Key Considerations in Implementing a Public–Private Partnership (P3) Program

Innovative Program Delivery

Transportation Finance Innovations

Quick Facts

To deliver P3 projects, a public agency will need to acquire or develop new knowledge, skills, and abilities to:

- Establish a statutory and policy framework.
- Identify, evaluate, and develop potential P3 projects.
- Conduct procurement.
- Monitor and oversee the concessionaire.

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Under a public–private partnership (P3) for highway projects, a private partner may participate in some combination of design, construction, financing, operations, and maintenance, including the collection of toll revenues. Establishing a P3 program within a public agency involves issues such as:

- Determining whether to set up a P3 program or to 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 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.
- Managing a new role as a performance-based contract manager.

To deliver P3 projects, a public agency will need to acquire or develop new knowledge, skills, and abilities that vary by the phase of the project, including:

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

I-495 Capital Beltway High-Occupancy Toll Lanes Project, Virginia.

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 policymakers may consider in creating a legal framework for P3s. The framework may be used to authorize or restrict who may enter into P3 agreements, how partners and proposals may be selected, and what types of agreements may be entered into.

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Norfolk/Portsmouth Midtown Tunnel, Virginia.

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Table 1. Issues Commonly Addressed Through Statute, Policy, or Contract.

Issue Type	Description
Primarily Statutory Issues: These issues are typically addressed through State legislation.	• Types of P3 agreements allowed. • Authority to enter P3 agreements. • Authority to approve or review P3 agreements. • Types of facilities allowed.
Issues Typically Addressed Through Policy and/or Statute: These issues may be addressed in legislation to authorize or clarify specific capabilities as necessary, but the details are frequently addressed through program policy.	• Types of financing/subsidies allowed. • Public use of proceeds. • Ability to hire external advisors. • Types of procurement allowed. • Whether unsolicited proposals are allowed. • Whether bidder stipends are allowed. • Whether administrative fees are allowed. • Whether to require performance security. • Criteria to evaluate potential P3 projects. • Criteria to select bidder.
Issues Typically Addressed Through Contract and/or Statute: These issues are typically addressed in contracts, although the general parameters may be set by statute or policy.	• Length of contract term. • Toll rates and toll-rate-setting mechanisms. • Allocation of risks. • Revenue sharing. • Dispute resolution. • Buy back provisions. • Refinancing provisions. • Ongoing performance audits or reports.

Identifying, Evaluating, and Developing Potential 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, risk allocation considerations, 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 are setting performance standards, monitoring technical and financial performance, assessing payments and penalties for performance, resolving disputes, and promoting effective contract governance.

For more information, see FHWA's primer "Key Issues in Establishing a Public–Private Partnership Program," available at: http://www.fhwa.dot.gov/ipd/p3/.

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., concessions, 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. Most surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible for assistance.

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