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## Preliminary Development Agreement: An Innovative Method of Streamlining P3 Procurements in Social Infrastructure

### Introduction

Within the last decade, Public-Private Partnerships (P3s) have played an increasingly crucial role in the construction and renovation of transportation and utility infrastructure. On the other hand, P3s have not been as popular a procurement method for social infrastructure projects such as hospitals, civic buildings, courthouses, police departments, wastewater treatment facilities, libraries, parking lots and schools. As many have already realized, that is about to change due in large part to the necessity of these projects and a lack of available funding. As such, state and local governments are now turning to P3s to finance vital social infrastructure projects across the country.

The benefits of P3 procurement include reduced costs, better value, timely/early completion, and access to private capital and private sector innovation. As opposed to typical procurement methods, in which public entities arrange for project financing, hire the designer, manage the construction bidding phase, and oversee the project's construction, P3s only require the owner to select a qualified team that can ensure the development, construction, maintenance and operation of the project over its entire lifecycle. Furthermore, depending on each state's legislative framework, many P3 social infrastructure projects are taking off through both solicited and unsolicited proposals.

However, despite overall cost benefits, the standard P3 procurement process can often be remarkably expensive and time consuming, such that social infrastructure projects (often much smaller than the transportation and utility infrastructure projects) are viewed by some as too small to warrant the P3 due diligence and transaction costs. This is largely due to the fact that bidders have no guarantee of either capturing the project or recovering the bid and preparation costs, which can be substantial. Moreover, the owner must delay both the design and the commencement of the work until the conclusion of what can sometimes be a lengthy procurement process.

In response to these concerns, this article proposes a dynamic procurement option that will streamline the selection process, minimize cost to both the owner and bidders, and maintain competition.

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## Preliminary Development Agreements

A Preliminary Development Agreement (PDA) is a procurement method in which a competitively-selected bidder takes the initial risk of developing a project, and, in exchange, receives the first right-of-refusal on a negotiated basis once the project is deemed feasible. Project teams, both solicited and unsolicited, propose a true partnership with the owner by determining, on an open-book basis, the cost and technical features of project delivery for a certain government asset.

This arrangement is beneficial during the early stages of a P3 project when the scope and costs have not been completely defined. Private bidders will often propose an array of innovative development plans, and the owner, while retaining termination rights, selects the most feasible plan. The private entity is then reimbursed for its bid and preparation costs.

A PDA is therefore an excellent way to introduce an unsolicited proposal to a government entity without having to incur significant costs. However, PDAs involve a specific set of conditions and additional measures that help incentivize the private sector to develop projects and ensure sufficient transparency and competition.

## How PDA's Work

The owner issues a Request for Proposal (RFP), or a private entity submits an unsolicited proposal, to identify a development team competent in financing, designing, constructing, and operating the relevant asset, particularly those with private/public financing experience. At this time, the proposal submitted only relates to team qualifications, and not to any project costs as the full project scope has yet to be defined. Therefore, the cost to submit a proposed PDA is relatively small. The company chosen for the PDA then works hand in glove with the owner to establish project construction costs and other technical information, but the private entity is normally compensated at cost for its work.

Normally, the first task of the selected partner is to prepare or comment upon a Value for Money analysis (VFM). This analysis is used to compare the financial impacts of a P3 project against those for the traditional public delivery alternative. The methodology for carrying out a VFM analysis involves creating a Public Sector Comparator (PSC), which estimates the whole-life cost of carrying out the project through a traditional approach; estimating the whole-life cost of the P3 alternative (either as proposed by a private bidder or a hypothetical "shadow bid" at the pre-procurement stage); and, completing a comparison of the costs of the two approaches. In simple terms, the analysis is the forecast cost of the risk adjusted for the traditional method of project delivery. The result of this analysis can lead to a decision about whether to deliver and finance the project as a P3, Design-Build or conventional Design, Bid, Build.

Should the owner ultimately agree with this open-book costing and accompanying scope of work, and assuming there exists legislative authority to do so, the owner may award the contract to the holder of the PDA without further rebidding. If the parties cannot agree, then the owner has the right to initiate further selection procedures with other interested parties.

This process is much more streamlined than those several year procurements that start with Request for Qualifications, followed by short listing, Requests for Proposals, and then proceed to lengthy negotiations.

## When and Where to Utilize a PDA

PDAs are employed where the owner has only a preliminary idea of the scope and financing available for the project. Examples of a PDA include California's Sepulveda Pass, a proposed \$10 billion P3 for various above and below ground roads and bridges. Other examples of PDAs in action include the following:

- Texas DOT – SH 130, Segments 5 and 6;
- Virginia DOT – I-95/395 HOT lanes;
- North Carolina Turnpike Authority – Mid-Currituck Bridge;
- Washington State DOT – Tacoma Narrows Bridge; and,
- Oregon DOT – Sunshine Corridor Improvements, Newberg-Dundee Transportation Improvements, I-205 South Corridor.<sup>1</sup>

While all of these are highway and utility infrastructure projects, PDAs are expected to, and should, play a big role in the anticipated rise of P3 social infrastructure projects.

## The Benefits of a PDA

PDAs allow for an early project start and therefore reduce pursuit time and costs. Also, the owner and development team are able to gain a better understanding of opportunities and risks prior to proceeding to the concession phase. When working together at the early stages in the project process, certain activities may advance, such as feasibility studies; environmental studies; preliminary engineering; investigation of construction methodologies; permitting; financial planning; and, developing open-book costing model(s).

<sup>1</sup> See *Examples of U.S. transportation projects that have utilized PDA approach* (available at [http://media.metro.net/projects\\_studies/sfv-405/images/04\\_sepulveda\\_pass\\_transit\\_corridor\\_ppt\\_12412.pdf](http://media.metro.net/projects_studies/sfv-405/images/04_sepulveda_pass_transit_corridor_ppt_12412.pdf)) (citing the above PDA projects as precedent).

Ultimately, the most important benefits of PDAs include the following:

- Shortened pursuit schedule with reduced costs to the owner and development team;
- Efficient use of private sector resources engaging in true partnership;
- Effective use of financial resources;
- Realistic view of environmental, rate and risks;
- Project transparency at an early project stage;
- Accelerates financial close and not constrained by having to secure financing commitments;
- Open-book approach to pricing concession agreement, operating costs, and lifecycle costs
- No change to O&M costs; and,
- Retains competitive tension post-selection: owner retains option to terminate partnership at close of PDA.

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