

# Best Practices Guide to P3 Procurement for US Mayors



THE UNITED STATES CONFERENCE OF MAYORS



**A Public Private Partnership, or a P3 as it is often called, is a contractual agreement formed between a public agency and a private sector entity that allows for private sector participation in the financing, design, construction, operation, and maintenance of public infrastructure projects.**

The private organization is given responsibility to provide a public good, facility or service that has traditionally been provided and managed by a public entity, such as a state agency, local government, or regional authority. The goal of the partnership is to provide benefits to the public through value-added private sector engagement and risk transfer.

A P3 procurement for the delivery, financing and operations and maintenance of public services and facilities is a viable alternative project delivery approach to complement traditional procurement practices. P3s have been proven throughout the world to be an effective way to deliver much needed civil and social infrastructure.

The P3 procurement method has demonstrated that, in comparison with traditional project delivery methods, assets are more likely to be delivered on time and under budget, as well as utilizing innovative ideas and products to create long-term life cycle operational and maintenance efficiencies. Additional benefits of P3s include job creation, design innovation, efficiencies in project finance, appropriate transfer of risk, optimization of resources and capabilities, as well as providing a higher quality of services to the public.

**Partnerships between the public and private sectors represent opportunity. These relationships enable growth through access to leveraged financing, transfer of risk and optimization of resources and capabilities, in the furtherance of public good.**

Partnerships between the public and private sector relate to all types of infrastructure needs. These include civil infrastructure: mass transit, surface and highway transportation, freight rail, air and maritime ports, water and sewer treatment plants, as well as social projects: educational (elementary, secondary and community college) facilities, hospitals, courthouses and correctional facilities, and other municipal or community-use facilities.

The following outline includes the essential components to prepare, organize and get into position for a P3 procurement, as well as AIAI recommendations for best practices. This guide can be used as a standalone resource; however it becomes a more compelling tool when combined with in-person education and supporting documentation provided through members and staff, based on their hands-on, practical experience.

*NOTICE: The material contained in this Best Practices Guide has been prepared by the Association for the Improvement of American Infrastructure (AIAI). The Guide is intended for educational and information purposes only and does not constitute legal advice or opinions specific to any state or jurisdiction.*



# APPROACH

Our Nation's infrastructure challenges cannot be solved solely through conventional practices. While not a panacea, well-managed P3s provide the financing, tools and techniques to accelerate delivery of infrastructure in a more expedient manner, based upon long-term solutions, and with significant value to taxpayers.

Public entities are best poised to capture the benefits of P3s by incorporating best practices into their processes, procedures, and projects.

This Guide seeks to maximize the public sector's ability to realize value. The factors outlined below are considered critical to P3 success:

- 1. Established Legal Authority**
- 2. Dedicated P3 Staff**
- 3. The Use of Advisors**
- 4. Project Identification**
- 5. Project Selection**
- 6. Market Sounding and Risk Matrix**
- 7. Procurement Process, Policies and Politics**
- 8. Stakeholder Engagement and Communications**



# BEST PRACTICES FOR P3 PROCUREMENT

# 1.



## **1. ESTABLISH LEGAL AUTHORITY WITH CLEAR PROCESSES AND STRAIGHTFORWARD GUIDELINES**

Prior to any procurement, the first step towards achieving best practices in any P3 is to have a clear understanding of your city's authority to use P3s, alternative delivery contracting methods, and performance-based contracts. An effective legislative and statutory framework will enable a Value-for Money bid rather than the low-price bid system, and broadly enable innovative alternative delivery methods across various sectors and project types. The purpose of this legal framework is to establish a procurement process that is flexible yet transparent, predictable, and competitive. The strength of the framework will come from the clear statement of goals for projects, goals for outcomes, and the benefits to the community. Beyond being strong, that framework should also employ a balanced approach, taking all parties into consideration – those bidding on projects, DBE firms, local firms, and all parties with a vested interest in the project over the term of the contract. Cities that lack a broad, statewide enabling authority for P3s should look to their state's Home Rule statutes or state constitution for the legal authority before entering into these types of arrangements.

### **1.1 GATHER STAKEHOLDERS INTERESTED IN DEVELOPING P3 FRAMEWORK AND RULES**

Mayors and other government officials should reach out to key stakeholders, including public officials in other jurisdictions and private sector contributors with practical P3 experience, for insight into best practices and lessons learned. An understanding of past P3 successes and failures will positively influence how to establish new P3 programs. The early input of the general public, including civil society, and labor, is critical to crafting authority that will work for each jurisdiction.

### **1.2 REALISTIC GOAL SETTING FOR THE PROCESS**

While it is always best to have the broadest P3 authority possible, it is important that the authority works within existing procurement code. Understanding the existing procurement process in the jurisdiction, and how that can be used to achieve your P3 goals, is key to success. Making sure that project goals are grounded in the reality of each location, project type, and economic situation will result in the achievement of those goals.



**It is critical to have the legal authority that allows for the use of innovative financing and delivery methods for a broad variety of sectors and project types.**

### **1.3 PROCESS DRIVEN GUIDELINES/Framework**

Legislative and legal authority is only the first step for any P3 program. Stakeholders such as elected officials, community groups, labor, and industry will want to see more of a framework for procurement. Establishing verified, reviewed, and approved procurement guidelines will promote a fair procurement process, which in turn leads to a more competitive procurement, resulting in better value for the public owner. Clear guidelines must be implemented and supported with legal protection for government, private partners, and the general public. Once in place, this protection should prevent projects from being subject to delay and cancellation due to the process being challenged.

**Legal framework should establish clear P3 authority and a flexible procurement process that is transparent, predictable, and enforceable contributing to greater competition.**

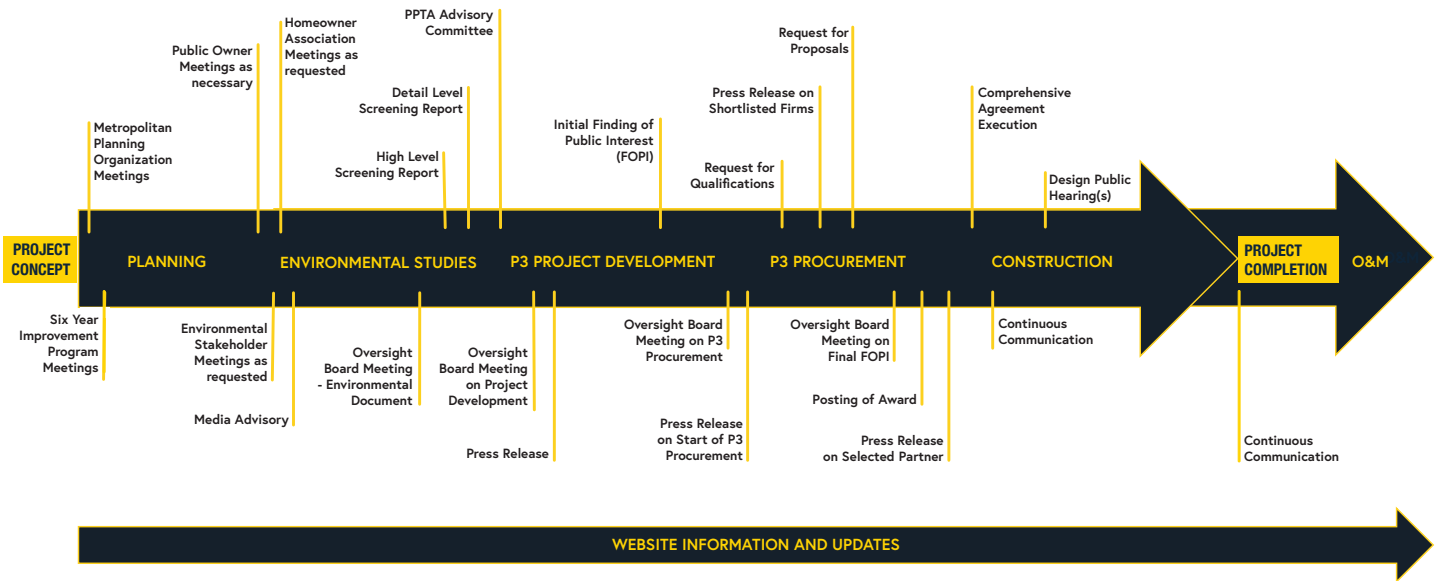
### **1.4 HAVE A COMMUNICATIONS PLAN**

Develop a transparent communication plan which outlines the process of public information and engagement. Information should be easily accessible to the community and other public users, who in turn should have a means of communicating their concerns and suggestions. Open meetings, websites and social media communication will ensure transparency and inclusion and will be welcomed favorably by the general public.





# P3 PUBLIC ENGAGEMENT OPPORTUNITIES



**The trust of the general public will be earned through concerted effort of public officials to promote and maintain transparency.**





## 2. DEDICATED P3 STAFF

A certified, dedicated staff is a critical component to the most successful P3 programs. It is highly recommended that a P3 team should be assembled from across the public entity's relevant departments including legal, finance, procurement, and technical. This P3 team should serve as the center of expertise as projects are identified, to lead the procurement, build public capacity, gauge market interest, and signal to the market that the jurisdiction is open for business. Members of this team, ideally, should have experience with alternative procurement and finance.

# 2.

### 2.1 LEGAL AUTHORITY FOR THE P3 TEAM

Simply having P3 authorizing legislation is not enough - the P3 team must have legal authority to execute the P3 law. This authority might come in the form of approved regulations or rules. It is also important that any P3 team either follow existing procurement rules or seek an exemption from those rules as needed, always in a transparent manner.

**Review existing procurement laws and regulations before you set out to create new policies.**

### 2.2 SKILL SETS AND DUTIES

The P3 team will be called upon to fill many duties, from project selection to close. An examination of the skillsets of internal staff will identify any potential gaps, which can ultimately be assumed by external consultants, since the core P3 team will require financial, legal, and technical skills to manage workflows.

**The P3 team should not only know how to manage P3s but also how to hire and manage the right advisors with the appropriate P3 experience.**





# 3.

## 3. UTILIZE ADVISORS

While the government's dedicated P3 team acts as the center for the P3 program, specialized P3 advisors are necessary to leverage P3 units and owner-agencies, particularly through the procurement process, due to the scale, scope, complexity, and unique nature of P3s. Utilize internal advisors and resources in agencies and/or departments relevant to the project(s) at hand.

### 3.1 CREATE POOLS OF ADVISORS

Create a deep bench of advisors with diverse skill sets for the legal, commercial, technical and financial advisory service fields. With this varied set of experts, the P3 office will be able to call upon the right expert based on the needs and characteristics of a project. Advisors should be selected based on their relevant qualifications and P3 experience.

**It is important to be comfortable with the individuals you select for your advisory pool – you will be spending a great deal of time with them. Be clear with each advisor as to their role in the project. Duplicated work is wasted budget!**

### 3.2 SPECIALIZED ADVISORY FIELDS

Having the right advisors is critical for the success of any infrastructure project, but this is particularly true for a public-private partnership. Both the public and private sectors benefit from expert guidance in the specialized fields involved in infrastructure development. Those specialized fields are generally placed in three categories:

<b>Legal Advisory Services</b>	Legal experts who assist in the drafting of contractual agreements and deal structuring.
<b>Financial Advisory Services</b>	Financial experts who assist with the modeling of the financial capacity for the project, the potential project financing and advice as to market conditions, as well as the analysis of the financial aspects of the submitted bids. In addition, economic, revenue, and cost projections may be required from specialized forecasting firms.
<b>Technical Advisory Services</b>	Technical experts who assist in the engineering, architectural, and environmental details of the project.
<b>Community Engagement Services</b>	Experts in communications who assist in devising strategies to facilitate education and outreach to stakeholders, community leaders and the public.







### 3.3 TEN QUESTIONS BEFORE HIRING YOUR ADVISORS

The Public Sector Procuring Agency's selection is a signal to the market of their commitment to successful procurement. Before hiring any advisor, the procuring entity should consider the following questions:

- 1.** Has legal authority been established to hire advisors from each category, or will further authority be required?
- 2.** What scope of services is required for this project?
- 3.** Do applicable resources exist within the organization that can be utilized to move the project forward? What skill sets are required to complement those resources?
- 4.** Is sufficient funding available to hire advisors and support their work? Is there contingency to pay advisors in the event of unforeseen delays or issues?
- 5.** Does the advisory firm have the required experience in working through a procurement, not only for the specific asset class, but public private partnerships in general? Market standards change over time. When was the advisors' last such experience?
- 6.** Does the advisory firm have the required resources, in particular experienced staff, to provide the support and ensure project success? Define the personnel who will remain dedicated to the project throughout the procurement process.
- 7.** Is the advisory firm engaged in other projects? If so, what is the timeline? Can the firm provide assurance that any additional commitments will not adversely affect this process?
- 8.** Do the advisors have a strong understanding of the legal, regulatory, and financial situation of the public owner/procuring agency?
- 9.** Are the advisors free from conflict, or any perception thereof, for the duration of the project and/or the program?
- 10.** Can the advisors provide readily available references?

# 4.



## 4 PROJECT SELECTION

Public private partnerships can deliver improved efficiency, effectiveness, and economics for infrastructure projects. However, P3 is not appropriate for all projects. In order to achieve project success, it must first be determined that a P3 is the best solution and provides greatest value. This assessment is typically conducted in two steps, firstly, a high level screening and then a second, more detailed screening.

### 4.1 HIGH LEVEL PROJECT SCREENING

With the ultimate goal of adding projects to the project pipeline, high level project screening should focus on the anticipated value for money of the P3 procurement in comparison to traditional procurement delivery mechanisms. A city might have several potential projects, but only a few that might benefit the most should be advanced as P3 projects, due to the resourcing and cost of the screening. Management of the process is one of the primary duties of the P3 team. High level screening may identify opportunities to bundle projects for maximum value.

**The P3 team should consider community needs as a whole to address the full extent of potential P3 projects.**



## 4.2 DETAILED LEVEL SCREENING

Once the first round of screening is complete, the P3 team should apply a stricter set of criteria to deliver the project pipeline. The team should identify project performance outcomes and goals without committing to any procurement or delivery model - in other words, look for good projects first, not good P3s.

## 4.3 PROJECT PIPELINE

Robust project pipelines are a sign to potential private partners, advisors, federal offices, and the general public that the government is serious about infrastructure, including public private partnerships. A publicly posted pipeline of projects sends a strong signal that the government is committed to moving forward on a host of projects, and that investment in the market is worthwhile. That pipeline of projects should also identify, if possible, the sources of funding for the project.

**The P3 team should look for good P3 projects first - not good P3s.**

# 5.



## 5 PROJECT PROCESS, POLICIES AND POLITICS

Procurement policies create the backbone for P3 procurement. They should enable and promote a transparent, consistent and competitive process. These policies should reflect industry-recognized best practices and relevant public policies and goals. The P3 Team, procurement agencies within the owner agencies, and government overall should have these policies in place before the P3 procurement begins.

**Seek best practices from all sources to determine what will work best for your government and obtain internal consensus on program and objectives.**

### 5.1 POLITICAL SUPPORT

Leadership is critical to a successful P3. Clear procurement policies and the ability to communicate them to the public is vital. The P3 team should have the policies in place, supported by elected leaders in the state and the understanding of the general public.

## Political support for procurement policies is key.

### 5.2 PROCUREMENT SCHEDULE

While it is more important to have the project procured correctly rather than quickly, it is essential to stick to the procurement schedule. Significant delays in the schedule can result in loss of bidder interest and reduced competition. A well thought out P3 can not only save time, but increase innovation and success.

It is imperative that the P3 team understands the processes and the time it takes to receive approval for each step, which will then allow them to set realistic procurement timelines for all phases of procurement. The most difficult part of the process can be time management.



**Progress in planning is progress on the project, often the most cost-effective progress you can achieve.**

### 5.3 MARKET SOUNDING

Once you have selected a project, an essential next step is to work with your advisors to prepare a market sounding, with key potential bidders comprised of equity investors, contractors and O&M providers. The market sounding can be done both in writing and in one on one meetings and should include a detailed project description, a proposed timetable and a list of questions that will help the public entity and its advisors assess the appropriate risk allocation for the project.

**Keep to the procurement schedule to build trust in the process.**

	<b>Market Outreach/ Request for Information</b>	<b>Request for Qualifications</b>	<b>Request for Proposals</b>	<b>Commercial Close</b>	<b>Financial Close</b>
Key Objectives	Feedback from industry on proper deal structure, type of P3 and key risk issues  Marketing for pending procurement	Establish minimum technical, financial and admin/legal qualifications  Identify "shortlist" of most qualified bidders	Develop project contract/tech specs  Create/retain competitive tension (min. 3 bidders)  Conduct fair, open and transparent procurement	Obtain required approvals for bidder selection and project contract  Execute project contract	Achieve financial close under financing agreements  Get money moving to commence project construction!
Start	Initial outreach to market or RFI	Release of RFQ	Release of RFP	Selection of preferred bidder	Final agreement
End	With release of RFQ	Announcement of Shortlist	Selection of preferred bidder	Execution of project contract	Execution of financing documents



**Public private partnerships are just that - partnerships - and should be approached as such. All parties and stakeholders should be committed to the success of the project and act accordingly. The ability to deliver needed infrastructure on time and on budget is a tremendous accomplishment that benefits the community. In order for the government to be prepared for this partnership, a focused approach and a well defined procurement process are imperative.**





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