

AIAI

Association for the Improvement
of American Infrastructure

Together, we move P3s forward.



PROGRESSIVE P3s



CHOOSING THE RIGHT PROCUREMENT TOOL

Governments across the U.S. face the challenge of repairing and expanding public infrastructure systems, and Public-Private Partnerships (P3s) offer a potential solution to this challenge. P3s are partnerships between a public entity and a group/consortium of private companies to deliver a public asset through a design, build, finance, operate, and maintain approach. P3s provide private capital to help finance projects while effectively transferring long-term design and performance risk to the private sector with a structure that ensures public entities retain asset control and ownership.

P3 procurement can be undertaken in a variety of ways, offering owners the flexibility to choose the method which is most appropriate with regard to the nature and status of the project and to the achievement of objectives. Many P3 projects have been delivered under a “hard bid” procurement approach - typically this method is utilized where the technical scope and risk profile have been clearly defined by the owner and the project is progressed through the environmental review process. Under this procurement method, the owner clearly defines its evaluation criteria which is typically based mainly upon the advanced technical and financial solutions of the proposals.

An alternative P3 procurement approach is a Progressive P3 (sometimes known as a Predevelopment Agreement or “PDA”). For civil infrastructure projects, Progressive P3s may be utilized at any point along the project readiness continuum, but are most often considered when the project is at an early stage in the environmental review process with scope, right of way, and other project components less than fully defined. Under this approach, the owner will work with design, construction, financial, operations and maintenance partners to bring their expertise and creativity to project development during the validation period and/or the environmental review process. The process often involves the owners providing financial incentives to generate innovative solutions with the goal of delivering the best project at the earliest possible date.

For social infrastructure projects, Progressive P3s can significantly enhance the design development and permitting processes while simultaneously de-risking the project and increasing subcontractor competition and pricing accuracy, which reduces contingencies and creates more certainty on cost and schedule prior to financial close.

Other potential benefits include:

- **with the appropriate approach, the procurement process may be lower in cost for all parties involved and can result in an accelerated selection of a private partner;**
- **early involvement of the developer team to focus on ‘best project solutions’ relating to optimal financing outcomes associated with the de-risking of design, constructability, maintainability, and operations;**
- **a pricing process that includes full transparency for all project components with appropriate checks and balances to ensure protection of the public financial interest; and,**
- **transparent financing iterations presented as the technical and operating scenarios are analyzed and presented result in a more appropriate solution that can take advantage of a better overall risk profile.**

Progressive P3s include a selection process of private sector teams best suited for a given project based primarily on qualifications, conceptual designs, key financial metrics, committed project leadership, and a target budget for the to-be-delivered asset(s) and services. Once selected, the team enters a collaborative development period with the project owner with an agreed upon list of deliverables to advance design, permitting, operations and maintenance and financing concepts in a transparent format.

PROGRESSIVE P3 POTENTIAL BENEFITS

PUBLIC SECTOR

Reduces procurement costs

The time and expense of selecting a private sector team can be reduced from that of traditional P3 procurements. Stipends may be diminished or eliminated given the specifics of individual procurements.

Accelerates bidder selection

Qualifications-based selection process is faster due to elimination of need for advanced designs and other inputs streamlining selection.

Enhances early private sector input

Enables public entity to work more closely with the selected team to optimize design, scope, budget, risk approach, financing and other considerations prior to financial close.

Mitigates and balances risk

Early involvement in the project development process allows much better risk assessment and mitigation practices ultimately resulting in minimization of contingency pricing.

Transparency

Public and private sectors collaborate in all aspects during the Pre-Development Period including final designs, innovation implementation, risk analysis, schedule development and life cycle considerations. Resultant pricing is negotiated one-on-one between the public entity and the private sector team. It is incumbent upon the private sector to demonstrate best value on the overall approach, price and financing.

Accountability throughout

Contracts include enforcement mechanisms to ensure performance requirements are met by the private sector team for non-compliant construction, operations or maintenance work.

PRIVATE SECTOR

Reduces pursuit costs

Solicitations do not typically require advanced designs and technical solutions or associated design & construction pricing, thereby eliminating the need for advanced designs or other inputs, which may reduce multiple RFP drafts and resultant one-on-one processes streamlining selection.

Promotes collaboration

After Preferred Partner selection, the public entity and selected team refine the project approach, scope, designs, quality, etc. As the process evolves, all parties become intimately aware of the key elements for project success and the decisions that have been made to facilitate outcomes.

Mitigates commercial and financial close risks

Financing is based on advanced risk mitigation that may result in an overall lower construction cost that takes advantage of a better overall risk profile.

Mitigates and balances risk

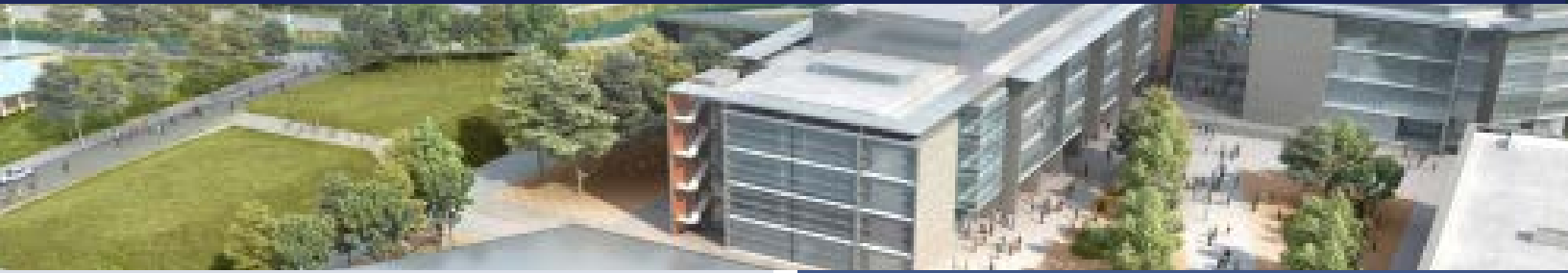
Early involvement in the project development process allows much better risk assessment, targeted diligence, and mitigation practices including resolving certain risks and reducing/eliminating unknowns.

Efficient focus

The Progressive process allows for single-minded focus to efficiently and cost-effectively deliver a project with a mutually acceptable (between public and private sectors) arrangement that is documented and transparent.



PROGRESSIVE P3 POTENTIAL CONSIDERATIONS



PUBLIC SECTOR

Legislative authority

Qualifications-based selection (QBS), common in the selection of professional services (i.e., engineering), may require specific legislation for “full delivery” infrastructure projects.

Transparent selection process

Selection processes need to be clear with as much measurable comparative criteria as possible. Transparency and integrity of the selection process is critical.

Project development costs

While procurement costs tend to be lower, owners must consider the time and effort that is often required during the Development Period. Projects procured under this approach require resources, and knowledgeable, committed, dedicated and empowered staff.

Competitive environment

Traditional procurements include “full delivery” pricing as part of the bidding/selection process. This is typically considered as the best value given the competitive tension of the procurement. Under a Progressive approach, the overall price component should be negotiated towards the end of the Development Period.

Off ramps

Off ramps are an essential element of this approach that allow both the owner and the private sector partner to exit the project should conditions arise that make continuation impractical or impossible.

Cultural concerns

Like all new procurement methods, owners not familiar with Quality-Based Selection for full delivery infrastructure projects may need to consider potential resistance to change, both internal and external to their organizations.

Agency comfort with negotiations

As these culminate with negotiated pricing and overall contract terms and conditions, owners need to increase internal knowledge and comfort with the components of the Progressive approach as appropriate internal checks and balances are in place to ensure protection of the public’s financial interests. Key to this is understanding risk assignment and the potential cost of transferring risks. This comfort needs to extend to contract awarding authorities.

PRIVATE SECTOR

Development commitment

Given the nature of these procurements and the benefit of bringing a private team on early in the project development cycle, environmental delays, fluctuating political support, and other variables can cause long delays in the Pre-Development Period.

Public/private resources

In order to complete a successful project, there must be a dedicated, experienced team made up of public and private partners that are solution-oriented, and proactive.

Off ramps

Off ramps are an essential element of this approach that allow both the owner and the private sector partner to exit the project should conditions arise that make continuation impractical or impossible.

Progress payments during Development Period

Private sector teams cannot work for long periods of time totally at risk. Owners should include milestone or work product payments that cover certain costs during the Development Period and consider potential impact or break fees should Off Ramps be necessary.

Contract provisions

Pre-Development Period Agreements should focus on the structure and timing of the collaborative period and the deliverables required throughout the process. A draft Project Agreement (PA) should be part of the Pre-Development Period package and commercial/technical terms in the PA should be part of the analysis through collaborative negotiations, since they can have a significant impact on the final structure of the transaction. Attempts to fully transfer certain risks and responsibilities at the time of execution of the Pre-Development Agreement can be challenging and may not be in the best interest of the overall benefits to the project. Thoughtful consideration is essential to ensure the benefits of this project delivery approach are fully maximized by the owner.

Project readiness

This approach should not be used simply to give the impression that a project is “moving forward”. Solid support, valid project purpose and need, and other key elements must be in place so that the benefits of the approach can be capitalized on and the project can move directly into full implementation.

KEY ELEMENTS OF A P3

A successful P3 procurement will include:

SUPPORTIVE P3 ENABLING LEGISLATION	THOROUGH DELIVERY OPTIONS ANALYSIS PROCESS	EFFECTIVE CONTRACT DOCUMENTS AND OUTCOME SPECIFICATIONS	
COMPETITIVE AND TRANSPARENT PROCUREMENT PROCESS	DEDICATED P3 TEAM OR P3 CENTER OF EXCELLENCE	A CLEAR PROJECT CHAMPION	AN EFFECTIVE AND CONSISTENT STAKEHOLDER OUTREACH PROGRAM

A P3 IS:

A DESIGN, CONSTRUCTION, FINANCING, OPERATIONS AND MAINTENANCE PARTNERSHIP

Public sector contracts with private sector to deliver assets and services for the benefit of the general public.

A RISK SHARING APPROACH

Private sector assumes appropriate (value-driven) financial, technical and operational risk; public sector sets policy and retains ownership. Risk is allocated to the party best able to manage it.

A LIFECYCLE PROCUREMENT APPROACH THAT GUARANTEES PERFORMANCE

By integrating delivery with operations and maintenance, the asset performance is optimized for the long term.

A TRANSPARENT RELATIONSHIP

Public stakeholders can expect to be regularly updated and informed throughout the project.

A P3 IS NOT:

PRIVATIZATION

Public sector retains ownership and ultimate control of the public asset.

A FUNDING SOLUTION

The government agency can leverage private financing not otherwise available through regular public procurements, however the owner must be able to generate revenue in order to repay the project development costs, whether it be through user fees generated by the project or budget appropriations.

A TRADITIONAL LOW-BID PROCUREMENT

The private entity enters into a long term performance-based contract with liquidated damages imposed by the public agency if availability and quality standards are not met.

THE RIGHT SOLUTION FOR EVERY PROJECT

A Value-For-Money analysis should be performed by experienced legal, technical and financial advisors to determine if a P3 is appropriate for your project.

SEQUENCING ACTIVITIES OF PROGRESSIVE P3s



KEY BENEFITS OF A P3



Creates Jobs and Accelerates Delivery

P3s create jobs in the local economy. By accelerating the delivery of critical infrastructure improvements as a result of providing private financing, P3s enable the public sector to bring more projects to market more quickly. The result is accelerated job creation with a positive impact on the job market over time.



Assures Transparency, Public Ownership and Control

The public agency never loses ownership or control of the asset, and proper procurements assure a transparent process for P3 delivery.



Guarantees Performance through a Lifecycle Approach

The P3 concessionaire designs and builds the asset and provides operations and maintenance thereby ensuring optimized asset performance over the long term.



Shares Risk Equitably

The private sector assumes appropriate financial, technical and operational risk, while the public sector sets policy and retains ownership. Risks are allocated to the party best able to manage them.



Uses Private Capital to Leverage Public Funds

The public agency is able to extend its budget further and deliver more infrastructure through the infusion of private capital.



Promotes Diversity & Inclusion

Diversity & Inclusion goals and incentives in the P3 model promote the growth of sustainable long-term job creation and contract opportunities throughout the life cycle of the project.



Provides Positive Social Impacts

Efficient infrastructure is critical in the support of communities. P3s offer innovation in their ability to create both economic and non-economic social impact. Accelerated project benefits and community oriented design solutions encourage local job creation and community investment.