PFG
Public Facilities Group

8 STEPS:

63-20 PROGRESSIVE DESIGN BUILD

Public Facilities Group (PFG) is a nationally recognized not-for-profit organization that works to maximize public sector benefits when using Public-Private Partnerships (P3). We encourage using a **63-20 Progressive Design Build** (63-20 PDB) approach for delivering public infrastructure projects.

A 63-20 PDB blends tax-exempt financing (typically 63-20 lease revenue bonds) that are incurred by a not-for-profit special purpose entity (SPE) with private project development and delivery. Also, 63-20 PDB allows for private facility management and maintenance to maximize the public sector's benefit and minimize costs. It offers private guarantees of both cost and schedule, transparent and predictable rent payments, and it includes built-in safeguards which allow the public to secure ultimate project control if desired.

Step 1: Selecting the Not-for-Profit Partner

Selection of the not-for-profit partner is typically done through a RFQ and should be governed by local procurement requirements. The use of a RFP process may not always be necessary since the not-for-profit has no direct contractual relationship with the public agency until the project is designed, the lease agreement has been signed, and the bonds have been issued.

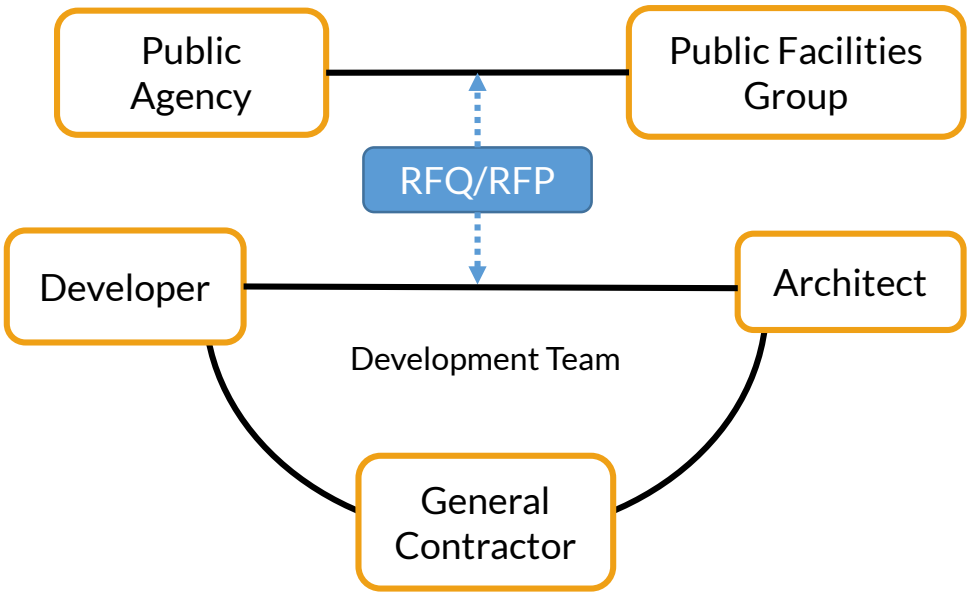
The not-for-profit partner is tasked with creating and staffing a single member not-for-profit special purpose entity (SPE). The SPE will incur the project's debt through a 63-20 or a 501(c)(3) bond sale. In addition to borrowing the bond proceeds, the SPE will own the facility on behalf of the public agency during the term of the debt, and it will manage the asset until the debt is retired. At debt retirement, ownership of the project will transfer to the public agency at no cost and without encumbrance.

The not–for-profit partner must have skills and experience in:

- Bond finance
- Structuring and overseeing complex real estate development
- Tax-exempt bonds and bond compliance
- Asset management

The not-for-profit earns a small fee paid from bond proceeds for its work. It is not paid a consulting fee by the public agency.

Step 2: Selecting the Private Development Team



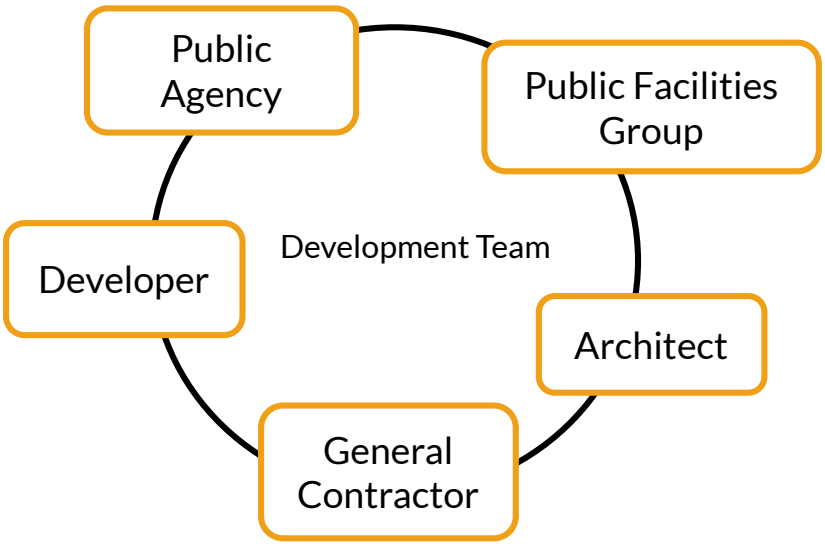
A RFQ / RFP process is commonly used to select the best team for each project. The purpose of the RFQ is to reduce the candidate pool to the 3 or 4 teams most qualified to move forward to the more detailed RFP.

The RFP:

- Specifies the team members and identifies the individuals within each specific team member to be assigned to the project along with that individual's level of experience with similar projects.
- Inquires how the proposed teams will create the greatest public value.
- Requires the teams to bid all soft costs, including all team fees and overhead costs, and to size all needed contingencies. These bids are based on an estimated per square foot hard cost and will be adjusted if the final design results in a higher or lower hard cost.
- Includes two contracts: A Predevelopment Agreement to address the design and pricing phase of the project and a Development Agreement that obligates the Team to guarantee both the final price and the timeline once the design and costs are established. The RFP asks the Development Team to comment on and accept these agreements.
- Asks for financial information from all team members.

The RFP does not ask for renderings. Renderings provided in RFPs have little relationship to the final project design and too often become a distraction for the selection committee.

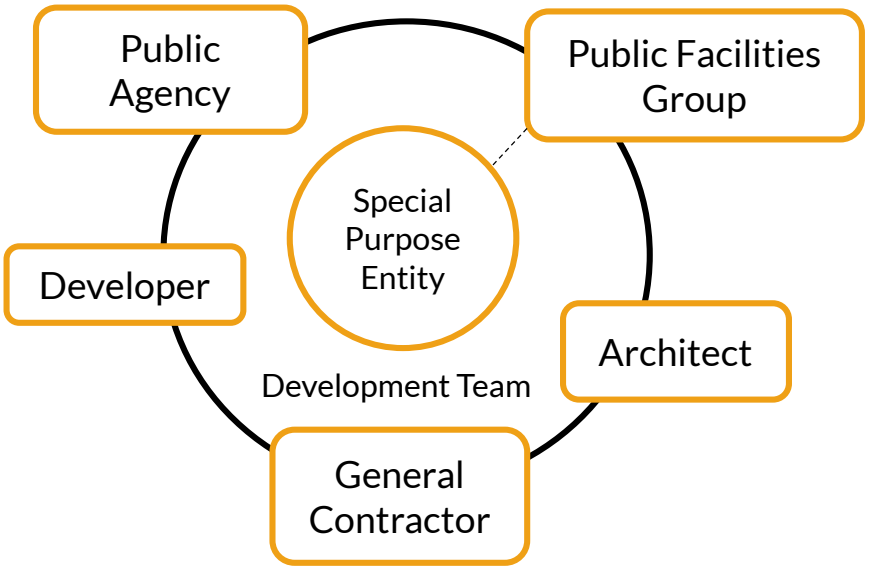
Step 3: Design and Predevelopment



Using the Pre-Development Agreement from the RFP, the public agency can either contract directly with the development team or indirectly with the development team through the SPE. It is in this pre-development period that the building will be designed and priced to meet both the public agency's occupancy needs and its cost constraints. In responding to the RFP, teams are required to provide detailed costs and a timeline for their pre-development services. The goal of the pre-development phase is threefold:

- To advance the design of the facility to a stage where the public agency can both approve the design and accept its cost. This normally occurs either during or at completion of Design Development.
- To establish the developer's guaranteed price (the GMP - Guaranteed Maximum Price).
- To complete all project entitlements.

Step 4: Financing Contracts and Bond Sale

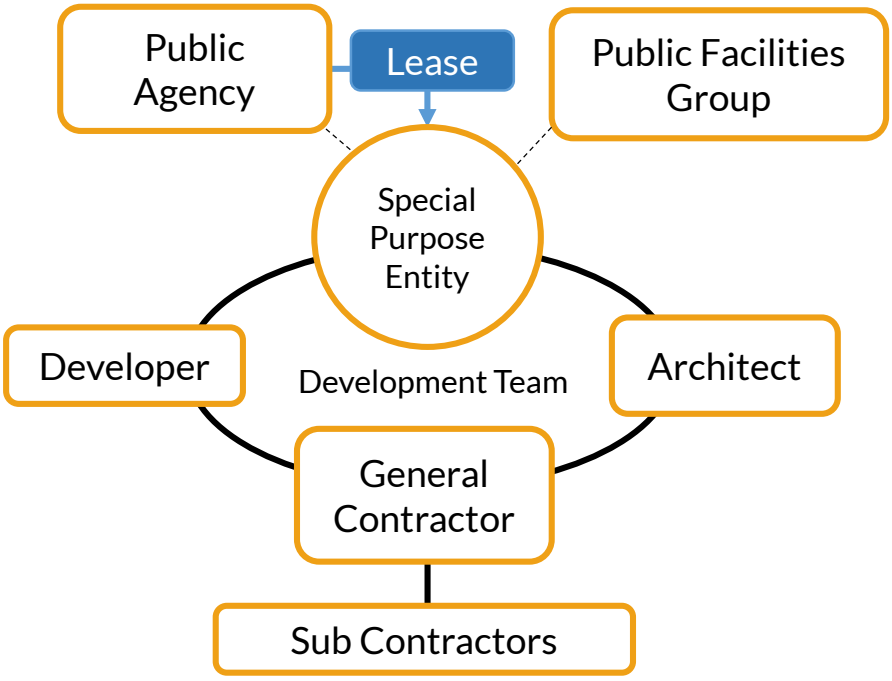


Simultaneously with pre-development, the finance team works on the financing documents. The finance team includes the public agency and its counsel, the SPE and its counsel, the developer and its counsel, the underwriter and its counsel, the bond counsel, and the bond trustee. The financing documents include the ground and facility leases, the final development agreement, the architect agreement, the general construction contract, other construction documents, the preliminary official statement, the official statement, the indenture of trust, the bond purchase agreement, and all other related closing documents.

Once the Developer has completed sufficient design work to produce a GMP, has secured all of the necessary entitlements, and when the SPE and the public agency have finalized the leases and finance documents, the bonds can be priced and the Bond Purchase Agreement can be signed by the SPE and the underwriter.

The actual bond closing occurs two to three weeks following pricing which is when all leases, contracts and finance documents will be signed. The bonds will be funded and the SPE will give the developer a notice to proceed.

Step 5 & 6: Construction and Construction Completion



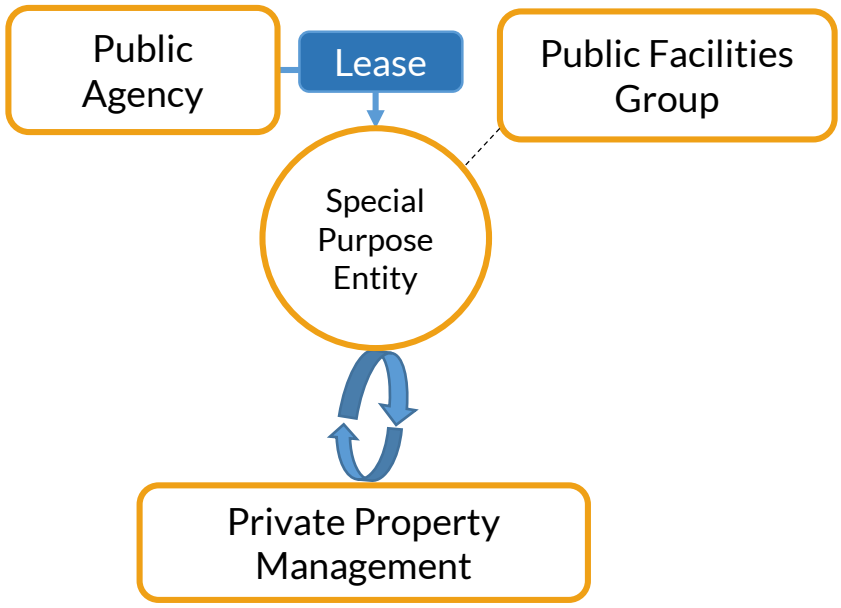
Construction

The Developer is responsible for overseeing construction. It is the Developer that guarantees the project will be built according to the plans and specifications and will be completed at or below the Guaranteed Maximum Price. The SPE then contracts with an independent construction inspector to verify that the project budget remains "in balance" and that there are sufficient funds to complete construction. If the project is ever "out of balance", the Developer is required to contribute sufficient funds to return it to balance.

Construction Completion

When the project is finished a Certificate of Completion will be issued. At this time the leases will become effective, rent will commence and the public agency can take occupancy. After all items on the punch list have been completed and the facility has been inspected and approved by the public agency and the SPE, then a notice of Final Acceptance will be issued by the SPE. All construction retainage will be released upon final acceptance. Any project savings are shared between the Public Agency and the Development Team based on the agreed upon percentages as stated in the executed Development Agreement.

Step 7: Operations and Maintenance and O&M Renewal



Operations and Maintenance (O&M)

During the latter half of construction, the SPE along with the public agency will issue a RFP for property management services. The selected property manager will be responsible for operating and maintaining the building. The public agency will specify its desired level of property management services in the RFP. The SPE, together with the public agency, will evaluate and select a property manager. Once the selection is made, the SPE will negotiate and enter into the property management agreement.

O&M Renewal

The Private Management Agreements are normally 3 to 5 years in term and will be renewed or rebid depending on the efficiency and quality of the services provided. This is standard practice in the operations and maintenance of privately developed and privately used facilities and is appropriately applied in a 63-20 Progressive Design-Build.

The Benefits to this approach over standard DBFOM operations and management agreements:

- Short term O&M is consistent with tax exempt finance rules
- Shorter term and renegotiations keeps pricing competitive
- Fluctuations in market costs are incorporated into the operations and management over the long term
- The risk of losing the contract keeps the private O&M team motivated to perform
- Public Agency has more control over the management of their building

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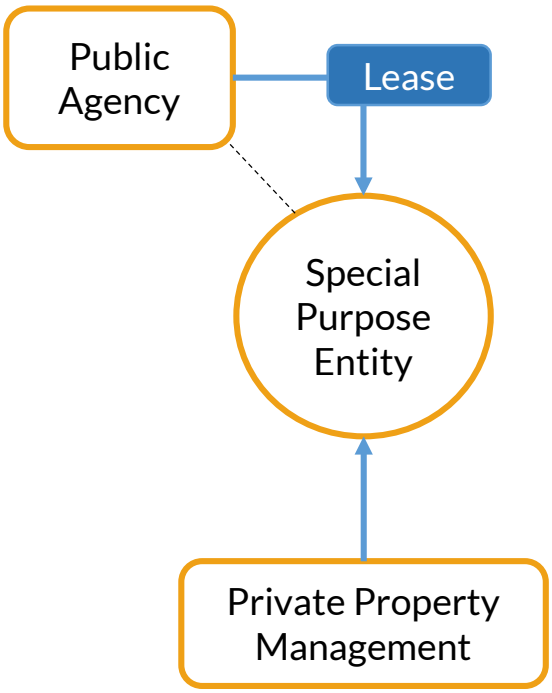
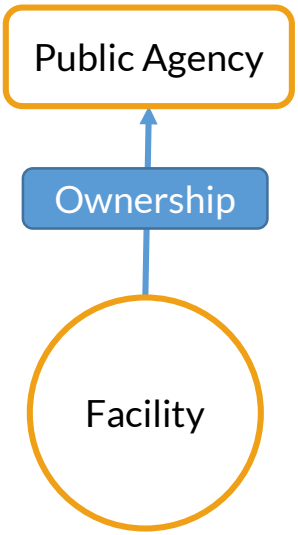
Unique Public Safeguards



Our approach to a 63-20 Progressive Design-Build grants the public agency the right to replace PFG as the sole member of the SPE and thereby take control of the SPE. This right can be exercised at any time the public agency needs or desires to do so.

Step 8: Transfer of Ownership



The public agency has the right to retire the project's debt at any time, either through bond refinancing or bond defeasance. When the debt is retired the project's fee title transfers from the SPE to the public agency at no cost and without encumbrance.