



FRANK M. RAPOPORT, ESQ.

To: PENNSYLVANIA P3 WATCHERS

From: Frank M. Rapoport, Esq.  
Peckar & Abramson, P.C.  
131 Lancaster Avenue  
Devon, PA 19333

Re: Open Season Begins May 1, 2013 for Unsolicited Proposals

As a reminder, open season begins May 1, 2013 for submitting unsolicited P3 proposals to the Commonwealth of Pennsylvania. Peckar & Abramson's staff, just outside of Philadelphia, has been watching teams form between local and national contractors and their private equity partners. The PA P3 office led by Bryan Kendro and under the leadership of DOT Commissioner Barry Shoch, not only seems genuinely interested in moving projects forward to rebuild Pennsylvania, but also has the complete support of Governor Tom Corbett.

By way of background, Act 88, Pennsylvania's P3 Law, was signed by the Governor on July 21, 2012. The Implementing Manual & Guidelines were adopted by the P3 Board on January 21, 2013. They can be found on the DOT's website at: <ftp://ftp.dot.state.pa.us/public/Bureaus/Press/P3ImplementationManual&GuidelinesFINALApproved010913.pdf>

Unsolicited proposals will be accepted by the PA P3 Office and the P3 Transportation Board for Commonwealth projects from May 1 - 31 and again from October 1 - 31, 2013. Commonwealth entities (public entities outside the Governor's jurisdiction) may establish their own opportunities for the private sector to submit unsolicited proposals and/or choose to accept proposals at anytime. Under the Implementing Manual & Guidelines, the P3 Office will screen projects beginning with a pass/fail stage, after which passing projects would move on to a more detailed screening phase. Approved unsolicited proposals may proceed as a RFQ or RFP, but proposers who submitted the original unsolicited proposal may not have to submit initial qualifications. Eventual selection criteria under any RFP will be modeled after a best value procurement criteria including pricing, financing, technical merit, local compatibility, reputation and economic impact.

Please Contact

Frank M. Rapoport, Esq.  
at [frapoport@pecklaw.com](mailto:frapoport@pecklaw.com)  
or 484.363.8481



Some of the legal issues being discussed among the Pennsylvania P3 Watchers are as follows:

1. Is there a statutory bonding requirement for P3s?
2. Does the Steel Products Procurement Act apply to P3 projects?
3. Does the Mechanics Lien Law apply to P3 projects?
4. What are the conflicts with prequalification requirements?
5. Does the concessionaire enjoy sovereign immunity?
6. Will the concessionaire have to pay to relocate utilities?
7. Can PennDOT use P3 projects to bundle projects for bridges/roads, etc.?
8. Will concessionaries have to competitively bid construction work?
9. Applicability of the Adverse Interests Act vis-à-vis CMGC model.
10. How will DBE requirements apply?
11. How will Pennsylvania's arcane Separations Act apply, if at all, to P3 projects?

Peckar & Abramson's P3 team will be monitoring all developments and continuing to comment upon and highlight opportunities for bidding teams in the Commonwealth of Pennsylvania. If you wish to continue receiving our memos, please send an email to [frapoport@pecklaw.com](mailto:frapoport@pecklaw.com) with "PA P3 Watcher" in the subject line. Questions should be addressed to Frank M. Rapoport, Esq., Peckar & Abramson, P.C., 131 Lancaster Avenue, Devon, PA 19333, (484) 363-8481.