

# Assessing and Comparing Key Provisions of Public-Private Partnership Offices' Procurement Guidelines

4Q 2017

The Miami-Dade Board of County Commissioners (BCC) organized a P3 Task Force to develop recommendations and guidelines for the County's procurement of P3 projects. The Task Force presented its report in March of 2016, which was accepted by the BCC in November 2016. The BCC has not yet passed legislation adopting the Task Force's recommendations. Legislation has been read by the County to update procurement guidelines for unsolicited proposals and the legislation is planned to be in place in January. This article compares some key aspects of the Task Force's recommended procurement process with that of other dedicated P3 offices in states and municipalities across the country.

Miami-Dade is moving forward with finalizing its procurement guidelines and other governments, like the City and County of Denver, are also moving to establish dedicated P3 offices. These actions provide private partners with a clear understanding of risks associated with the procurement process and help protect public interests that are vital to the offices' success.

Currently, there are a limited number of dedicated P3 offices in the United States, with the majority of them housed in departments of transportation and only a relative few that are dedicated to infrastructure as a whole asset class. This article examines the recommendations by the Miami-Dade P3 Task Force and the established guidelines for the Colorado High Performance Transportation Enterprise, the District of Columbia Office of Public-Private Partnerships, Pennsylvania DOT's Public-Private Partnership Office, and the Virginia Office of Public-Private Partnerships.

Key issues for P3 Offices in the procurement process:

- Requirements for Value for Money Analysis
- The Shortlisting Process
- Approval Processes by Elected Officials
- Stipends for Unsuccessful Proposers

## Requirements for Value for Money Analysis

Having pre-determined analytical processes prior to the procurement of a project can add significant levels of certainty to a project process. This typically takes the form of a value for money analysis that assesses whether the public sector would see increased value by delivering the proposed project through a P3 rather than through traditional procurement. When projects are accompanied by these reports, the public sector gets a better understanding of why the delivery method was chosen and this can provide political cover.

However, these analyses are somewhat more of a work of art rather than science and the conclusions of the reports can be called into question by those who are opposed to the project for political reasons. For example, the value for money that was determined by KPMG's analysis of the Indianapolis Courthouse was challenged by the city council and the project was subsequently cancelled.

## The Shortlisting Process

The number of teams that get shortlisted can affect the quality of bidding teams. If a public agency shortlists too many teams, the probability that a given team will be awarded the project may be too low for the teams to continue to participate in the procurement process. In Aon's annual survey on procurement risk, multiple respondents

indicated that large shortlists increase the cost of procurement and can discourage them from pursuing future projects. However, if too few teams are shortlisted, the public may grow concerned about cronyism and the potential that they may not actually procure the project at the greatest value.

## Project Approval by Elected Officials

Elected officials are important to the success or failure of public infrastructure projects. Elected officials acting as political champions can provide vital support that drives a project, particularly a P3 project, to a successful financial close. Determining the correct level of input from elected officials is a decision that rests within each jurisdiction, as

officials are elected to ensure that the interests of their constituents have a voice. However, giving elected officials significant say in project processes has the potential to add political risk to the procurement process and has the potential to impede efficient project delivery.

## Stipends for Unsuccessful Proposers

Providing stipends for unsuccessful bidders reduces the risk that bidders take on when they pursue projects. The U.S. DOT recommends in its Successful Practices for P3s report that public agencies provide a stipend to teams that submit compliant bids for the following key reasons: stipends foster competition; stipends demonstrate

a public agency's commitment to the project, stipends defray a portion of the bidding cost, stipends ensure that bidders submit compliant bids in order to receive the stipend; and stipends can be used to compensate all bidders in the event of cancellation or suspension of the procurement.

## Overview of Key Provisions in Procurement Guidelines

| P3 Agency  | Requirement for Value for Money Analysis | The Shortlisting Process  | Approval by Elected Officials  | Stipends for Unsuccessful Proposers   |
|--|--|---|--|---|
| Miami-Dade P3 Task Force Recommendations                     | Yes                                      | No less than two and no more than four  | Requires approval from the Board of County Commissioners at project initiation, issuance of RFQ, RFQ scoring methodology, issuance of the RFP, Mayoral approval of provisions governing ATCs, and the Mayor and BCC have final approval of the comprehensive agreement                                   | Recommends that the County have a stipend policy for shortlisted proposers who have submitted compliant bids, though inclusion of stipends is at the option of the County |
| Colorado's High Performance Transportation Enterprise (HPTE) | Yes                                      | Minimum number of teams is two and the maximum will be determined by each project's RFQ | HPTE Board must be briefed on project initiation, RFQ, RFP, shortlisting, preferred proposer selection, and approval of project agreement at commercial and financial close. The project agreement is executed by the HPTE and the State Controller. HPTE Board is comprised of gubernatorial appointees | Allows the payment of stipends on a project-by-project basis  |
| D.C. Office of Public Private Partnerships (OP3)             | Yes                                      | No commentary on the shortlist  | Requires passive approval by the Council of the draft RFP documents and Council approval once the OP3 selects a preferred partner  | Allows the payment of stipends on a project-by-project basis  |

| P3 Agency                                      | Requirement for Value for Money Analysis | The Shortlisting Process   | Approval by Elected Officials  | Stipends for Unsuccessful Proposers                          |
|--|--|--|--|--|
| Pennsylvania DOT P3 Office                     | Best Value Analysis                      | No commentary on the shortlist   | For projects owned by the Commonwealth, the legislature must approve prior to beginning procurement. Final approval from the P3 Office or the Public Entity that is driving the procurement.   | Allows the payment of stipends on a project-by-project basis |
| Virginia Office of Public Private Partnerships | Yes                                      | Anticipates that no more than five teams will be qualified for each project, but no explicit maximum. If only one is shortlisted, the VDOT P3 Office will conduct an evaluation and market assessment to determine if it is in the best interest of the public | Throughout the procurement process, there are multiple instances of required approvals by appointed public officials including the Commissioner of Highways, Director of the Department of Rail and Public Transportation, the Public-Private Transportation Act Steering Committee, and the Commonwealth Transportation Board. While members of the boards or committees are political appointees, there is no requirement for approval by elected officials. | Allows the payment of stipends on a project-by-project basis |

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