

# Public Private Partnerships (P3's)

What, Why, Where, How, When?

# P3 discussions can be confusing

- Innovative contracting/  
project delivery
  - asset management
  - program management
  - design/build (DB)
  - design/build/operate/  
maintain (DBOM)
  - design/build/finance/  
operate/maintain  
(DBFOM)
- Innovative financing
  - Shadow tolls
  - Availability payments
  - Concessions or long  
term leases or licenses

# What are P3's?

- Public private partnerships (P3's) are:
  - contractual agreements
  - between public and private sector partners
  - that allow more private sector participation
  - in delivery and/or financing
  - than is traditional.

# What is traditional?

- Design-Bid-Build is traditional
  - Design - public sector or private consultant
  - Construction – public sector
  - Procurement –
    - Design consultant is selected based on a qualifications based selection with negotiated price
    - Construction contract is based on low bid
  - Financing – public funds ( tax revenue or tolls)

# Why are P3's not traditional?

- Private sector performs functions normally performed by the government
  - Design
  - Build
  - Maintain
  - Operate
  - Finance
  - Manage

# P3's fall along a spectrum of increasing private responsibility

Public responsibility



Design/bid/build

Private contract fee services

Design/build

Long term lease of existing toll roads

Design/build/finance/operate new roads

Private responsibility

# P3's in SC

Public



Private

- Design/bid/build – most projects
- Private contract for fee services
  - Cross Island – O & M for toll collection system
  - Bridge Asset management & maintenance contract
- Design/build
  - Conway Bypass, Carolina Bays Parkway, Cooper River Bridge
- Design/build/finance/operate/maintain
  - Southern Connector

# Traditional financing

- Public sector finances road with tax revenue
  - State gas tax
  - Motor vehicle registration fees
  - Local option sales tax
- Public sector finances road with toll revenue (public sector issues revenue bonds and pays back with tolls)

# Innovative Financing

- Private sector takes more responsibility for financing than is traditional.
  - Greenfields
  - Brownfields

# New facilities

- ❖ “Greenfields” (new facilities)
  - ❖ Private sector finances road with toll revenue (private sector takes on debt to pay construction costs and pays back with tolls)
- ❖ Similar to Southern Connector
  - ❖ Connector 2000 (63-20 non-profit public benefit corporation) issued bonds to raise the money to build the road – Connector 2000 has a license from SCDOT to collect the tolls to pay back the debt

# Existing facilities

- ❖ “Brownfields” (existing facilities)
  - ❖ Private sector pays an up-front, lump-sum fee to public agency in exchange for the right (“concession, lease or franchise”) to collect revenues from facility over the life of the contract and improve it.
- ❖ None in SC
  - ❖ Examples from other states:
    - ❖ Chicago Skyway - \$1.8B for 99 year lease
    - ❖ Indiana toll road - \$3.8B for 75 year lease

# PPP options

New Facilities	Design Build	Design Build Operate Maintain	Design Build Operate Finance Maintain
Existing Facilities	O&M Concession		Long Term Lease

# Why use P3's?

- Public funding has not met need
  - For maintenance of existing facilities
  - For construction of new facilities
- Gas tax is inadequate source of funding
  - Gas tax revenue is decreasing
  - Gas consumption is down
  - Political resistance to raise taxes

# Key Benefits

- Accelerated project delivery compared to traditional project delivery methods
- Project cost savings
- Improved quality and system performance due to use of innovative materials and management techniques
- Substitution of private resources and personnel for constrained public resources
- Access to new sources of capital

# Accelerated Project Delivery

- Usual time for public sector to produce project is 7-10 years
- P3's can reduce time to deliver project by:
  - Grouping several responsibilities in one contract (such as design and construction)
  - Transferring risk to private sector of not meeting schedule and initial cost estimates (providing costs incentives or disincentives)

# Project cost savings

- Reduced time of delivery = reduced costs
- Cost of construction are rising faster than inflation, so the earlier you build, the cheaper it is

# Improved quality and system performance

- Private investors have incentives to improve quality and system performance if they are responsible for warranties or long-term O&M costs
- P3's encourage the private sector to come forward innovative ideas that save long term costs (private sector can bear the risk of innovative techniques better than public sector)

# Allocation of Risks

In P3's, a significant portion of the project risk can be transferred to the private sector, resulting in lower overall risk, reduced costs and accelerated delivery.

# P3's: Contract Structures

P3 contract structure is generally determined by state law and negotiation

	Risks Fully or Partially Transferred to Private Sector Under Models				
PPP Model	Design Risk	Const. Risk	Finan. Risk	O&M Risk	Traffic Risk
Traditional Design-Bid-Build		X			
Design-Build	X	X			
Design-Build-Operate-Maintain	X	X		X	
Availability Payments	X	X	X	X	
Toll Concession	X	X	X	X	X

# P3s: State Authorizing Legislation

Items to address in state legislation:

- Broad authorization vs. project specific authorization
- Multiple project elements, for new or existing facilities
- Competitive, open and transparent procurement processes
- Confidentiality of certain proprietary information
- Solicited and unsolicited proposals (deadline for competing proposals)
- Tolling, pricing and authority to set rates
- Tolls on existing roads (including interstates)
- Availability payment structures (revenue sources)
- Use of public revenue for PPPs
- Concession agreement requirements, including length of concession
- Performance standards for design, construction and O&M
- Public sector oversight and monitoring
- Use of eminent domain for PPP facilities
- No further legislative approvals required
- Reversion of facility to public sector
- Public right to buy-back concession

# P3's: When?

We cannot move forward until we have authorizing legislation.

Where are we in South Carolina?

2008 – PPP Study Committee created by the Legislature

- Fall 2008 - Committee heard testimony from USDOT, SCDOT, and industry
- Dec 2008 – Committee report recommending comprehensive PPP legislation
- Mar 2009 – PPP bill introduced,  
currently under consideration by Senate subcommittee

# PPPs: How?

## Procurement Process



- Obtain environmental and other approvals
- Assess the value of PPP vs. public procurement
- Develop institutional capability
- Hire financial, legal and other advisors
- Develop RFQ, RFP, concession agreement, and other project documents

- Host industry forum
- Issue RFQ
- Receive SOQs
- Shortlist Proposers
- Issue preliminary RFP
- Conduct one-on-one meetings
- Consolidate feedback
- Issue final RFP
- Receive detailed proposals
- Select winning bidder based on evaluation criteria

- Execute concession agreement
- Concessionaire finalizes financing package
- Concessionaire and lenders execute financing agreements
- Concessionaire draws on financing and funding commitments

- Concessionaire completes design work and constructs the facility
- Concessionaire operates and maintains the facility
- Public sector responsible for ongoing oversight and monitoring responsibilities
- Facility reverts to public sector

<sup>1</sup> These are the components of a typical procurement process, but particular projects may require adjustments to this process

# P3's: Contents of RFQ

## Description of Project

- Development activities, environmental approvals, ROW acquisition, utilities and other crossings
- Cost estimates, traffic and revenue forecasts
- Available public funding
- Procuring agency's legal authority
- Bonding, DBE, and other requirements

## Procurement Process

- Tentative schedule for RFQ, RFP
- Date for submitting SOQs
- Industry forum/pre-SOQ workshop
- Procedure for questions and requests for clarification

## SOQ Contents

- Identify concessionaire, equity members, lead construction contractor, lead operations contractor
- Management approach and structure
- Experience and track record (including safety and legal issues)
- References
- Financial statements, credit ratings, surety and bank letters
- Conceptual approach to project

## SOQ Evaluation Process

- Pass/Fail items and responsiveness
- General experience (financial and technical) vs. conceptual project approach
- Protest Procedures

# P3 Agreement

The P3 agreement typically includes the following:

- Grant of right to collect tolls;
- Length of term;
- Toll rate structure;
- Design and construction obligations; planning and approvals;
- Detailed operation and maintenance standards;
- Procuring agency oversight responsibilities;
- Change orders and other modifications;
- Competing facilities;
- Financing obligations and lender's rights;
- Insurance and bonding requirements; indemnity provisions;
- Force majeure and other relief/compensation events;
- Default, remedies and termination rights (including buy-back);
- Reps and warranties; conditions to closing; and covenants;
- Dispute resolution provisions; and
- Other miscellaneous provisions.

# P3's: Potential Projects

In South Carolina, the two potential projects currently being discussed are:

- Southern Connector – refinancing by private operator
- I-73 – “Greenfield” Project (new construction)

# Questions, Concerns?

- What do you think?