

# Conducting Procurement for Public–Private Partnerships (P3s)



## P3 TOOLKIT

### Quick Facts

- The optimal structure of an agreement depends on the characteristics of the project, the goals and capabilities of the public agency, and the incentives and capabilities of potential private partners.
- Agencies often use a multi-stage, “best value” procurement process that includes a request for qualifications, followed by a request for proposals, and then by negotiations with the preferred bidder.
- Transparency should be ensured during the procurement process as well as throughout the life of the P3 agreement.

### For Further Information

Learn more about FHWA's P3 Toolkit, available at

<http://www.fhwa.dot.gov/ipd/p3/index.htm>.



Under the public–private partnerships (P3s) model for procuring highway facilities, a private partner may participate in some combination of design, construction, financing, operations, and maintenance, including the collection of toll revenues. Key issues that public agencies must consider in conducting a P3 project procurement are structuring the agreement, conducting a fair and competitive procurement process, and negotiating a final agreement that is transparent and protects the public interest.

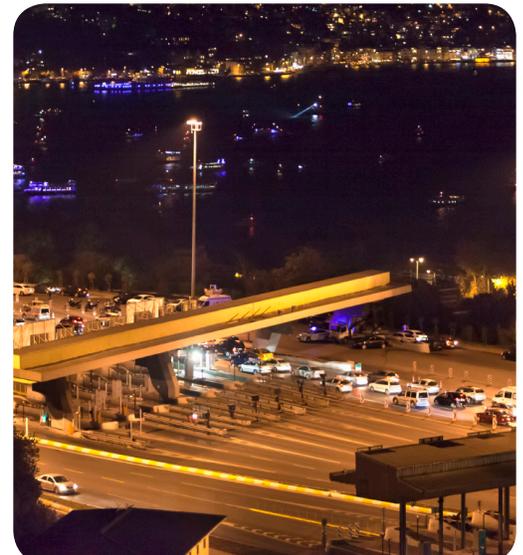
## Structuring Project Agreements

Once public agencies have identified a project as having the potential to be delivered as a P3, they can prepare a project for procurement. This typically involves scoping, preliminary engineering work for the project and specifying elements of the agreement. Agencies typically develop the conceptual structure of an agreement before procurement. The optimal structure of an agreement depends on the characteristics of the project, the goals and capabilities of the public agency, and the incentives and capabilities of potential private partners. Key elements include allocation of responsibilities and risks; financial considerations, including compensation mechanisms; concession term; performance standards; and performance management processes.

## Procurement

Given the risks and complexity involved in using non-traditional methods of transportation project delivery, choosing the best partner(s) requires due diligence on the part of the public sector. Because of the size, complexity, and length of term of P3 agreements, special procurement processes are needed to ensure that there is sufficient and qualified competition.

Public agencies may use unsolicited proposals as a way of accessing private sector ideas about potential projects that could be commercially viable. Agencies that allow unsolicited proposals have developed various processes to introduce competitiveness and transparency into the procurement process.



A public agency may conduct industry outreach to gain a better understanding of private sector capabilities and interests with regard to a particular project. This process may occur prior to the procurement process or once an agency has selected a short list of qualified bidders. This can help an agency understand how to structure a commercially viable project that will generate competitive bids. Agencies may hold information-sharing meetings or workshops with industry representatives to describe the basic attributes of the project and of the potential agreement and to obtain participant feedback.

To create a competitive and fair procurement environment, agencies often use a multi-stage, “best value” procurement process that includes a request for qualifications, followed by a request for proposals and then by negotiations with the preferred bidder. Figure 1 illustrates how this process could occur.

Bid selection can be based on different criteria, such as the dollar value of the offer, the lowest subsidy or availability payment required, the lowest proposed length of the concession term, or the lowest net present value of gross revenues required. The selection of the preferred partner may be based on the bid price in conjunction with qualitative factors (“best value”).

Negotiations with the preferred bidder can allow both parties to establish a mutually agreeable, project-specific solution to issues identified after the procurement process. This requires skilled legal counsel with expertise in developing long-term, enforceable agreements between the public and private sectors. The negotiation process can help to ensure mutual understanding of both parties regarding the details of an agreement and the smooth implementation and oversight of a project.



## Ensuring Transparency

There have been criticisms of P3 deals being rushed through without the public or their elected officials understanding the implications. Transparency should be ensured during the procurement process as well as throughout the life of the P3 agreement. In Virginia, P3 proposals are reviewed by an independent review panel comprised of members from stakeholder groups, and affected jurisdictions receive the proposals and have a 60-day period to review them and submit comments.

Although public scrutiny of decisionmaking is important to accountability of government spending, it is also important to maintain confidentiality during the proposal process to provide bidders with incentives to deliver innovative designs at the lowest possible cost and thus ensure a competitive tendering process. The public sector should be clear



*Figure 1. Example of a Multi-Phase Procurement Process.*

up-front about what type of information should remain confidential and provide an explanation as to why confidentiality is necessary during the proposal process. Temporary confidentiality could be balanced with full disclosure of selection criteria, scoring, and agreements.



## PROGRAM AREAS OF THE OFFICE OF INNOVATIVE PROGRAM DELIVERY

IPD provides a one-stop source for expertise, guidance, research, decision tools, and publications on program delivery innovations. Our Web page, workshops, and other resources help build the capacity of transportation professionals to deliver innovation.

### PROJECT DELIVERY

IPD's project delivery team covers cost estimate reviews, financial planning, and project management and assists FHWA Divisions with statutory requirements for major projects (e.g., cost estimate reviews, financial plans, and project management plans).

### PROJECT FINANCE

IPD's project finance program focuses on alternative financing, including State Infrastructure Banks (SIBs), Grant Anticipation Revenue Vehicles (GARVEEs), and Build America Bonds (BABs).

### PUBLIC-PRIVATE PARTNERSHIPS

IPD's P3 program covers alternative procurement and payment models (e.g., toll and availability payments), which can reduce cost, improve project quality, and provide additional financing options.

### REVENUE

IPD's revenue program focuses on how governments can use innovation to generate revenue from transportation projects (e.g., value capture, developer mitigation fees, air rights, and road pricing).

### TIFIA

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for significant projects. Many surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible to apply for assistance.

