AIAI

Association for the Improvement
of American Infrastructure

Together, we move P3s forward.

P3 Question? P3 Answers.

EXAMPLES OF P3 PROJECTS

Q. How do you find out about P3 projects, specifically those involving student housing?

A. Long range capital plans are often discussed in a public forum. When it comes to public agencies or institutions, including state colleges or universities or university systems, those plans are often a matter of public record. These are also handled in the context of public meetings to discuss plans for modernizing public facilities, including student living and housing projects.

Q. If you use a P3 for funding Airport improvements will it jeopardize possible financial contributions that the FAA may provide for the project?

A. This is unlikely, as the facilities upgrades associated with an airport P3, such as LaGuardia's Central Terminal Building modernization, are separate and distinct from the tarmac or aviation operations. FAA funds are for aviation operations, such as air traffic control systems, runways, the tarmac, safety and security; but not for facilities upgrades.

Q. Airport P3s sound like they make sense. What about Stadiums, are they candidates for this kind of procurement?

A. Stadiums which are public assets can be candidates for P3 procurement. Ownership is key. Private partnership in the form of capital used to invest in constructing or modernizing such facilities could meet the tests for a P3. There is a revenue component to this asset class, similar to airports. However, it should also be noted that investors may view the essentiality of a stadium asset different than for other asset types.

Q. Buildings and stadiums, airports and bridges, toll roads and student housing. What about WATER? Can a county use P3s to upgrade and expand capacity of its water system?

A. Yes! There are examples of water systems being upgraded and modernized to meet growing needs imposed on water treatment, as well as waste and storm water. This also allows for capital improvements that can accelerate compliance for drinking water. The P3s upgrades would be planned to accommodate growth of both residential and industrial demands on the water system. All of this can be achieved under a procurement model and project structure that would leave the ownership of the water infrastructure and the rate setting authority with the public sector.

Q. Are there any public officials in the audience who might be willing to talk about their biggest challenges in getting the public on board for a P3?

A. A representative from a state Department of Transportation shared his thoughts on the practical use of and availability of alternative project delivery methods, expressing its challenges and the value of having access to P3s as a procurement method. Additional information can be shared if participants would like to connect with that public official.

Q. Does Texas has a Center of Excellence?

A. Yes, it is the first formal establishment of a center of excellence in the US. It is called the Center for Alternative Finance and Procurement. It is housed within the Texas Facilities Commission, and its charter includes the full range of public infrastructure asset types; except TxDoT roads.

Q. Has the Veterans Administration considered P3s to build hospital?

A. The VA has considered and is actively engaged in evaluating alternatives for the procurement of goods and services to meet its mission demands. This includes evaluating P3s as such an alternative for the delivery of necessary infrastructure.

Q. For stadium and other entertainment projects, are there agreements based on minimum revenues guaranteed by gov't agency, with sharing of revenues above minimum?

A. The payment mechanisms associated with borrowing or other financing solutions is an important facet of any public procurement. There are generally three categories of these payment mechanisms, including: revenue risk; availability payments; or hybrid models. For community use facilities, such as a stadium or entertainment complex, there is the distinct possibility of sharing of the proceeds from revenues collected from the use of those facilities.

FINANCE

Q. Discuss the leveraging opportunity that exists by using P3s. How can doing a P3 for one project help deliver non-P3 projects?

A. P3s are not free money. These are solutions that leverage access to financing resources. When a capital project is taken out of the queue by having engaged in a P3, then the budget for the responsible government agency may have some flexibility to address other capital needs. Having confidence in the certainty of the budgetary commitments to the operational and maintenance needs of public assets leads to a more reliable and stable project delivery environment.

Q. What is the typical financing structure for a P3 project?

A. There is not a one size fits all approach for financing public infrastructure through an alternative delivery model, a P3. There are generally combinations of funding and financing resources which are drawn upon to solve these complex equations. The combination of debt and equity serves the capital needs of the public project. This translates to an allocation of public debt (tax-advantaged municipal bonds), private equity, bank financed debt and public funds (budget of the public agency).

Q. How do bond rating agencies look at P3 arrangements? Is it considered debt in determining a municipal bond rating?

A. Generally speaking, and it is important to note here, the ratings agencies determine how the debt associated with a public works procurement impacts the credit worthiness or municipal bond rating for the subdivision of government which will serve as the owner of the public asset. While the ratings agencies each have their own methodology, there are consistencies among their treatment of debt in the context of P3s. The ability to satisfy the contractual provisions related to the design and construction phases are the key drivers. Payment and performance guarantees associated with construction completion guarantees are the drivers for the treatment of debt for these procurements. Factors such as the timing and processes associated with liquidated damages, and claims processing for payment and performance guarantees can directly impact a municipal bond rating, and therefore the treatment of debt for P3s.

Q. Bryan used the term SPV. What is that?

A. An SPV or Special Purpose Vehicle, or sometimes called an SPE - Special Purpose Entity - is the legally formed organization through which the P3 contract is executed. It represents the combined interests of the private sector participants, including the concessionaire, the finance partner, the design and construction partners, as well as operational and maintenance capabilities.

Q. Other than tolls, how does the Private entity get its ROI?

A. Payment mechanisms can take several forms. One is the collection of revenue, a risk borne by the private entity in a method commonly referred to as revenue risk. Another is what are called “availability payments.” These relate to the availability for use of the public asset, literally. If the facility cannot be used as designed, then the private partner doesn’t get paid (repaid). There are hybrid models too, where some of the risks are shared among the parties - both public sector and private concessionaire. In some cases, the private party will have designed and built the project, paid for through its financing, and may provide maintenance; but the public agency may retain operational control over the revenue (setting and collecting fees). In this hybrid model, the partners share in the risks and the repayment to the private partners to yield their intended return on investment.

The condition of the asset, in particular over time, is critical to its availability. Deferred maintenance, deterioration that is allowed to continue causing even more costly or time-consuming repairs, and the inability to control the owners budget and available funds for maintenance add risk to the operators assumed revenues. Coordination of maintenance and repairs would need to be clearly stated between the parties to avoid and/or minimize service interruptions. Desired upgrades or improvements to the system may have to be negotiated with an owner that will have limited funds and limited incentive to spend their money on an asset where they are not receiving the revenues.

Q. Please describe value for money analysis.

A. In its simplest form, it is an evaluation of the net present value of investments (financing) made today in a certain public asset and how they would be assessed over the critical stages of modernizing or improving, restoring or building a new asset, including the phases of design, construction, operations and maintenance. This enables an agency to compare what it would cost to develop and deliver that asset using a number of different methods. It takes into consideration life cycle issues, costs and risks, and makes for a proverbial apples to apples comparison.

Q. How do you substantially transfer risk to the private partner, while still maintaining control of project decisions as the "Owner"? As changes occur during the design process, how do you limit the private partner from seeking additional costs or cutting quality to maintain price certainty?

A. It is the essence of the partnership that underlies a P3, just as with the alignment of interests in a Design + Build contract, that the interests of the public are paramount. The owner is the agency charged with the responsibility to serve as the steward of the public interest in the asset. The risks taken on by the private partner include design development (typically from about 30% design to final, detailed design) of the project. This integration of needs and capabilities is a fundamental premise of the alternative project delivery strategies, including Design+Build, as well as Design, Build, Finance, Operate and Maintain models, essentially the full range of P3s.

Q. Any special advice when the federal government is a funding partner for the maintenance of the infrastructure?

A. The Federal government makes funding and financing resources available. In addition to Federal Highway advisory services, such as the Build America Bureau (formerly known as the Build America Transportation Investment Center, or BATIC), FHWA makes credit enhancement services available, including TIFIA. With this comes certain public policy mandates, such as small or disadvantaged or minority business enterprise participation. So too are there certain contracting protection measures in place when attached to Federal funds. This includes payment and performance guarantees to comply with the Miller Act, as well as Davis-Bacon guidelines.

Q. What is the typical cost or percentage of total cost of the project for the "Advisors"?

A. The percentage costs associated with advisors – technical, legal and financial – will vary with the overall size and scope (and cost) of the project. In absolute terms, it is often said that 'it costs as much to assess a $500m project as it does a $50M one.' These costs can range into several millions of dollars.

Q. Value for money perspective may be different from a financial advisor versus technical advisor. Can you talk a little more about the differences between specifications and outcomes? Do advisors drive that discussion?

A. There are generally three perspectives which can assist a procurement authority in making decisions about the best method through which an asset might be procured. These include legal, technical and financial advisors. Each brings strengths and insights to support the decision making paradigm, based on practical experience and knowledge. These different points of view inform the process, including in the assumptions of risks which underlie a Value for money analysis and a Public Sector Comparator.

"HOW TO" (PROCUREMENT AND IMPLEMENTATION)

Q. What is the best way (lessons learned) to avoid the political roller coaster of doing a P3?

A. Communications and early stakeholder engagement are the secret ingredients. Based on the community engagement strategies which have been successful in several key markets around the country, the easy answer to this question is jobs. Jobs and votes go hand in hand. The promises of P3s include long-term direct, indirect and induced job growth. With these jobs come regional economic revitalization. Nothing excites a voter base like prosperity. In addition, getting the neighborhoods and communities engaged will help understand and appreciate the anticipated impacts, benefits, as well as inconveniences that may be part of a new infrastructure project. The key to this is communications and early stakeholder engagement.

Q. What is the process used to select the private partner in a P3?

A. Competitive solicitation, based on best value assessment criteria is the recommended method for selecting or awarding a preferred bidder for a P3 procurement. Multiple stages, such as requests for qualifications and requests for proposals define the steps necessary to conduct a meaningful review of responses to the solicitation.

Q. In a world of immediate reactions via social media, what are some best practices in rolling out a P3 project?

A. Community engagement is a critical aspect of the success of any public works project. There are opportunities to engage the court of popular opinion in developing local and regional support for a project. Community meetings - an old school social approach it would seem - are part of this. So too are more modernized versions, such as telephone town hall meetings, and social media forum which allow for a healthy exchange of ideas and dialogue. Whether it is a posting on a Facebook group page or a tweet, or group chat, there are opportunities to engage through the instant feedback loop of social media.

Q. Could we get an ideal p3 procurement process description from both the private and public perspectives?

A. AIAI produced a "How to P3 Guidelines" process description. It represents procedural steps for implementing a viable P3 procurement program.

Q. The P3 seems too good to be true. Why wouldn't a public entity want to use a P3? In what cases does it not work well?

A. Not all projects are suited for P3s. Traditional public finance models can oftentimes work well for those projects lacking the technical complexity, which would benefit from a substantial risk transfer to the private sector, from an integrated project approach and from private sector innovation. Size is also an important element to consider, as value-for-money is more difficult to achieve for small projects, given a certain level of transaction costs that is largely independent of project size. The long-term essentiality of the asset is also an important criterion.

Q. Is a municipality establishing a public authority, common in P3 projects to partition the project from typical municipality business?

A. That is one form of governance which can facilitate the use of alternative project delivery. One example is the Port Authority of New York and New Jersey. They have a mandate and flexibility to meet the jurisdictional needs of the communities they serve. Regional authorities serve a similar function elsewhere around the country. They can apply to water or transportation assets or infrastructure.

Q. One benefit of P3 is the alignment of interest between public and private entities. However how can we better align the environmental studies, that assess the potential impact of a project, with the pace at which permits can be processed to accelerate delivery of public infrastructure?

A. Environmental studies which precede site selection or assess potential impacts of a proposed project are a necessary and required part of the planning process. P3s take these into account as seriously as any other public procurement. Any design or land-use planning issues are addressed, There are opportunities for innovation in effectively handling those issues in the most responsible manner possible. Suggestions have been offered to streamline the environmental review and permit processing for public infrastructure projects. These do not shortcut or eliminate the processing, just make it more effective and accelerate it, irrespective of the procurement model.

Q. Does AIAI have a library of model Rfqs , RFPs, and contracts?

A. AIAI shares best practices to guide the consideration and applicability of the P3 model. In addition to the FHWA, other industry organizations also compile and share contracts, RFIs, RFQs and RFPs to support future procurements. The key is to adopt whatever models are provided to specifically meet the needs of the governmental entity that is serving as the procurement authority, as it evaluates and makes decisions that will serve the best interests of the public.

Q. Is it common for several local governments to partner on a P3 project that is of common interest?

A. Bundling of a number of jurisdictions' needs can be an effective approach for procuring public infrastructure assets. The key is to identify and engage a common authority against which to backstop the financial resources that are aligned with the group of local government entities. Follow the money, or in this case, connect those governmental entities together at a common level - and money is often times the tie that binds.

Q. What's the recipe to creating public sector sense of urgency for using P3 deliveries?

A.
- Set the oven's temperature based on the level of activity on your (local) political calendar.
- In your mixing bowl of choice blend in a list of failing facilities that must be replaced for safety or federal order.
- Mix with a realization that the cost of ownership of older facilities is much higher than that of a new facility.
- Peel, chop and add to the mix the deferred maintenance costs (readily identifiable in your local budget requests).
- Sprinkle in a touch of social media (listening to what is out there), and posting what matters to your committee or jurisdiction.
- Let bake for a news cycle, or simmer for an election cycle, and then adjust the capital infrastructure plans for your city or county.

Q. An integration between the different advisors becomes very heavy issue, especially in mega projects. What is the right way to lead this integration? Do you have an expert that specializes in this area?

A. A champion is necessary to address the political will that has been found to be a critical success factor. So too does having the technical depth and experience to absorb the myriad factors involved in planning for the development and delivery of infrastructure. Having a central review and decision making authority facilitates future success. This is the starting point for integration of those different advisory inputs.

Q. What are these centers of excellence?

A. Centers of excellence are advisory resources which provide input and guidance to government agencies to assist in evaluating the best options for procurement of public infrastructure assets. They are based on best practices methods from around the world, most notable with Partnerships BC (British Columbia) and Infrastructure Ontario. They make the advisory services available to cities or counties or other government entities or agencies, including school districts or water departments, to enable their access to procurement options and financing alternatives.

Q. Can you talk a little more about the differences between specifications and outcomes? Do advisors drive that discussion?

A. Best practices recommendations for planning and developing public infrastructure involves starting with intended outcomes from any procurement. Traditional methods of bond financed, design-bid-build procurement have relied, for decades, on specifying solutions, such as equipment and materials. P3s encourage and welcome innovation and creativity in addressing life cycle issues. This includes design considerations, materials selection, and innovations in construction techniques. These decisions are best addressed in the context of outcomes, rather than specifications. Performance of an asset should be the desired evaluation criteria, not a product type or model that may have been current decades earlier when a solicitation was developed.

Q. Can the academic community help serve the role of those center of excellence? Are their experts equipped to assist or add value?

A. There was a thought that they could serve this objective role and provide advisory services to support public procurement. It is not central to the mission of an institution of higher learning, and so that value could be limited. They do serve an essential research role, and their experience can be brought to bear in this arena.

Q. If you have no P3 experience, besides attending this conference, where should you start to educate staff on the P3 process? Is there an organization that [could help?

A. These conferences provide a great starting point, as public officials can learn from their peers, share concerns and ask questions. There are a number of P3 groups, and there are also other conferences. AIAI provides the services and forum to exchange information that can be helpful in exploring options and understanding best practices related to P3s to improve infrastructure in America.

Q. Does it cost a state or county or city to have AIAI perform those educational workshops?

A. None at all. AIAI is a non-profit education and advocacy group and these outreach sessions are part of the AIAI mission. These services range from one-on-one meetings and in-person workshops to webinars and briefings.

Q. How can smaller governments with historically large project(s) potentially identify if P3 is the correct mechanism for their purposes?

A. Seek advisors who can assist in such an assessment. They would evaluate options, essentially that Value for Money analysis and Public Sector Comparator, to help better understand what options they have.

Q. We have heard about P3s being permissive. What does that mean for procurement processes?

A. Historically, there have been different approaches to understanding policies. One school of thought says that, "if it says you can do something, then you can, but nothing else." Another says, essentially, "if it doesn't say that you cannot, then you can." Somewhere in between is the reality in which we all live in a grey, not black 'n white world. Permissive statues allow or enable a broader interpretation of authority, in this instance to procure public infrastructure. Permissive may be viewed as enabling opportunities to consider alternatives, such as P3s.

LEGAL

Q. Does a P3 project require specific state authorizing statutes?

A. Generally speaking, a state or a procurement authority is best served when there is a statute to support the method of procuring the public infrastructure asset. It is not absolutely required that there be an authorizing statue; but it does help to clarify processes and procedures related to a procurement if the mandate is reliable and P3 enabling laws help that. This is a best practices recommendation for P3s in the US.

Q. How does Home Rule impact an agency's ability to procure infrastructure using P3?

A. Home rule, or the ability of a local jurisdiction to procure assets, and financially obligate the funds necessary, can play a critical role in P3s. Michigan is just such an example. While they are not generally considered a P3-enabled state, they have used home rule to develop specific public assets, including street lighting for Detroit and for the state's highway system.

Q. It would be helpful to have a baseline definition of what is meant by the term "P3."

A. P3s are Public Private Partnerships. They are captured in a contractual relationship between a responsible public agency - the procurement authority - and private sector partner - a special purpose entity – including the design and construction, financing provided by private sector participation or investment, and often with operations and/or maintenance components. It is important to note that a P3 does not include privatization. Ownership of the public asset always remains with the public agency.

Q. Should other statutes that regulate construction, such as payment bond statute, be modified and reconciled with P3 legislation?

A. It is helpful to all concerned if the legal statutes which support procurement are aligned. When there are differences, or even conflicting policies, they should be addressed and resolved.

LIFE CYCLE ISSUES (INCLUDING OPS & MAINT)

Q. There was an earlier question about lifecycle and examples of these is P3 deals already in place. Please address this. This is a very important part of…the public debate.

A. Deferred maintenance is not a capital replacement plan. This is one of the more significant issues facing public infrastructure asset management. One of the key elements of the value proposition of P3s is the life cycle care and maintenance of these assets. It is during the operations and maintenance phase of the asset when a partnership delivers on that value. Design innovations lead to facilities which are built better. They lead to improved efficiencies during the operations phase. If a road is laid with better asphalt, it will require less frequent replacement over the life of that roadbed. In social infrastructure examples, think of the lobby floor of that courthouse. If a linoleum flooring is used to welcome visitors of the building, visual taste aside, it is predictable that the floor will wear out more rapidly than a more robust, longer lasting flooring solution. While a terrazzo flooring material may be more expensive to install on day one, its ability to be serviced and last much longer, would allow it to present the courthouse in the best possible condition, over the life of that asset. Should the more expensive material ever not live up to its expectations and need a replacement earlier than planned, it is the private sector partner who is taking that risk.

Q. How do you address replacing union City employees for private sector O&M?

A. An important element of P3s is the transition of vital personnel. This is an issue which is addressed as a result of the procurement and the negotiations which lead to the comprehensive development agreement. Municipal labor is a part of this process. Workers are offered opportunities to transition to the private partners who will operate and maintain the asset going forward. An alternative is to allow those employees who may choose not to accept the terms of a transition to remain with the public sector entity. In those cases, the public partner assumes the risks of addressing the needs of those municipal union employees. One of the issues that is raised in this context includes retirement fund participation. Arrangements for transitioning those funds is generally managed as part of such negotiations and personnel planning.

Q. Alistair. Please talk more about the point system.

A. Contract compliance and monitoring of performance of an operational asset can be evaluated and reported using a “points system.” This generally accepted standard allows a procurement agency to determine how a private partner is performing in meeting its obligations. The points are converted into monetary deductions from the monthly payments. In addition, certain events, or non-availability of public assets can trigger punitive clauses in a contract. These points systems are an important component of these measurement protocols.

Q. Are there real examples of the projects that really reduced the LCCs and how you measure it at the stage of planning the budget allocation?

A. There have been several P3 projects where Life Cycle Costing has proven that changes from the owners concept could produce a better net present value. These have included alignment changes or change in bridge type which allowed a change from bridge to at-grade roadway. (Corpus Christi Bridge) Another example would be the LCC analysis regarding the type and quality of corrosion protection systems used on steel bridge members vs. Cor-ten steels. An LCC analysis is performed to evaluate repainting cycles vs. the additional cost of Cor-ten steel for a given time frame. (TappanZee) Another example would be the type of reinforcing steel used in bridge decks. This is especially significant in northern areas with heavy snow fall, or in areas affected by saltwater marine conditions. Any reduction in reinforcing steel corrosion has a direct effect on deck delamination and potholes or concrete substructure spalls. However, the more corrosion resistant the material, the higher the initial cost. Therefore, an LCC analysis is performed to determine the least cost solution based on a given time frame. Another example, clients will provide a Concessionaire the option of deciding on a pavement design, whether it be utilizing portland cement concrete or hot mix asphalt to meet performance requirements during an Operations Period plus some Handback. The P3 Concessionaires will analyze the initial construction cost of both concrete and asphalt solutions to meet the prescribed design life. The LCC costs will be calculated based on the specific renewal schedule and activities required to meet the Operations Period performance levels while minimizing delays/accessibility issues for each designed solution (PCC vs. AC) NPV is also a factor to be considered since typically the later your can delay a renewal or additional costs, the more attractive the total number becomes. (This was the case on AZ SR202)

RISK

Q. What is the biggest risk to the Public owner when a Private enterprise goes out of business during the project?

A. None.

No seriously, this is one of the inherent advantages of P3s. The public is spared the risks of bankruptcy or a private partner going out of business. The surviving entity will have to honor the P3 contractual obligations to serve and service the public asset. What most often happens is that the public will be in possession of a vastly improved public asset which is operational. The private partner bears the burden of delivering on the terms of the long-term contract.