



Association for the Improvement
of American Infrastructure

Together, we move P3s forward.

The Impact of Project Cancellation

Simply stated - Once a procurement launches, it is essential that all parties can rely on its completion and award in a transparent and disciplined manner. While there is no good time to cancel a procurement, the RFP and Preferred Bidder phases are the most critical, given the significant resources being utilized and the costs being incurred.

Private companies invest significant dollars to prepare and participate in procurements for large infrastructure projects. They are also faced with decisions on where to best assign their resources, should they be involved in multiple bid opportunities. Equally, the public sector also invests a great deal of time and money when preparing for procurements and the subsequent associated processes. Project cancellation is highly costly - both in terms of real dollar and opportunity costs, to both the public and private entities.

AIAI in analyzing past cancelled procurements offers the following three recommendations as best practices:

1. Private sector organizations look at a government's commitment to a program when making choices in which markets invest their resources. The role of leadership is an essential ingredient in this decision-making process. Project champions are core to successful procurements. Nowhere is this more evident in a P3 than with the chief executive; whether it is the Governor or head of a state or local department/authority. Effective leadership is vital as it signals to the market that they are committed to a fair and straightforward process. The potential for change of this leadership during the procurement as a result of election cycles is appropriately perceived as a major risk. Whenever possible, procurements should be timed to avoid political change risk.

2. Another major risk that can ultimately lead to cancellation is if the government entity is not prepared sufficiently for opposition to the project. This is more pronounced for tolled infrastructure, although some form of challenge impacts most large scale projects. In order to create an environment that will allow for the most competitive and innovative submissions, it is imperative that public leadership demonstrates a commitment to the program and a resolve to sustain the procurement to completion. Such commitment is essential to avoid unnecessary costs for all parties involved - not only in monetary terms, but also potential legal liability and ultimately the risk of public perception that the government entity lacks leadership and vision. The public sector needs to be ahead of the curve in addressing project challenges with a detailed and proactive outreach plan. There should be no surprises and while the private sector can assist in finding solutions, project opposition and the related costs of a delay or cancellation clearly should be borne by the procuring entity, including payment of a material stipend to the extent there is a termination of the procurement.

3. A third concern is when a project is awarded to a successful bidder and subsequently cancelled, for reasons such as protest from a losing bidder. This fortunately does not occur frequently, but there are enough cases that it merits consideration. Of primary importance is the transparency and optimization of scoring which will serve as the objective criteria for selecting the winning bid. This needs to be applied to both pricing and technical aspects to avoid choosing a proposal that is lower in cost, but not technically on par, and may ultimately lead to claims or change orders later. Many times protests from losing bidders arise after a particularly lengthy and costly procurement, where it becomes such a high threshold to bid that companies are reluctant to capitulate and move on. Maintaining a procurement schedule will help to manage bid costs and along with a stipend that reflects the actual bid costs, should dampen such bid protests.

Procurement cancellations are detrimental to all parties. When private sector participants may decline in the future to compete for projects with a particular government entity, such lack of competition increases costs for taxpayers, limits competition and innovation and adversely affects the potential for future economic development in surrounding communities. AIAI's three strategic recommendations can mitigate the risk of cancellation.