Value for Money Provisions

Infrastructure Investment and Jobs Act 2021

Project Screening Process

Best Practices for Owners

January 2023

AIAI

Association for the Improvement of American Infrastructure

Together, we move P3s forward.

Members of **AIAI's Value for Money Working Group** convened to determine suggested industry best practices, in support of the implementation of P3-related provisions in the *Infrastructure Investment and Jobs Act of 2021 (IIJA)*.

The Group's objective was to capture a best practice approach for how transportation agencies, such as state DOTs, may best achieve Congressional intent in Sections 11508 and 70701 of the IIJA.

These provisions require agencies to conduct either a VfM analysis, or a comparable analysis for projects of a certain size or procurement method.

"VfM gives you information on which to base your final decision. It is just part of the process. It is a useful analytical framework."


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What is a P3?

A Public Private Partnership ('P3') can broadly be defined as a long-term agreement between the public and private sector to provide a combination of development, design, construction, financing, operations and maintenance services.

P3s fall under the following categories:

- **Availability- based** where the private sector receives payment from the public sector for development, operations and maintenance, and continued availability of an asset, in the form of a service payment. The payment is generally based on performance against specified performance levels.
- **Revenue- based** in which the private sector is generally entitled to revenue collected from users of the service such as toll revenue. In revenue- based P3s, the private sector will bear a level of demand risk.

Benefits of the P3 Model

- Greater certainty of timely and on-budget delivery
- Greater certainty of lifecycle costs
- Access to private capital to expedite delivery of necessary infrastructure
- Innovation from private sector involvement
- Distribution and management of risk to the parties best placed to manage them

Challenges of the P3 Model

- Appropriately resourced and credentialled project owners, owners' representatives and advisors
- Rigorous 'Value for Money' assessment to evaluate the relative value of P3 models compared to other methods

What is Value for Money?

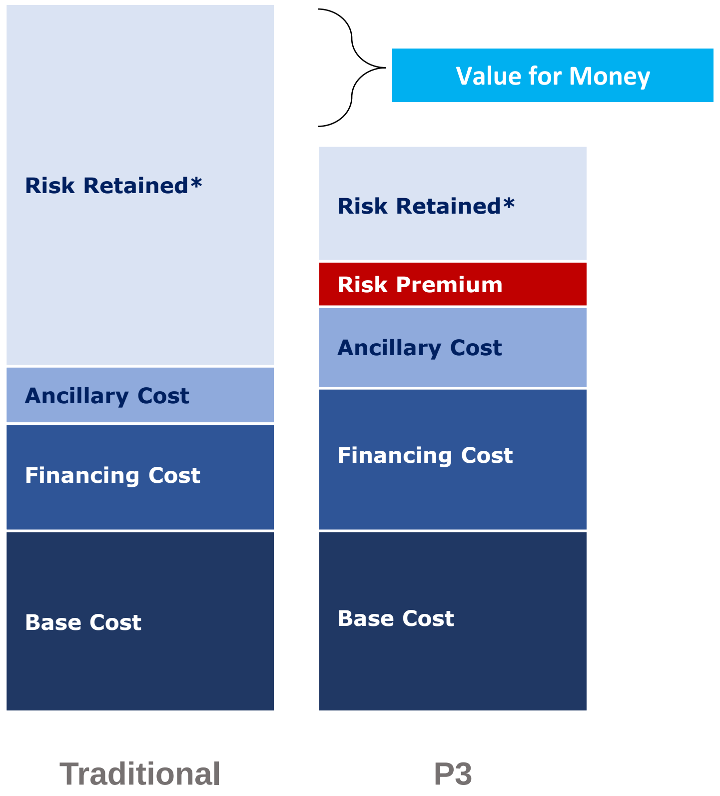
“VfM gives you information on which to base your final decision. It is just part of the process. It is a useful analytical framework.“

A value for money (“VfM”) analysis compares the whole-life costs of delivering an infrastructure project using different forms of procurement. Its purpose is to identify which procurement approach delivers the greatest value for the public sector for a given project or project type.

VfM is a common tool to evaluate more traditional forms of project delivery, including Design-Bid-Build and Design-Build, against Public-Private Partnerships delivery methods, which incorporate private financing and risk transfer. VfM analyses account for the entire lifecycle of a project, from the Design phase through the Operations, Maintenance and eventual ‘handback’ of the asset. VfM is achieved when the higher costs of certain elements of the P3 model are more than offset by the reduction of the cost of retained risk.

Determining the best procurement approach involves consideration of a variety of factors including long term project costs, uncertainties, and risks both now and in the future. Often government agencies will lack the resources or institutional knowledge and experience to conduct robust VfM analyses themselves. It is therefore the role of independent advisors to help fill these gaps, when possible.

A rigorous VfM analysis is considered best practice when considering procurement options for large scale infrastructure projects, not as a means to determine whether the project is considered a good use of community resources.



Recommended Value for Money Process

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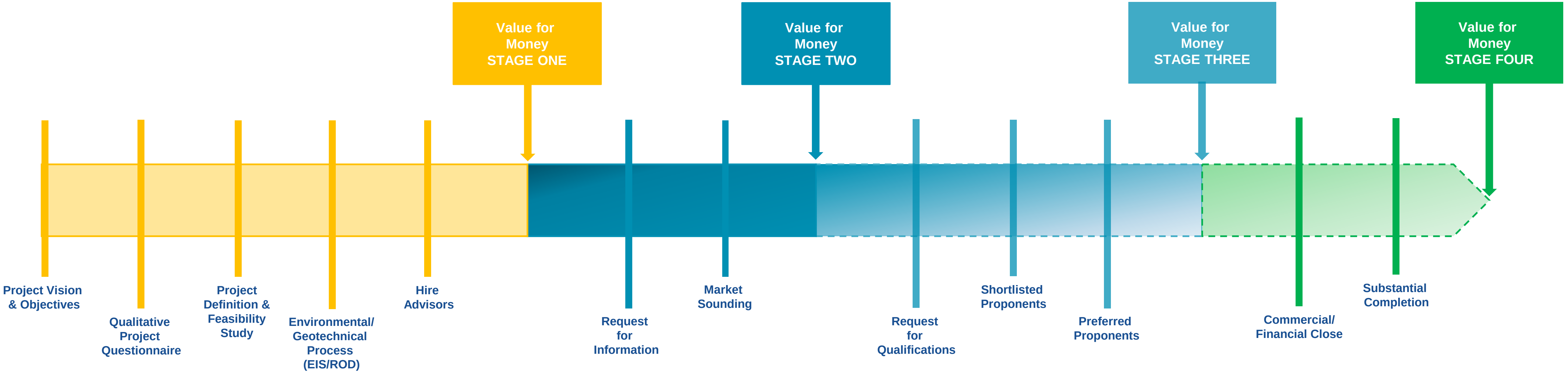

Value for Money STAGE ONE (Business Case)

Qualitative Assessment: Preliminary analysis to identify project challenges, risks, and opportunities, based on project objectives. Findings include a shortlist of project delivery models as well as initial consideration of contract packaging (e.g. enabling works).

Value for Money STAGE TWO (Pre-procurement)

Quantitative Analysis: Comparison of risk-adjusted project costs across delivery models and preliminary funding assessment. Findings determine delivery model, risk allocation, and contract packaging. These in turn inform procurement strategy and are the basis of procurement documents and contract.

Value for Money STAGE THREE (Post-Procurement)

Confirmation of Qualitative Analysis: Preferred proponent's proposal compared with a theoretical public sector equivalent project and/or Shadow Bid to confirm value for money. Findings support final contract negotiations and commercial/financial closing activities.

Value for Money STAGE FOUR (Ex-post)

End of Contract Analysis: Final construction and lifecycle cost, including any claims/changes, compared to risk assessment and VfM to identify variance. Findings include lessons learned and recommendations to improve future project procurement and delivery approach.

Infrastructure, Investment & Jobs Act (IIJA) Requirements for Value for Money Analysis or Other Comparable Analysis for Transportation Infrastructure Projects Receiving Federal Financial Assistance

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IIJA Section 11508: Requirements for Transportation Projects Carried out Through Public-Private Partnerships ("P3") ("The Major Projects VfM Requirements")

See 23 USC 106(h)(1)

Is the transportation project $500 million or more?*

YES

See 23 USC 106(h)(1)

Will the project have federal financial assistance (e.g. federal grants or loans)?

YES

See 23 USC 106(h)(3)(d)

Does the project sponsor intend to carry out the project as a P3?

YES

A VfM "or similar comparative analysis" must be done and the appropriateness of a P3 must be determined

* Note that this requirement may also apply to "such other projects as may be identified by the Secretary".

IIJA Section 70701: Value for Money Analysis ("VfM") ("The TIFIA/RRIF VfM Requirements")

See 23 USC 106 Statutory Notes "Value for Money Analysis" (b)(1)

Is the transportation project more than $750 million?

YES

Is the project carried out by State, Tribal or local government?

YES

Is the project in a State with legislation authorizing the use of implementation of transportation P3s?

YES

Does the project intend to request TIFIA or RRIF credit assistance?

YES

Does the project anticipate it will generate user fees or other revenues to support its capital and operating costs?

YES

A VfM "or similar comparative analysis" must be done and the appropriateness of a P3 must be determined**

** Note that in contrast to Sec 11506, Sec 70701 includes a list of specified requirements for what a VfM should include. Additionally, Sec. 70701 refers to "or comparable analysis, whereas Sec. 11506, refers to "or similar comparative analysis". Although the language is different, substantively, they should be interpreted to have the same meaning.