc.ca/files/faqs.html>>

13 Blain, Larry, "International Models for Infrastructure Financing: Public Private Partnerships in B.C.," presented at Goldman Sachs Infrastructure Conference, New York City, September 19, 2007.

sector approaches must be evaluated against the PPP approach.

Another feature of the Canadian approach is explicit treatment of risk sharing between public and private sector participants. Risk allocation is considered alongside of cost allocation in the negotiation process.

As of June 2008, Partnerships BC reports 13 major projects under construction or operational and 5 more presently in procurement. All projects facilitated by Partnerships BC to date represent a total capital investment of CAD9 billion, of which CAD5 billion was provided by the private sector partners.¹⁴

Partnerships, BC, has an annual budget of about CAD8.2 million. Approximately 75% of this amount is financed by fees charged to PPP participants for services rendered. Most of the remainder (CAD1.8 million) is a grant from the provincial government.¹⁵

This very aggressive program is not without its critics. An internet search quickly turns up web sites criticizing the evaluations of specific projects or, in some cases, opposing PPPs in general. Among the complaints are allegations that inappropriate interest rates are employed for the Public Sector Comparators, that procurement costs for PPPs are understated, and that the results of evaluations are slow in becoming public. The Canadian Council for Public-Private Partnerships, in its review, noted that Partnerships BC's various roles—promoter, negotiator, procurement manager, financial advisor—interfere with consistency. It might be added that these multiple roles may also weaken the appearance of impartiality on the part of Partnerships BC.

V. CONCLUSION

The Canadian experience provides a very interesting counterpoint to the situation in the U.S. Canada has similar infrastructure endowments, somewhat similar governmental institutions, and similar financing problems. Canada, like the U.S., saw PPPs as a partial solution to financing problems and as a way to deliver public services more efficiently in certain cases. But the policies and strategies of the two countries have diverged sharply.

While U.S. federal and state governments have made some effort to clear barriers and have provided guidance in certain instances, it is left to local governments and agencies to decide whether or not to pursue PPPs and to determine how to evaluate proposals. Canada, as typified by Infrastructure Ontario, has been much more proactive. British Columbia, in particular, has taken an aggressive, hands-on approach designed remove all barriers and enforce fair comparison of PPPs and other alternatives. This model is claimed to be a success, and the rest of Canada appears to be following.

14 <<http://www.pppcouncil.ca/>>

15 Partnerships, BC, "2006-2007 Annual Report," p. 41.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 17 2008

OFFICE OF
WATER

Mr. A. James Barnes
Professor of Public and
Environmental Affairs and
Adjunct Professor of Law
Indiana University
1315 E. 10th Street, Suite 418
Bloomington, Indiana 47406

Dear Mr. Barnes:

Thank you for your letter to Administrator Stephen L. Johnson dated September 15, 2008, in which you transmit on behalf of the Environmental Financial Advisory Board (EFAB), the report entitled "*Public Private Partnerships in the Provision of Water and Wastewater Services: The Canadian Experience.*" I found the previous report on public-private partnerships (P3) to be insightful, and I remain in agreement with the statement that, "these partnerships can reduce costs, improve the quality of service, and speed the provision of needed infrastructure...the availability of this tool should be a powerful weapon in the Agency's struggle to achieve sustainable water services at a reasonable cost." As always, I appreciate the opportunity to review and examine any input from EFAB.

This addendum provides an interesting examination of the innovative attempts to advance P3s in Canada. I believe it is important for EPA to examine those activities and comparative models, as recommended, and evaluate State programs in light of those activities taking place at the Provincial level.

As I noted in my response to your previous report on the subject, I plan on continuing to work with Congress and the water industry to try to achieve many of the efficiencies highlighted in the report and I would like to continue this discussion with the Board. Once again, thank you for your efforts. If you have any questions or wish to speak further about this issue, please contact James A. Hanlon, Director, Office of Wastewater Management, at (202) 564-0748.

Sincerely,

A handwritten signature in blue ink that reads "B. H. Grumbles".

Benjamin H. Grumbles
Assistant Administrator