ELEVATING OUR PROFESSIONALISM

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Public/Private Partnerships and the Public Procurement Process
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**Definition of P3s**

*Public private partnerships (PPPs) are agreements between government (public sector) and the private sector for the purpose of providing public infrastructure, community facilities and related services.*

**Distinctive Attributes of P3s....**

- The private sector enters into a contract with government for the design, delivery, and operation of the facility or infrastructure and the services provided.
- The private sector finances the capital investment and recover the investment over the course of the term of the contract.
- The asset transfers back to the public sector during any period of the contract or at the end of the contract.
Benefits of P3 Projects

- Focus on outputs
- 3Ps make projects affordable
- Better value for money over the lifetime of the project
- More efficiency in procurement
- Faster project delivery with more projects in a defined timeframe
- Risks are allocated to the party best able to manage the risk
- Deliver certainty of budget and outcomes
- Better asset utilization and social and economic benefits
- Sustainable development and improved regulation
- Public sector only pay when services are delivered
- Injection of private sector capital
Key P3 differences from traditional Govt. contracting:

- Change in government/private sector roles and responsibilities
- Longer contract time periods - involve longer contract time periods (5, 20, 25+ years) - can last as long as 99 years
- Private sector partner sometimes provides all or some of the funding for the project & may assume significant risks from the government partner
- Involves a potentially higher degree of risk for the partners
- Contracting process does follow traditional government procurement and policies and procedures (note: with several key differences)
- 377 public-private partnerships (P3s) have been initiated in 24 states - 104 of these P3s for transportation infrastructure - Florida (16), California (12) and Texas (9) have initiated the greatest number of P3s.
Although each is unique, all P3’s include four basic characteristics....

- Shared goals
- Shared resources (time, money, expertise, people)
- Shared risks
- Shared benefits
Types of P3 Projects

Operations & Maintenance (OM) - the private partner operates and maintains a public facility or asset, the government partner owns the public facility or asset.

Design-Build (DB) - the private partner both designs and builds a facility or asset, the government partner provides the funding and owns and operates the facility or asset.

Design-Build-Operate (DBO) - the private partner designs, builds and operates the facility or asset, the government partner provides the funding and owns the facility or asset.

Design-Build-Operate-Transfer (DBOT) - the private partner designs, builds and operates a facility or asset and transfers ownership to the government partner.

Build-Transfer-Operate (BTO) - the private partner constructs a facility or asset and transfers title to the government partner. The public partner leases the facility or asset back to the private partner under a long term contract.
Types of P3 Projects (Continued)

Build-Own-Transfer-Operate (BOTO) - the private partner builds, owns and operates a facility or asset for a period of time at which point ownership is transferred free of charge to the government partner.

Build Lease-Transfer-Maintain (BLTM) - the private partner designs, finances and builds a facility or asset and leases it to the government partner for a predetermined period for a predetermined price.

Lease-Renovate-Operate-Transfer (LROT) - the private partner renovates a facility or asset. The government partner grants the private partner a concession to operate the facility or asset for a specified period of time and to charge a fee for the service or activity.

Design-Build-Finance-Operate-Maintain (DBFOM) - the private partner designs, builds, finances, operates and maintains for a period time, e.g. 25 years), a facility or asset, the government partner provides the operating funds during the life of the facility or asset or during the term of the contract.
STATE OF FLORIDA P3 LEGISLATION

- Legislation has created alternative procurement processes and requirements for P3. This includes solicited and unsolicited proposals.
- Legislation created a “Task Force” authorized to recommend guidelines for the creation of a uniform process. Task Force has already provided their recommendations to the Governor.
- Legislation allows “qualifying” public agencies to utilize this method of procurement:
  - Legislation has authorized P3 for county road projects throughout the State of Florida.
  - Legislation has extended the authority to issue P3s for certain public service with not-for-profits/charitable youth organizations.
Florida Statute 287.05712

287.057112, F.S. governs P3 procurement processes for Qualifying Projects by Responsible Public Entities.

Statute provides identification of a Qualifying Project:

- Any facility or project that serves a public purpose
- Ferry, mass transit, parking, airport, seaport, rail, fuel supply facility, oil or gas pipeline; water/wastewater facility
- Medical recreation, sporting, cultural, or educational facility
- Includes building improvements (and equipment) principally used by the public entity or public that supports service delivery
- Responsible Public Entity: counties, municipalities, school board sand districts, regional entities and state subdivisions
What type of “Qualifying Projects” are allowed under 287.05712 F.S.

Social Infrastructure

- Hospitals and medical facilities
- Courthouses, police stations, and fire departments
- Stadiums
- Local schools, university/college buildings and facilities, athletic fields, gymnasiums, and libraries
- Local community centers and cultural arts facilities
- Parking structures, bus stops, and trolleys
Other “Qualifying Projects”

- Any ferry or mass transit facility
- Airport or seaport facilities
- Rail facilities
- Fuel supply facilities and oil and gas pipelines
- Water, wastewater, or service water management facilities
- Any improvement that will be principally used by a public
PROCUREMENT PROCESSES FOR P3 PROJECTS

Request for Proposals (RFP)
- Professional Services
- Price may be considered as a ranking factor
- Competitive Selection Process
- Evaluation Committee

Invitation to Negotiate (ITN)
- Procurement process utilized to rank proposers and provide the ability to shortlist several finalists for negotiations
- Price is discussed and negotiated before final decision of award.
- Competitive Selection Process
- Evaluation Committee
- “Best and Final” offer

Unsolicited Proposal Process
**UN SOLICITED PROPOSALS**

**WHAT IS AN UNSOLICITED PROPOSAL**
- A written proposal for a new or innovative idea that is submitted to a public agency on behalf of an initiative by the offeror.
- A proposal to a public agency for the purpose of obtaining a contract with the government.
- A proposal submitted to a Public Agency which is not in response to a request for proposals or any other government initiated solicitation.

**WHAT IS NOT AN UNSOLICITED PROPOSAL**
- Advertising material: Information related to products, services or capabilities in order to stimulate in buying.
- Commercial item offers: Suggestions of items or services as alternate/replacement for existing items or services.
- Contributions: A concept, idea or suggestion without intention to devote further effort to develop concept.
- Routine Technical Correspondence: RFIs regarding interests in research areas or other written technical inquiries.
Specific Provisions for Unsolicited Proposals (UPs) in the P3 Statute

UPs Expressly Permitted: Reasonable application fee for evaluation – sufficient to pay costs, may use private consultants

Public Advertisement: If agency “intends” to enter into a comprehensive agreement based on a UP, agency must publish that they have received an UP for two weeks in the Florida Administrative Register and local newspaper of general circulation, and announce that agency would accept other proposals for the same project.

Timeframe for the receipt of other proposals – Responsible Public Entity to determine the time frame for the receipt of other proposals, based on complexity of the project and public benefit to be gained from longer or shorter time frame, “must be at least 21 days and no more than 120 days from initial publication”
WHAT SHOULD A UPS TO A PUBLIC AGENCY INCLUDE

The following outlined items should be included in an unsolicited proposal submitted to a public agency, unless its waived by the agency:

- Description of the project which may include conceptual design of agency’s facilities or the provision or services
- A project schedule including milestones for initiation and completion
- Method proposer will implement to secure property interests
- Financing and source of proposer’s funds to address the debt and equity investment by the proposer
- Main point of contact that will make binding decisions for the private entity
- Provide any proposed fees, lease payments or other costs payments over the term of the contractual agreement
- Proposer should provide terms and conditions in case there are methods and circumstances that lead to changes in the initial Contract Award
What Other Requirement May be Requested by the Public Entity?

- “Additional Materials” may be requested by a “Responsible Public Entity”

- The “Responsible Public Entity” may require a technical study to be prepared by an external consultant/expert with experience in preparing analysis for bond rating agencies.

- The “Responsible Public Entity” in evaluating the technical study, may rely on their internal staff to provide reports, or it may secure external advisors or consultants to provide recommendations.
PUBLIC ENTITY EVALUATION PROCESS OF UPs UNDER THE NEW P3 STATUTE

After the public notice period and time period allotted for additional proposals, responsible entity shall rank all proposals received in order of preference considering the following:

- Professional Qualifications
- Terms and Conditions
- Proposed and Innovative Design Techniques
- Life Cycle Cost reduction terms
- Finance Terms and Conditions
HOW ARE UPs EVALUATED UNDER FLORIDA’S P3 STATUTE?

- The agency may follow the same ranking of proposal submissions that it does under the RFP or ITN processes.
- After ranking has been done, agency may negotiate a Comprehensive Agreement with the highest ranked firm.
- If unsuccessful negotiations occur, Agency may terminate all negotiations with first ranked and negotiate with second ranked, and if unsuccessful negotiate with third ranked, etc.
- If only one proposal is received, the Agency may negotiate with the sole UP proposer to arrive at a best and final negotiated result, the Agency may terminate if unsuccessful negotiations occur.
- It is important to note that the Agency reserves the right to reject all proposals at any time prior to final Contract Award.
GOVERNANCE PRINCIPLES OF P3S

- Participation
- Decency
- Transparency
- Accountability
- Fairness
- Efficiency
FUNDING – PROJECT FINANCE

Funding
The financing of long-term infrastructure is based upon a non-recourse or limited recourse financial structure where the debt and equity used to finance the project are paid back from the cash flows generated by the project.

Project Finance
- High gearing requiring less equity
- Tax benefits
- Public sector use of revenue
- Long term debt funding
PRIVATE SECTOR FUNDING

- Private investment market stronger than the public finance market
- Sharing of risk of investment in public private partnerships
- To be attractive to private investors, P3 projects must promise a significant return
- Project repayment through user fees – private firms will not participate unless profitable project – defense against bad projects
MANAGING RISK IN P3S

- **Partner (government or private sector) best positioned to deal with the risk should assume the risk.**

- **Demand Risk** - Usually assumed by the private sector P3 partner. Problem when a dedicated funding stream (tolls or fees) is used to fund the operating expenses of a P3 project. Demand forecasts and revenue projections - highly unreliable – especially for P3s of long duration (10, 20, 30, 99 years). Everyone loses if private sector partner to default on the P3 project or to declare bankruptcy because of insufficient revenues. Structure P3 so that if demand declines to a point where revenues are insufficient to fund operations, then tolls or fees can be increased or some other remedy invoked in order to maintain desired service levels.

- **Service Interruption Risk** - Prescreen and select capable private sector P3 partners. Trust is one of the most important components of a P3. The government must be able to trust that the private sector P3 partner “will do the right thing” to make the project work.
Managing Risk in P3s (continued)

- **Political Risk** - Managing and mitigating political risk is largely related to how well government explains the value and benefits of P3 projects to stakeholders and mobilizes their support.

- **Financial Risk** - Financial risk varies depending upon the type of project. O&M projects have less overall financial risk than do DBFOM projects.

- **Force Majeure Risk** - Generally shared equally by both the government partner and the private sector partner.

- **Additional P3 Risks** - P3 projects create additional risks including site risk (e.g., suitability) and design and construction risks. P3s are usually structured so that these additional P3 risks are assumed by the private sector partner.
P3 Procurement Process

Phase 1: Pre-Procurement
  - Prepare Document and Solicitation Issuance

Phase 2: Bid, Proposal Submittal Period
  - RFP or ITN Document Release to the Public

Phase 3: Evaluation and Ranking of Proposals
  - Pre-Proposal Meeting

Phase 4: Negotiations with Finalists
  - Receipt and Opening of Bid Responses

Phase 5: Contract Award
  - Invitation to submit detailed project specific

Phase 6: Contract Management
  - Selection of Preferred Bidder

Financial Close

Preparation and evaluation of bidder documents

- Project Selection
- Project Scope and development
- Market testing
## Public v. Private Control

<table>
<thead>
<tr>
<th>Type of Facility</th>
<th>Public Control</th>
<th>Private Operations &amp; Public Financing</th>
<th>Private Operations &amp; Private Financing</th>
<th>Private Control</th>
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</thead>
<tbody>
<tr>
<td>New Facilities</td>
<td>Design-Bid-Build (DBB) &lt;br&gt; Design Separate from Construction Bid</td>
<td>Design-Build (DB) &lt;br&gt; Private Sector Designs &amp; Builds Facility in One Bid</td>
<td>Private Sector Finances Designs, Builds and/or Operates Facility</td>
<td>Private Sector Controls Entire Process</td>
</tr>
<tr>
<td>Existing Facilities</td>
<td>Operated by Public Agency)</td>
<td>Private Sector Bids For Operation &amp; Maintenance Contract</td>
<td>Private Sector Secures Long-Term Lease</td>
<td>Private Sector Buys Facility from the Public</td>
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### Ownership

- **Public**
- **Private**
Comparison with Other Methods

Construction Contract
- Construction for Lump Sum Price Based on Owner Provided Plans

Design- Build Contract
- Design-Build Based on Owner Provided Schematic or Conceptual Drawings
- Construction of Project
- Best Value

P3 Contract
- Financing Project
- Continued Operations
- Utilities, ROW, Permitting, Utilities Environmental Compliance
- Design Build Construction with Required Performance Standards
- Life Cycle Costs

FAPPO
Case Studies

- Port of Miami Tunnel P3
- The Chicago Skyway An Operation & Maintenance P3
- P3 Project for the Miami Dade College Medical Campus
PORT OF MIAMI TUNNEL P3

• The Port of Miami actually sits on an island. Traffic entering and exiting the Port of Miami must do so on surface streets. The Florida Department of Transportation (FDOT) has entered into a transportation P3 with a private sector consortium partner, MAT Concessionaries LLC, to design-build-finance-operate-maintain (DBFOM) a tunnel that will connect the port with interstates I-395 and I-95.

• The total cost of design and construction of the tunnel is $607 million. The state of Florida will pay for 50 percent of the capital costs (design and construction) with the other 50% being provided by Miami-Dade County and the City of Miami. All operating and maintenance costs will be paid by the State of Florida. The FDOT will collect container and passenger fees to provide the revenue stream to fund the partnership.

• Construction of the tunnel began in May 2010 and completed in May 2014. Operational control of the tunnel will revert to the FDOT at the end of the P3 contract in October 2044.
THE CHICAGO SKYWAY AN OPERATION & MAINTENANCE P3

- **The Chicago Skyway** is a 7.8 mile toll road connecting Interstate 94 to Interstate 90. In 2005, the City of Chicago was looking for ways to unlock value in its fixed assets. The city made a decision to enter into a public-private partnership (P3) for the operation and maintenance (O&M) of the Skyway. The city leased the Skyway for 99 years for an up-front payment of $1.8 billion. The private sector partner operates and maintains the Skyway.

- The private sector partner immediately moved to install more lanes and switched to electronic tolling, improvements the city could not undertake due to budgetary constraints.

- The P3 contract specifies predetermined tolls through 2017. After 2017, the private sector partner may increase tolls annual by: (a) 2%, (b) the Consumer Price Index, or (3) the increase in the nominal gross domestic product per capita, whichever is greater.

- The City of Chicago has used the $1.8 billion in proceeds from the P3 to: pay down debt, fund other non-transportation projects and create a reserve fund. In addition, the city has avoided future operation and maintenance costs for the Skyway.
P3 PROJECT FOR THE MIAMI DADE COLLEGE MEDICAL CAMPUS

- Development of real property owned by Miami Dade College (MDC) The site is a 4.49+/- acre parcel located at the Medical District located in Miami Dade County adjacent to the Jackson Memorial Hospital Parking garage on the West side of the site.

- The College’s request was to receive Letters of Interest from Offerors with sufficient financial means and experience to develop as a minimum the following buildings at the site:
  - Proposed Medical Campus Expansion Building
  - Proposed Garage Building

- In addition to the above, the College requested other facilities at the proposer’s discretion but offered the following sampling of project types for the site:
  - Hotel
  - Conference Center
  - Medical Office Building
  - Residential Building
  - Retail Component
P3 Project for the Miami Dade College Medical Campus

- The Site
P3 Project for the Miami Dade College Medical Campus

Facts Related to the College’s Solicitation

- The College issued an Invitation to Negotiate (ITN)
- As it related to concept for the site, the College wanted a “Mixed-Use Development”. The Mixed Use Development may include residential, office and retail, parking, hotel, conference center and other commercial uses so long as they comply with all applicable federal, state and local regulations, construction codes, design guidelines and covenants.
- The College was open to any financial proposal but was more inclined for the development to finance, construct and operate and manage the facilities with exception of the Proposed Medical Campus Expansion Building and the Garage Building, the College preference was to operate and maintain these two buildings.
- The College retained a Real Estate Consultant with a Legal Counsel to assist with the ITN process and subsequent negotiations.
P3 Project for the Miami Dade College Medical Campus

Facts Related to the College’s Solicitation (Continued)

- The College held a Pre-Proposal meeting, about 50 Vendors attended the meeting
- The College received twelve (12) proposal responses
- All twelve proposers were deemed responsive and responsible
- The Purchasing Department on behalf of the Evaluation Committee scheduled the first meeting to rank all proposals received. After scoring all twelve proposals, the top three scored proposers were selected to be invited for negotiations
- The Purchasing Department on behalf of the Evaluation Committee scheduled Negotiation meetings with all three top ranked proposers
- Final recommendation under this ITN process was never attained as the College was unable to find enough financial return as a result of this P3 project. Important to note the rejection of all proposal is an option under this process