

# PUBLIC-PRIVATE PARTNERSHIPS

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## P3



N&C Consulting  
Government Procurement & Compliance



# WHAT IS P3

**NIGP – a broad term used to describe public facility and infrastructure contracts.**

**Includes components of design and build into a single contract**

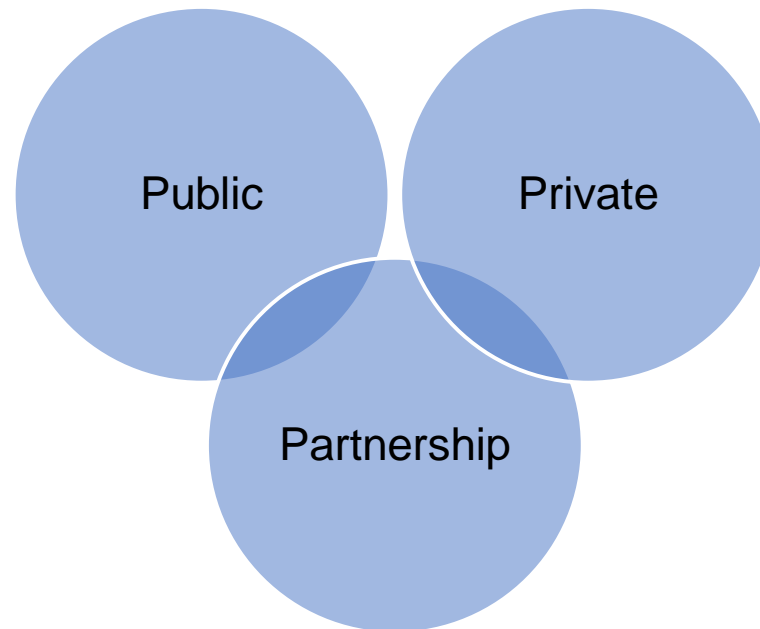
- **Construction**
- **Renovation**
- **Rehabilitation**
- **Financing**
- **Operations**
- **Maintenance**
- **Management**
- **Services**

# WHAT IS P3

**A contractual relationship between a government and a private sector entity whereby, “the skills and assets of each sector are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.”**

# WHAT IS P3

**Agreement between Responsible Governmental Entity (RGE) and private sector entity allowing for skills and assets of each to be shared in delivering a service or facility**



# PURPOSE OF P3

- **Beyond established procurement methods**
- **Shortens delivery time**
- **Encourages innovation**
- **Provides for less costly delivery**
- **Provide transparency & accountability**
- **Assure competition**
- **Provide checks & balances**

# KNOW YOUR STATE LAWS

TEXAS has multiple statutes covering:

Transportation

Government Code

Hospital Districts

Local Government Code

SE Texas Biotechnology  
Park

Real Estate

FLORDIA has two P3 statutes

- State Transportation
- Local Governments

# ACRONYMS

## **Operations & Maintenance (OM)**

the private partner operates and maintains a public facility or asset, the government partner owns the public facility or asset.

## **Design-Build (DB)**

the private partner both designs and builds a facility or asset, the government partner provides the funding and owns and operates the facility or asset.

## **Design-Build-Operate (DBO)**

the private partner designs, builds, and operates the facility or asset, the government partner provides the funding and owns the facility or asset.

# ACRONYMS

## **Design-Build-Operate-Transfer (DBOT)**

the private partner designs, builds, and operates a facility or asset and transfers ownership to the government partner.

## **Build-Transfer-Operate (BTO)**

the private partner constructs a facility or asset and transfers title to the government partner. The public partner leases the facility or asset back to the private partner under a long term contract.

## **Build-Own-Transfer-Operate (BOTO)**

the private partner builds, owns, and operates a facility or asset for a period of time at which point ownership is transferred free of charge to the government partner.



# ACRONYMS

## **Build Lease-Transfer-Maintain (BLTM)**

the private partner designs, finances, and builds a facility or asset and leases it to the government partner for a predetermined period for a predetermined price.

## **Lease-Renovate-Operate-Transfer (LROT)**

the private partner renovates a facility or asset. The government partner grants the private partner a concession to operate the facility or asset for a specified period of time and to charge a fee for the service or activity.

## **Design-Build-Finance-Operate-Maintain (DBFOM)**

the private partner designs, builds, finances, operates, and maintains for a period time (e.g. 25 years), a facility or asset, the government partner, or users, provide the operating funds during the life of the facility or asset during the term of contract.

# EXAMPLES

**Texas** – capital complex master plan – 3 phases – Dallas water garden – mixed use development around transit station – inclusive park – Children’s museum - broadband high speed internet

**California** – 4.1 miles of street car line – student housing – city wide fiber network – LA civic center

**Florida** – rental and Senior housing – convention center and hotel – city golf course – historical house revitalization - driverless shuttle project – Town square

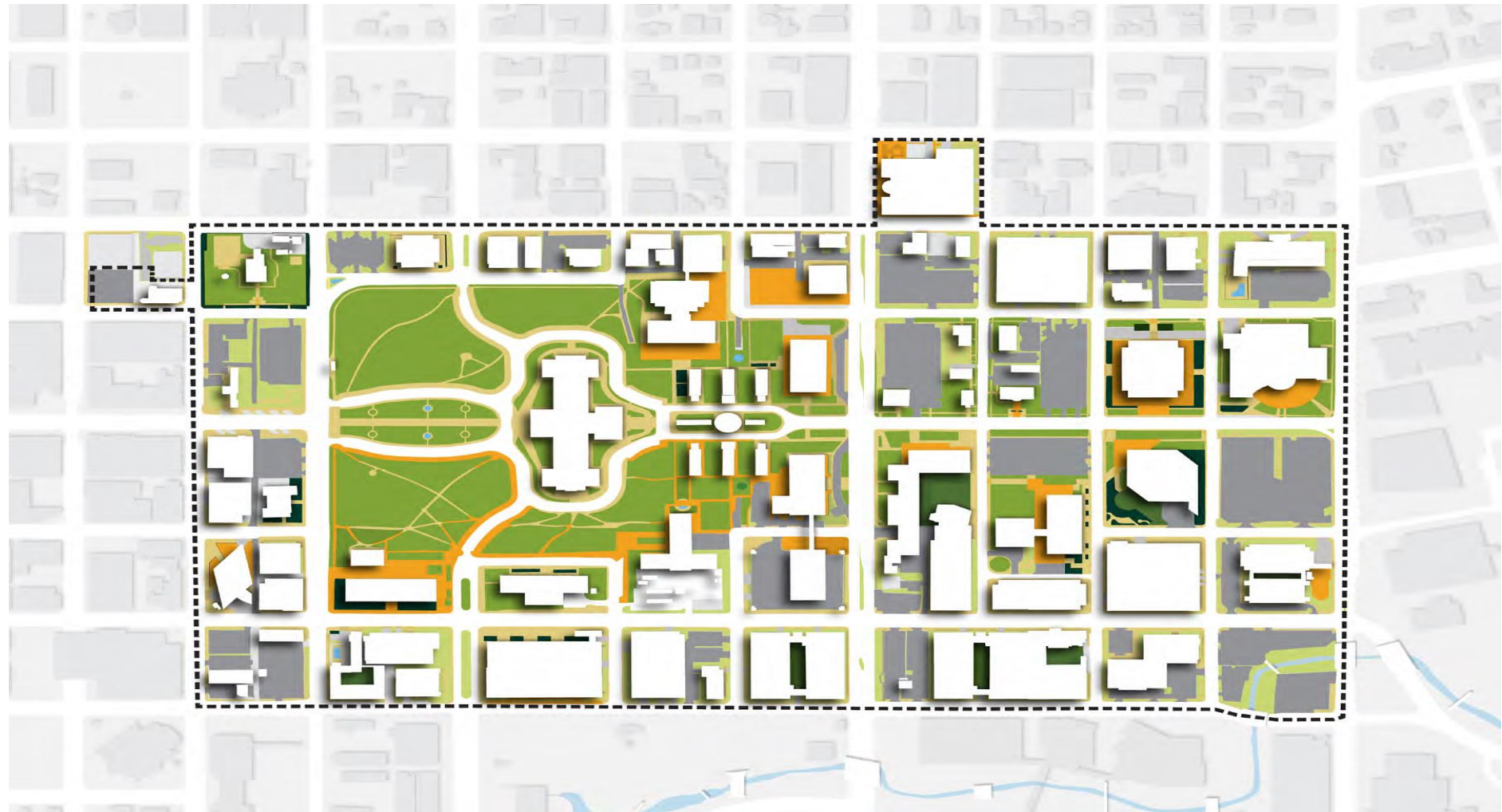
**Federal Government** – proposed P3 office – NASA exploration to, around and beyond the Moon

**Infrastructure** - highways, airports, railroads, bridges and tunnels, water and wastewater facilities,

**Other** – development of former mall – full time town funded child care – county morgue – shooting range – tourism study – clean up of lake – 200 bed homeless shelter – 16 story downtown hotel - school buildings – prisons - entertainment or sports facilities.

# EXAMPLES

Texas – capital complex master plan



# EXAMPLES

California –LA civic center



# EXAMPLES

**Infrastructure** - highways, airports, railroads, bridges and tunnels, water and wastewater facilities



# WHY PUBLIC SECTOR CONSIDERS

1. **Contractors involved during design concept of project**
  - Private sector expertise
2. **Investors have their own money committed**
3. **Contracted long-term maintenance**
4. **Risk transferred to private sector**
5. **Way for governments to finance investments and operations**
  - Debt constraints obligations
  - Government is not financing, building and maintenance costs

# WHY PUBLIC SECTOR CONSIDERS

## 6. Value for Money (VfM)

- Private sector profit driven – less tolerant of cost over- runs, delays
- On Time - Within Budget
- Life-cycle cost considerations – better materials – cutting edge technology

## 7. Non-inherently government assets

- Monetize said assets without giving up public ownership

## 8. Accelerated infrastructure maintenance & construction

## WHY PUBLIC SECTOR DOES NOT CONSIDER

Lack of expertise

P3 Complexity

Lack of institutionalization

High transaction costs



# RISKS

## PUBLIC

**Long-term contracts constrain Boards**

**Risk compensation to private sector**

**Demand risks - must pay partner if revenue projections not met**

**Highly complex – ambiguous/confusing**

**Lack of competition**

**Lack of expertise - evaluation, costs, progress**

**Incomplete contracts**

## PRIVATE

**Construction risks**

**Compliance risks**

**Demand risks**

**Due diligence pre-project**

**Time and money**

# SHARED RISKS

A P3 contract allocates risks to the party (the government or the contractor) best able to manage the risks and may assign a higher level of responsibility for resources and processes to the partner.

Demand –  
analysis  
unreliable, faulty

Service  
Interruption –  
failure to  
perform

Financial -

Political – stake-  
holders not  
satisfied

Force Majeure

# REWARDS

Needs, expertise, innovation, risk sharing complements each other for a better project

## PUBLIC

Transfers costs – cost saving  
Funds redirected to other areas  
Private efficiency/expertise  
One-time or recurring payment  
Profit sharing  
Equal or better quality

## PRIVATE

Long-term, recurring revenue source  
Incentive to deliver on-time and in budget  
Early completion bonus

# WHAT DID NOT WORK AND WHY

**Chicago Parking Meters** – leased parking meter management for 75 years for 1.15 Billion. But when the streets were closed no revenue came in and the city had to compensate the company for lost revenue

**Indiana Toll Road** – Waived fees to evacuate people due to flooding. Had to pay company \$447,000.

**Massachusetts Solid Waste Management** – State lead 23 communities to sign a 20 year contract. Estimated tonnage and set minimum. Never realized. Communities paying for disposal of trash that did not exist.

If private partner is just in for the money or the stated vision and goals are opposing – run

# WHAT DID WORK

## Texas State Highway 130

- DBFOM
- \$1.36B
- \$200M private equity
- \$1.1B – 5 banks/federal loan
- 50 years
- Tolls
- Texas will receive \$125M during the agreement
- Private partner wanted to up speed limit to 85 mph – paid Texas \$100M to do it



# WHAT TO CONSIDER

- Another tool – never money out of thin air
- P3s are technically, economically, politically, and contractually difficult arrangements
- Who are ALL the partners (consortiums + banks)
- WIIFM (or really your constituents)
- Establishment and management is fairly expensive and risky
- Who gets paid and how - realistic
- What is partner(s) motivation
- Private sector wants project 50 – 100 million and up

# A DIFFERENT RELATIONSHIP



Different roles and responsibilities for each partner

Different procurement processes and tools

Long, long, long-term contracts

Unsolicited proposals

Size that will attract private sector partners

Potentially higher risks for both parties

No progress payments

# PROCUREMENT PROCESS

**RFQ followed by RFP/Competitive Dialogue/Invitation to Negotiate**

No time line or scope limits on negotiations

**Plan for all phases**

Pre-contract

Selection

Post-contract

**Risk Assessment**

Identify

Which partner assumes and how

Specific mitigation in writing



# PROCUREMENT PROCESS



**Written to select the best partner**

\$ Qualifications/Experience

\$ Financial Capacity

\$ Risk Transfer

\$ Litigation and Controversy

\$ Capable of Long-Term Relationship

# SOLICITATION CONTAINS

- Clearly defined scope and targeted outcomes
- Detailed descriptions of responsibilities, risk, benefits for both
- Performance Measures
- Who pays for what and when
- Identifiable revenue stream to retire investment
- Rate of return for both
- Best value evaluation criteria – value for money calculator (VfM)
- Retain options & opportunities for contract modification through out  
LIFE OF CONTRACT
- Clearly defined method of dispute resolution
- Termination clause with specific remedies

# PERFORMANCE MEASURES

applied to private partner

- Performance measurement system
- Performance data collection and evaluation process
- Measurement standards
- How penalties and/or incentives applied
- Payment amount and how/when made
- Financing procedures

# CONTRACT ADMINISTRATION

- Contract management plan – detailed and specific
- Manage by outcomes
- Who specifically is responsible for each performance measure
- Detailed time-line that includes payments made
- Explicit communication plan that fosters partnership behavior
- Feedback plan from all stakeholders

# BEST PRACTICES for PROCUREMENT

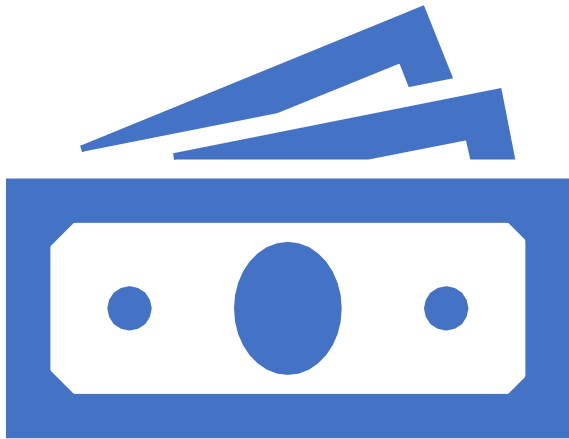
- Implement separate Policy and Procedures
  - Solicited and unsolicited
- Healthy competition
- Transparent
- Communication
- Know when you need a SME
- Know who are ALL stakeholders
- Training
- Dedicated team from planning through administration

# LESSONS LEARNED

- Standardize P&P whenever and wherever possible
- Evaluate whether P3 process would invite or discourage competition
- Manage relationships instead of contract
- Get private sector partner(s) involved early
- Limit or eliminate mandates – maximize flexibility
- Document decisions from day one
- Write clauses about lost revenue due to circumstances – share losses
- Avoid Deal Drift

# BEST VALUE – AEP #14

“Best Value” means a technique in a competitive solicitation process which emphasizes value over price and permits the evaluation of criteria such as qualifications, experience and performance data to determine the best overall value to the Agency.



## NO FREE LUNCH

When private partner offers to pay up front costs it is easy to lose sight of reality

Costs must eventually be paid

Benefits must be realistic

P3 is a useful TOOL for government and private partners

# RESOURCES

Strategic Partnerships, Mary Scott Nabers

[www.spartnerships.com](http://www.spartnerships.com)

National Council for Public-Private Partnerships

“Success with Public-Private Partnerships”, Dr. Joe Saviak

“Contracting & Public Private Partnerships:”, Dr. Joe Saviak, Dr. Lawrence Martin

Governing, “Public-Private Partnerships are Popular”, Ryan Holeywell

“Private Capital, Public Good”, by Patrick Sabol and Robert Puentes

Brookings :Private Capital, Public Good

“Public Private Partnership Pros & Cons”, Juan Rodriguez

NIGP Business Council Study

State of Texas Government Code 2267 <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2267.htm>



# THANK YOU

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# Competitive Dialogue/ITN

European Union (EU) preferred procurement method for all types of P3

A semi-structured, multi-phase process allowing simultaneous discussions and negotiations with multiple potential contractors.

- Basis for award is MEAT (most economically advantageous tender)
- Improve communications throughout entire process
- Designed for particularly complex contracts

ITN = Invitation to Negotiate (Florida)

Texas process may include a RFQ followed by RFP(s) and once narrowed to X number of potential partners, perhaps a BAFO