

# Establishing a Public-Private Partnership (P3) Program

## Role of a P3 Program

A P3 Program's responsibilities vary by project phase, including:

- Establishing a statutory and policy framework
- Identifying, evaluating, and developing potential P3 projects
- Conducting procurement; and
- Monitoring and oversight.

To deliver P3 projects, a public agency will need to acquire or develop new knowledge, skills, and abilities to carry out these responsibilities.

## For Further Information:

See FHWA's Primer on *Key Issues in Establishing a Public-Private Partnership Program*, available at:

<https://www.fhwa.dot.gov/ipd/p3/>.

## Why Establish a P3 Program?

Under a Public-Private Partnership (P3) for highway projects, a private partner participate in a long-term contract involving some combination of design, construction, financing, operations, and maintenance, including collection of toll revenues. Establishing a P3 program within a public agency assists with the agency with issues such as:

- Whether to set up a P3 program or develop P3 projects on a project-by-project basis
- Developing a process for the selection of projects as potential P3s
- Structuring commercially viable P3 agreements that achieve policy goals, optimally allocate project risks, and bring value to the investment
- Conducting a fair and competitive procurement process to select the best partner and negotiate a final agreement that is transparent and protects the public interest while addressing the private partner's concerns; and
- Managing a new role as a performance-based contract manager.

## Establishing a Statutory and Policy Framework

P3 enabling legislation varies widely among States, but the basic goal is the same – to allow public entities to take advantage of the benefits of P3 project delivery while protecting the public interest. Table 1 presents the factors that State policy makers may consider in creating a legal framework for P3s. The framework may be used to authorize or restrict which public agencies may enter into P3 agreements, how partners and proposals are to be selected, and what types of agreements may be entered into.

## Identifying, Evaluating and Structuring P3 Projects

Identifying projects that have the potential to be delivered as P3s early in the planning process can help to position P3 projects for success by ensuring that the P3 delivery model is considered in the scoping, preliminary design, and environmental review of the project. Policymakers must consider whether to set up a P3 program or develop P3 projects on a project-by-project basis; and what criteria and process to use for the selection of projects as potential P3s. To evaluate and structure P3 projects, public agency staff will need to be conversant with various evaluation tools and risk allocation and financial considerations.

## Conducting Procurement

In the procurement phase public agencies must consider: (1) How to structure a commercially viable P3 agreement that achieves policy goals, optimally allocates project risks, and brings value to the investment; and (2) How to conduct a fair and competitive procurement process to select the best partner and negotiate a final agreement that is transparent and protects the public interest while addressing the private partner's concerns.

## Monitoring and Oversight

P3 agreements include outcome-based performance specifications. After the agreement is signed, the public agency must manage the contract to ensure that it achieves the performance standards established in the agreement. Key issues in managing contract performance relate to setting performance standards, monitoring technical and financial performance, assessing payments and penalties for performance, resolving disputes, and promoting effective contract governance.

## Issues Commonly Addressed Through Statute, Policy or Contract

Issue Type	Description
<b>Primarily Statutory Issues:</b> These issues are typically addressed through State legislation.	<ul style="list-style-type: none"> <li>• Types of P3 agreements allowed</li> <li>• Authority to enter P3 agreements</li> <li>• Authority to approve or review P3 agreements</li> <li>• Types of facilities allowed</li> </ul>
<b>Issues typically addressed through Policy and/or Statute:</b> These issues may be addressed in legislation to authorize or clarify specific capabilities as necessary, but the details are frequently addressed through program policy.	<ul style="list-style-type: none"> <li>• Types of financing/subsidies allowed</li> <li>• Public uses of proceeds</li> <li>• Ability to hire external advisors</li> <li>• Types of procurement allowed</li> <li>• Whether unsolicited proposals are allowed</li> <li>• Whether bidder stipends are allowed</li> <li>• Whether administrative fees are allowed</li> <li>• Whether to require performance security</li> <li>• Criteria to evaluate potential P3 projects</li> <li>• Criteria to select bidder</li> </ul>
<b>Issues typically addressed through Contract and/or Statute:</b> These issues are typically addressed in contracts although the general parameters may be set by statute or policy.	<ul style="list-style-type: none"> <li>• Length of contract term</li> <li>• Toll rates and toll rate setting mechanisms</li> <li>• Allocation of risks</li> <li>• Revenue sharing</li> <li>• Dispute resolution</li> <li>• Buy back provisions</li> <li>• Refinancing provisions</li> <li>• Ongoing performance audits or reports</li> </ul>

## Program Areas of the FHWA Center for Innovative Finance Support

The FHWA Center for Innovative Finance Support is a one-stop clearinghouse for expertise, guidance, research, decision tools, and publications on highway program delivery innovations. Our website, workshops, and myriad resources support transportation professionals in the use of innovative approaches for delivery of highway projects.

### Public Private Partnerships (P3s)

The FHWA Center for Innovative Finance Support's P3 program focuses on resources and capacity building for consideration and use of design-build-finance-operate-maintain (DBFOM) concessions funded through tolls or availability payments.

### Alternative Project Delivery

The FHWA Center for Innovative Finance Support's Alternative Project Delivery program provides information on contractual arrangements that allow for greater private participation in infrastructure development by transferring risk and responsibility from public project sponsors to private sector engineers, contractors and investors.

### Project Finance

The FHWA Center for Innovative Finance Support's Project Finance program focuses on alternative financing, including State Infrastructure Banks (SIBs), Grant Anticipation Revenue Vehicles (GARVEEs), and Private Activity Bonds (PABs).

### Tolling and Pricing

The FHWA Center for Innovative Finance Support's Federal Tolling and Pricing program focuses on the use of tolling and other road user charges as a revenue source to fund highway improvements, and the use of variably-priced tolls as a tool to manage congestion.

### Value Capture

The FHWA Center for Innovative Finance Support's Value Capture program explores strategies for tapping into the added value that transportation improvements bring to nearby properties as a means to provide new funding for surface transportation improvements.