

APPENDIX I-6: TREND ANALYSIS – PUBLIC-PRIVATE PARTNERSHIPS (P3S) IN FREIGHT

Trend Statement

While there are few Public-Private Partnerships (P3s) in the United States (U.S.) and even fewer freight related P3s, there is a growing interest in using alternative forms of financing for future freight projects. Dedicated P3 offices allow for specialization in P3 project development that could potentially include freight projects.

Background

P3s are contractual agreements formed between a public sponsor and a private sector entity that allow for greater private sector participation in the delivery and financing of transportation projects. Public sponsors are turning to P3s as other sources of revenue decline.

While public sponsors may work jointly with private entities on freight projects (this is especially common on rail projects like Southern California’s recently completed Colton Crossing grade separation), a P3 involves more than a public sponsor working with a private owner. In a true public-private partnership, the public sponsor assigns some responsibility to a private firm. P3s also involve some sort of third-party financing, usually a combination of equity and debt, as well as ownership transfer (if only temporarily) from a public owner to a private entity.

Delaware’s rehabilitation of Shellpot Bridge, a historic railroad bridge, is most often cited as an example of a freight P3. While the state did work with private owners to assume control of and rebuild the bridge, there was no private financing of any kind (i.e. “Wall Street” was uninvolved).

Freight System Implications

At their core, P3s are about responsibility transfer. When a public sponsor asks for bids to design (D) and build (B) a bridge, the agreement that comes from the bidding process is known as a DB. DB is the most basic form of P3 and these kinds of projects are now often referred to as being “traditionally financed.” In order for a project to be a true P3 some other responsibility for the facility needs to be transferred, e.g. financing (F), operations (O), and/or maintenance (M).

At their best, P3s have concrete benefits that accrue to the public sponsor. For example, a P3 contract might specify that all cost overruns are to be paid by the private firm. At their worst, private investors lose their investment in a bankruptcy such as State Route-125, South Bay Expressway in San Diego County now operated by San Diego Association of Governments, and public sponsors are forced to bailout a project. For example, if the forecasted use of a facility was higher than the actual usage for a facility built as a P3, the user-fee revenue may be insufficient to service the debt.

The most often cited benefits of P3 are that private firms, 1) are more efficient than government and are better equipped to deliver projects faster and 2) have access to capital unavailable to governments which allows projects to be “built today.” A traditionally-financed project may have to be delayed pending future revenues.

Private firms that invest in P3 are solely interested in turning a profit. There are two ways that facilities built as P3s can repay their initial capital cost. One is to attach a revenue source (such as a user fee or a toll) to the new facility. The other is from payments (usually deferred until the facility is open and operating) known as availability payments. In some ways, projects that directly benefit commercial vehicles may be more suited to P3s than those that primarily benefit passenger vehicles. Shippers may be more willing to accept a toll if the expected benefits of a project outweigh the pecuniary cost of the fee. P3s are typically used in situations where there is requisite project scale and complexity, both in terms of sheer dollar value and the difficulty of the project's engineering and implementation.

Case Study

The Port of Miami tunnel is an example of a DBFOM project. An estimated 16,000 vehicles travel to and from the port through downtown Miami streets, and trucks account for 28 percent of this traffic. Downtown congestion restricts port growth, increases port user costs and causes safety concerns. The solution is a four lane, toll-free, underwater tunnel connecting the port to adjacent freeways I-395 and I-95, bypassing downtown Miami surface streets.

Construction began in May of 2010, and the tunnel opened to the public in 2014 at an estimated capital cost of \$668.5 million. At this cost and with the risk associated with drilling a tunnel, this project was appropriate for a P3. A 35-year concession agreement was executed among Miami Access Tunnel Concessionaire LLC, Bouygues Travaux Publics and the State of Florida.

The P3 benefits Miami because the city does not have to pay any costs upfront; a private consortium is paying the cost of construction. The private partner had every incentive to open the facility on-time (or early) since they would not have been paid until trucks were actually driving through the tunnel, i.e. when the facility is *available*. The public sponsors will make annual availability payments, subject to conditions, such as the firm completing regular maintenance.

International Examples

While there is few freight P3s in the U.S., there are other examples from outside the country:

- Bremen Intermodal Facility - Bremen, Germany
- Maputo Port Renovations - Mozambique
- Port of Aqaba Expansion - Jordan
- Port of Colombo Expansion - Sri Lanka

Planning Considerations

There have been very few P3s of any kind in the U.S., but freight P3s are especially rare. Freight projects may become more suitable for P3s as users become more willing to accept tolls in exchange for tangible benefits, including time savings. P3s are typically not suitable for small projects. The places that do the most P3s have dedicated P3 offices and offer investors a wide range of investment opportunities, not just transportation projects (as is often the case in the U.S.). Offices in British Columbia and Puerto Rico are often pointed to as excellent examples.

The risk with freight P3s is there may not be the requisite usage of a dedicated freight facility to pay the cost. The forecasted usage of Atlanta's proposed truck lanes was insufficient to generate enough revenue to cover the cost of constructing the lanes.

Despite the potential benefits, P3s involve complex negotiations with private firms and sometimes protracted contract negotiations. California has had problems with P3s in the past, namely the bankruptcy of SR-125, which was a creation of a toll roll for the southern portion of the route (i.e. the South Bay Expressway). Therefore, it is crucial that public sponsors look at this innovative form of financing with caution and scrutiny.

Resources

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Gaffey, David W. (2010) Outsourcing Infrastructure: Expanding the Use of Public-Private Partnerships in The United States. *Public Contract Law Journal*. Volume 39 pp. 351-373.

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