

Why Your State Needs a P3 Authority

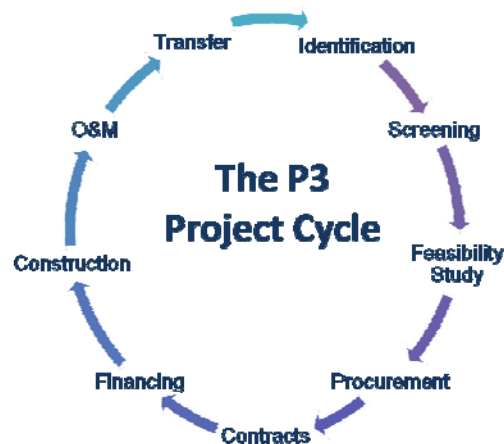
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The use of Public-Private Partnerships (P3) as a project delivery and financing mechanism has grown considerably during the past two decades. While the US can claim to have created the modern form of P3 in the Public Utility Regulatory Policies Act (PURPA) of 1978, it is a relative newcomer to the current wave of P3s. Several recent transportation P3s have demonstrated the potential of the delivery model and the Long Beach courthouse was a first for the new model of social infrastructure P3 in the US.

These projects represent a P3 trend that is catching on throughout the country. Approximately half of all states have P3 legislation in place and some local governments have pursued P3s without specific legislative changes. Beyond legislation, few states have gone further to develop an institutional or regulatory framework for P3s. Virginia and Arizona have established P3 offices in their Departments of Transportation (DOT) and California has assigned specific responsibilities related to P3s to certain agencies. But, only Puerto Rico has established a formal P3 Authority.

A survey of international experience indicates that P3 Authorities are critical to the success of P3 programs. P3 Authorities provide a range of services and serve a variety of functions. From the public sector perspective, P3 Authorities establish a transparent and standardized process for analyzing and procuring P3 projects. This helps to ensure the public interest is maintained when entering into long-term contracts for infrastructure provision. From the private sector perspective, P3 Authorities serve as a one-stop-shop for deal flow and reduce transactions costs by standardizing bidding documents, procedures and contracts. While the initial reaction of many in the public sector is to reject P3s altogether or to regard them with skepticism, the establishment of a P3 Authority that manages the project development process and establishes clear criteria for evaluating the merits of P3 can answer their concerns and ensure net benefits to the public sector of any P3 project. While the initial reaction among the private sector parties may be against regulation and additional government bureaucracy, international experience shows that deal flow is generally increased and marketing and other transaction costs decreased with the establishment of a P3 Authority.



The table below summarizes the various functions and features of several P3 Authorities from around the world. The following text analyzes specific cases, beginning with the recently established Puerto Rico P3 Authority. One conclusion from the review of P3 Authorities is that once established, their operations, processes and procedures are not set in stone. Even in the United Kingdom (UK), which boasts the largest and longest-running P3 program in the world, the government continues to develop new guidelines, evaluation criteria and policies related to P3. This is true of most other countries as well. Guidelines were developed and policies established in response to market trends and lessons learned. One conclusion for the US market is that there is much to learn from previous experiences so it does pay to review the experiences of other countries as the P3 trend grows in the US. The review is like to save time and headaches in developing a P3 program for any US state.

FUNCTIONS & FEATURES OF P3 AUTHORITIES							
	Resource Center	Guidance Material	Transaction Advice	Funding	Contract Mgt	Project Approvals	Project Prep
Australia: Victoria	✓	✓					
Canada: British Colombia	✓	✓	✓		✓		✓
Ireland	✓	✓	✓				
Italy	✓	✓	✓	✓			
Netherlands	✓	✓	✓	✓	✓		
Philippines	✓	✓	✓	✓	✓		
South Africa	✓	✓	✓	✓		✓	
Partnerships UK	✓	✓	✓		✓	✓	✓
Puerto Rico	✓	✓	✓	✓	✓	✓	✓

Puerto Rico Public Private Partnerships Authority

The Puerto Rico P3 Authority was established by the P3 Act in 2009. It is a subsidiary of the Government Development Bank for Puerto Rico (GDPR). This is an interesting approach since the GDPR provides financing for development projects including project finance loans. However, Puerto Rico is somewhat unique as a US Commonwealth; it does not receive direct services from the US Treasury and the GDPR also serves as PR’s treasury, issuing General Obligation bonds along with its development duties. One major objective in launching the P3 Authority was to reduce the GDPR’s risk exposure to projects.

The Authority has a small staff and hires outside advisors for its desirability studies and procurement management, mainly on a milestone fees basis. The Authority does not have authority to transfer ownership of public property to private partners. This authority lies

with the line agencies. Partnership contracts are limited to 50-year terms and may be extended for successive terms that collectively do not exceed 25 years. Private partners are exempted from PR and local property taxes. Contractors in the partnership are subject to a fixed income tax rate of 10 percent of the net income derived from the project.

Each January, the line agencies (transportation, water, education, etc) submit potential P3 projects to the P3 Authority. It is the Authority's responsibility to conduct feasibility studies on these projects (referred to as desirability studies or DS). If the result is positive, the P3 Authority ushers them through the procurement process. The P3 Authority requires the consent of the line agencies to move forward with any project.

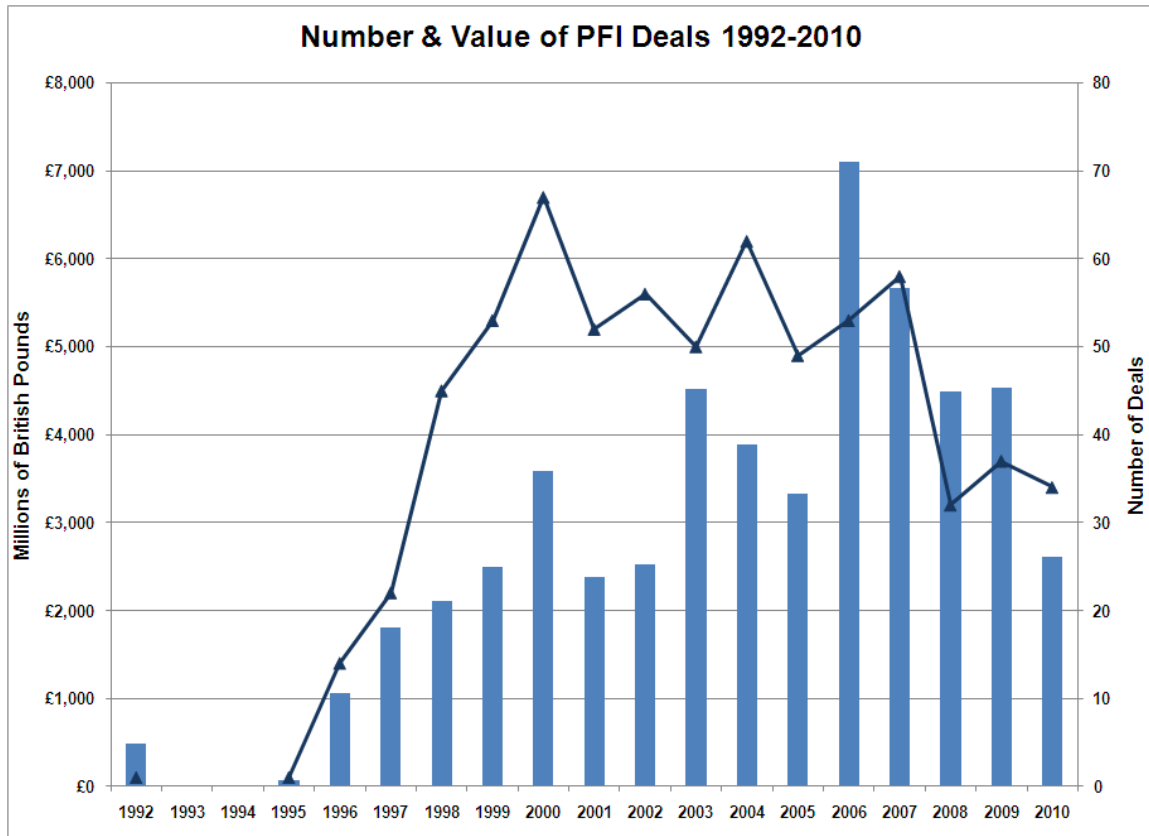
The GDPR has awarded two projects to date. The first one was the concession of the PR22 toll road. The other project is for construction/refurbishment of approximately 100 public schools which is in the process of being awarded in several procurement packages. The Authority's pipeline includes a gas pipeline, new water/wastewater projects, the concession of PR's airport, provision of new correctional facilities, a 40km extension of the PR22 toll road.

Partnerships United Kingdom

The United Kingdom's Private Finance Initiative (PFI) is by far the world's largest P3 program. From 1992-2010, approximately 700 PFI projects reached financial close at a total capital cost of approximately £53 billion (roughly US\$87 billion). As can be seen in the graph below, the 1990s were really a pilot phase for the PFI and the program was rolled out in 2000 and subsequent years.

Partnerships United Kingdom (PUK) was the primary P3 agency for the UK during 2000-2010. It was a form of P3 itself, 49 percent owned by the UK Treasury and a majority owned by private investors. PUK was launched to manage the rollout of the PFI program which began to overwhelm its predecessor, the UK Treasury PFI Taskforce. Private investment and healthy revenue from transaction advice enabled PUK to hire highly skilled private sector talent to usher the P3 process. Government appropriations covered certain activities, such as a Help Desk for agencies that required advice on project preparation and the P3 process. PUK was phased out in 2010-11 and its functions brought back within the Treasury.

During its tenure, PUK provided a range of services, from serving as a resource center and developing guidance documents, to providing specific transaction advice, approving projects and managing contracts. It did not provide funding or financing for projects. All UK PFI projects are availability payment-based models relying on central government transfers to the appropriate authorities to make payments to private partners.



Standardized Contracts

The UK Treasury developed Standardized PFI Contracts (SoPC) for use by public authorities. The SoPC is currently in its fourth version and is available online at: http://www.hm-treasury.gov.uk/ppp_standardised_contracts.htm

Guidance Documents

The UK Treasury Operational Taskforce issued the following Guidance material:

Operational Taskforce Note 1: Benchmarking and Market Testing Guidance

- This guidance is designed to support public sector PFI contract managers in achieving value for money through benchmarking and market testing of soft services.

Operational Taskforce Note 2: Project Transition Guidance

- This guidance is designed to support project and contract managers in the transition from procurement to operation.

Operational Taskforce Note 3: Variations Protocol for Operational Projects (entered into prior to Standardisation of PFI Contracts version 4)

- This protocol is to help public sector authorities with PFI contracts to put in place a voluntary protocol for managing variations during the operational phase of their PFI projects.

Operational Taskforce Note 4: Contract Expiry Guidance

- This guidance is designed to assist public sector Contract Managers in managing the transition from a PFI Contract to whatever new arrangement may be set up to succeed it.

In addition to standardized contracts and Taskforce Notes, the UK Treasury issued the following Additional Guidance for PFI projects:

- Section 1 - Value for Money Guidance
- Section 2 - Operational Taskforce Guidance
- Section 3 - Finance Guidance
- Section 4 - Treasury Taskforce Technical Notes
- Section 5 - General Guidance

Partnerships Victoria

Partnerships Victoria was established within the Treasury of Victoria in 1999. It has managed the development and execution of 21 P3 projects with a total value of approximately \$21 billion in the health, water/wastewater, corrections, transportation and other sectors.

The Partnerships Victoria framework consists of policies, guidelines, technical notes and advisory notes. The original framework governed project development and implementation from 2000-2008, when the National P3 Policy and Guidelines were introduced. The original framework included the following:

A. Policies

1. Partnerships Victoria Policy, 2000
2. Contract Management Policy, 2003
3. NMU Water Authority Approval Process for Partnership Victoria Projects, 2001
4. Public Disclosure Policies, 2007

B. Guidelines

1. Practitioners' Guide June, 2001
2. Risk Allocation and Contractual Issues June, 2001
3. Contract Management Guide June, 2003
4. Updated Standard Commercial Principles, April 2008

C. Technical Notes

1. Public Sector Comparator, June 2001
2. Public Sector Comparator Supplementary Technical Note, July 2003
3. Use of Discount Rates in the Partnerships Victoria Process, July 2003

D. Advisory Notes

1. Determining the Inflation Rate, August 2005

2. Managing Interest Rate Risk, August 2005
3. Disclosure and Management of Conflict of Interest, October 2005
4. Interactive Tender Process, October 2005

The Partnerships Victoria framework requires compliance with the Australian National P3 Policy and Guidelines and the Partnership Victoria Requirements and Annexures. The Annexures include guidelines on the following topics:

- Commercial Principles
- Discount Rate Inputs
- Inflation Rate
- Public Sector Comparator
- Public Interest
- Project Summary
- NMU Streamlined Approvals

Partnerships British Columbia

Partnerships British Columbia (BC) is a private company wholly owned by the Province of British Columbia that reports to the Minister of Finance as its shareholder. Its mandate is to:

- Plan and structure partnership delivery solutions for public infrastructure which are expected to achieve value for money;
- Successfully implement partnership delivery solutions for public infrastructure through leadership in procurement, practices and market development; and
- Maintain a self-sustaining organization and provide added value to an increasingly diverse client base.

Its core business areas are summarized in the table below. Since its establishment in 2002, Partnerships BC has implemented 35 projects with a capital cost of approximately \$25 billion with approximately \$5 billion in private financing.

Partnerships BC Core Business Areas		
Business Planning	Procurement Process	Post-Financial Close
Early Project Screening Concept Plans Procurement Options Assessment Business Case <ul style="list-style-type: none"> • Market Sounding • Quantitative Analysis • Risk Analysis • Multiple Criteria Analysis • Procurement Options Analysis 	Procurement Management Evaluation Management Contract Negotiations Service Integration <ul style="list-style-type: none"> • Consultant Reporting Project Reporting	Design and construction phase advice and governance (e.g. support during design development phase) Operations phase advice (e.g. negotiating change order; due diligence for change; lessons learned reviews)
Source: Partnerships BC Service Plan 2011/12 – 2013/14		

Guidance Documents Issued by Partnerships BC

- Discussion Paper: Methodology for Quantitative Procurement Options Analysis, January 2010
- Procurement Related Disclosure for Public Private Partnerships, January 2010
- Canadian Council for Public-Private Partnerships - Partnerships BC 2005-06 Consultation Outcomes, December 2006
- Risk Management in Public Private Partnerships, July 2006

South Africa's Municipal Infrastructure Investment Unit (MIIU)

South Africa implemented a centralized approach to managing municipal P3s, despite decentralized budgetary distributions. While municipal governments still retained the power to initiate or reject P3 projects, the Municipal Infrastructure Investment Unit (MIIU) played a large role in providing technical expertise that all but the most sophisticated municipal governments would be hard pressed to acquire. Due to the overlapping legislation of the Municipal Systems Act and the Municipal Finance Management Act, municipalities were often forced to conduct multiple feasibility studies of differing technical requirements on one project. The power of MIIU to aid municipal governments in navigating these legal requirements was essential in initiating municipal P3 projects. In addition, the MIIU provided grants to help conceptualize and design P3 projects; select, supervise, and evaluate local consultants; negotiate P3 contracts; and communicate with other national level stakeholders such as labor unions or relevant national government ministries. Sources of municipal funding for P3 projects included Treasury allocations through conditional shares or equitable grants, municipal tax revenues or fees from services, and other external credit guarantees. The MIIU's life spanned 1998-2006, when it was folded in to the South African Treasury's P3 Unit. The Unit still provides the same support that the MIIU did and has developed Municipal P3 Guidelines to further streamline the municipal P3 process.

India Infrastructure Project Development Fund

India's Infrastructure Project Development Fund (PDF) is a best practice in P3 programming. One of the main obstacles to infrastructure development globally is the lack of a pipeline of adequately prepared projects. The PDF was established in an attempt to resolve this problem for India. The PDF provides funding for project preparation tasks such as hiring consultants to perform feasibility studies and conduct project procurements. Line agencies prepare pre-feasibility studies of projects then submit them to the PDF for consideration. If the projects pass project screening criteria, they are approved for PDF funding. The fund was designed as a revolving facility. When projects reach financial close, they must repay the funds that were used during project preparation. Projects with a commercial orientation that are expected to generate excess revenues are required to repay 140 percent of their preparation funds. Efficiency enhancement and cost savings projects are required to repay 125 percent of their preparation funds. And, non-revenue generating projects repay only 100 percent of their preparation funds. The additional repayment helps

to cover the funds lost to projects that are not implemented. The repayment of funds is considered a project cost and rolled into the project financing.

Conclusion

P3 Authorities have been critical to the success of P3 programs around the world. The standardization of the approach to P3 project development and execution benefits the public sector by increasing transparency and establishing clear evaluation criteria and the private sector by streamlining the process and creating a one-stop-shop for bidders, lenders and investors. As the P3 trend in the US grows and states seek to roll out their P3 programs, they would benefit from reviewing the experience of other countries and establishing P3 Authorities based on international best practices.