law

Public Private Partnerships - could they be coming?

By Arthur McInnis

Things have been down a little lately. Despite the flurry of rail related contracts in recent times people are complaining – there is not enough work. Meanwhile, on the public sector front, finances look a bit frayed. Is there any hope? Yes. It is the drivers. They all point to change. The Government is set on reform, it is labouring under severe budget deficits and there is a craving for better value for money. I have seen them before. They are precisely the factors that drove the UK to reform. First, through Public Private Partnerships (PPPs), and second, through the Private Finance Initiative (PFI). Now while I cannot say they will be coming with absolute certainty, because the Chief Executive did not categorically commit to them in his policy address, he gave several hints they are coming with his market-led pointers but more importantly with some of the types of projects that he outlined in his policy agenda. Thus I remain firmly of the view that the signs clearly point in this direction.

Pre-PPP

Before PPP most infrastructure spending in the UK was in the hands of the public sector or in the private sector but regulated. It assumed that such spending was integrative; in other words it was the glue that held the economy together. It was also assumed that such spending was a public good. Thus everyone should benefit and share the costs equally. Over time these assumptions came to lose their force. The political conditions necessary for PPP to take hold were created.

Gradually people began to see things in user-pay rather than taxpayer-pay terms. Economists had been saying for sometime that this entailed better economic use of resources. Geopolitical and geographic changes also crept in. It redrew the boundaries of competition in many sectors. In a stroke what had been seen as natural monopolies came to be viewed instead as competitive oligopolies simply by broadening sector classifications. Thus, for example, the electricity market became part of an energy market.

Ryrie Rules

With attitudinal, economic and related regulatory changes taking place the stage was set for a good hard look at whether private finance might thus be used to fund the construction of public sector facilities. Upon the urging of the UK Treasury a committee was founded in 1981 to look at how outlandish this idea might be. Sir William Ryrie chaired the committee. Ryrie, went to work and produced a report that gave a qualified go-ahead to the idea of private finance footing public sector bills. His qualifications came to be known as the Ryrie Rules. Two stood out. The first said that privately funded projects had to be tested against publicly funded alternatives and shown to be more cost effective. The second said that privately funded projects had to reduce public expenditure pound for pound. It can be seen that these rules were tough to satisfy and as a result there were few projects that passed the muster.

The Chancellors' Feet

Almost ten years went by between the Ryrie Rules coming out and remarks that would be made by the then Chancellor of the Exchequer Norman Lamont. Those remarks have gone down in construction history as the launch of the Private Finance Initiative in Britain. Almost exactly ten years ago on November 18, 1992, Lamont said:

"Changes have been made to the rules for privately raised finance. The objective is to find new ways of mobilizing the private sector to meet the needs which have traditionally only been met by the public sector. The new arrangements are based on risk which needs genuinely to be borne by the private sector .... any privately financed project which can be operated profitably will be allowed to proceed."

With these words PPP, restyled PFI, was set for take off. One short year later, Lamont's successor and the new Chancellor Kenneth Clarke, set up the Private Finance Panel. The panel was largely a committee of public and private sector gurus who brought structure and order to the process. It was given a boost in 1994 when the UK Government introduced a universal testing requirement for all capital projects. This meant that the treasury would no longer approve public sector spending unless it had passed a PFI test. It put the private sector in pole position.

Things moved along without any hiccups until New Labour was elected in May 1997. It proved to be a watershed for PFI in the UK because it was seen by many as predicated upon Conservative ideology. New Labour showed they understood this by immediately abolishing universal testing as one of their first acts in Government. The big question this raised was whether PFI still had legs. New Labour decided to find out.

A committee was commissioned to investigate and report on any inefficiency in the PFI process. Many in Labour then believed that the 'Bates Committee Report' would be the death knell of PFI. In fact some still believe it today. Much to their disappointment Sir Malcolm Bates endorsed rather than reversed the direction the Conservatives had taken. Not content to rest there he really moved the process forward a generation by recommending ways to increase standardisation, reduce bid costs and improve structures and processes. PFI has not looked back since.

Under Bates' lead a Treasury taskforce was created. It took over from the private finance panel on July 1 – 1997. The taskforce was a mixed bag of public and private sector secondees led by Adrian Montague, a project finance bigwig. He set the Taskforce about leading on pathfinder projects, passing upon other projects' commercial viability, disseminating best practice, and generally just cheerleading. In a word the taskforce made PFI respectable.

Now according to Bates' original review the taskforce was seen as a stopgap body and given only a two-year lifespan. The problem with this was that it had been hugely successful. So the Government trotted out Bates again to reprise his earlier role with a second review. It recommended the creation of a permanent body to offer the very same kinds of project management skills that the taskforce had previously. In 2000 Partnerships UK was created. Interestingly enough Partnerships UK too became a PPP with a 51/49 split in ownership between the private and public sectors. Since then the Office of Government Commerce has been added to Partnerships UK and serves as the guardian-in-chief of PFI policy not to mention the official body behind most public sector procurement in England.

A Model for Hong Kong?

So has PPP worked? Is it a worthwhile model for Hong Kong? It would seem so. The National Audit Office and others mostly taking this same line have done countless reports. One recent report worth mentioning, done by the Institute of Public Policy in the UK, concluded that PPPs delivered high quality facilities on time and on budget. It found that working environments had improved and risk transfer to the private sector was real. On top of that designs were more innovative than before and overall outcomes had improved.

Now where were we again? Well, we have the same conditions as existed in the UK. We want the same things as they did. They tried something new. There is a ten-year track record under three Governments who have tested it. The majority believes its working. Yes, despite the hole in the budget PPPs would allow projects to go ahead now. They're stimulative and add value. So whether coming or not I would have to say PPPs should be. What are we waiting for?

***Dr Arthur McInnis is a co-director of the Asian Institute of International Financial Law and a Consultant with Clifford Chance. This is an edited version of an article which ran earlier in* The Standard.**

ADVERTISERS INDEX

EVENTS 2003

World Project Management Week

Date: March 24-28
Venue: Marriot Resort,Gold Coast, Australia
Contact: Tel: +61 7 3846 5858
Fax: +61 7 3846 5859
Email: wpmweek@eventcorp.com.au
Details: World Project Management Week 2003 will provide a valuable opportunity for project managers to share and explore the their ideas and approaches in greater depth with their peers globally. Early registration will entitle participants to a reduced rate. Asian Architect & Contractor is official publication at this event.

World of Asphalt 2003 Show and Conference

Date: March 18-20
Venue: Nashville Convention Center, Nashville, Tennessee
Contact: Tel: 800-355-6635 or 301-562-5384
Fax: 800-979-3365 or 301-587-3182
Email: info@worldofasphalt.com
Details: The event will feature exhibits showcasing the latest asphalt-related equipment, products and services. It also offers greatly expanded education programs and a live paving demonstration to provide increased industry learning opportunities for attendees. The show will offer attendees a one-stop shopping experience with all of the asphalt industry's most advanced product design innovations and technology in equipment and products.

America Hardwood Export Council (AHEC) Southeast Asia Convention – Vietnam

Date: June 13
Venue: Sheraton Saigon Hotel and Towers, Ho Chi Minh City
Contact: Fax: 852-2366-8931
Email: info@ahec-china.org
Details: A fascinating one-day convention for the hardwood industry and furniture manufacturing sectors. The program includes four breakout sessions on a range of trade and manufacturing special issues. The council expects strong turnout of its members from the United States to meet delegates from all over Southeast Asia.

2003 International Construction and Utility Equipment Exposition (ICUEE)

Date: September 23-25
Venue: Louisville, Kentucky
Contact: Tel: 414-298-4138
Fax: 414-272-1170
Email: jlitwin@icuee.com
Details: Eight hundred manufacturers of construction and utility equipment will be putting their machines to the ultimate test on The Proving Ground. The International Construction and Utility Equipment Exposition (ICUEE) has been the premier demo expo for outdoor equipment demonstration for the past 40 years and the 2003 show will be no exception with 1.2 million square feet of exhibits.

BICES 2003 – 7th International Construction Machinery Exhibition & Seminar

Date : October 14-17
Venue: National Agricultural Exhibition Center, Beijing
Contact: Tel: 86-10-6853-3288
Fax: 86-10-6851-3987
Email: cncmc@public.east.cn.net
Details: The biennial event has a wide product concentration, including: new type construction machinery, excavation machinery; lifting & hoisting equipment; earthmoving machinery; compaction machinery; road construction machinery; pretreated reinforcement machinery; equipment for repair work and more.