

Public-Private Partnerships (P3's)

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Public Private Partnerships - Agenda

- What and why P3's?
- Design-Build and Concession Differences
- P3 Request For Proposal
- Alternative Technical Concepts (ATC)
- Scoring
- Maintenance & Handback Requirements
- Oversight Roles
 - Concessionaire
 - Owner (Department)
 - Owner Oversight Engineer
- Concerns

What is a P3?

- An agreement between public and private sectors partners which allow more private sector participation than a traditional contract.
- The agreements usually involve a government agency contracting with a private entity to renovate, construct, operate, maintain and/or manage a facility or system.

Why consider P3's?

- Risks can be transferred
- Additional project funding
- Faster delivery of projects if financial constraints
- High expectations of our elected officials "On Budget and On Time"
- Per Florida Statute 334.30(1), there is a public need for the rapid construction of safe and efficient transportation facilities for the purpose of travel within the State.

Factors Driving Public Sector Interest in P3's

- Growing burden of transportation demand/additional capacity needs
- Dwindling transportation funds
- Competition for scarce funding
- Rising cost of new construction
- Rising Operation and Maintenance obligations
- Need for innovative and new solutions

Some Accepted P3 Delivery Types

- Asset Sale
- Full Service Long-Term Concession or Lease
- Multimodal Agreement (Public-Public Partnership)
- Build-Own-Operate (BOO)
- Build-Own-Operate-Transfer (BOOT)
- Build-Transfer-Operate (BTO)
- Build-Operate-Transfer (BOT)
- Design-Build-Finance-Operate (DBFO)
- Design-Build-Operate-Maintain (DBOM)
- Design-Build with Warranty (DB-W)
- Design-Build (DB)
- Operate and Maintenance Contract
- Fee-Based Contract Services

Project Leases

- Generally, in exchange for a sizable up-front payment, the private entity partner operates, maintains, and collects toll revenues from the operations on an existing road and/or bridge through a long term lease. Toll rate increases are limited to certain economic measures, such as consumer price index.

Availability Payments

- Is a payment mechanism of a P3 in which a private entity designs, builds, finances, and usually maintains and operates a facility. The public entity agrees to make regular payments to the private party based on the facility's availability and level of service achieved for operations and maintenance.

Shadow Tolling

- Is similar to availability payments in that a private entity agrees to design, construct, finance, operate and maintain a facility. However, instead of compensating the private entity through availability payments, the private entity receives a payment based on traffic volumes and service levels. The private sector takes the risk of traffic revenue, project delivery, maintenance, and operations.

Private Sector Views on P3's

- Procurement process should be fair, transparent, and efficient, attract highly qualified bidders, maintain confidentiality when required, and provide consistent information
- Environmental studies should be completed
- Proposers want known contract and standards

PPP Concession Model Characteristics

- Requires a dedicated revenue source (Tolling) for repayment
- Long Term Lease Agreement
- Public sector retains ownership and oversight
- Typically transfer of traffic and revenue risk
- Transfer of construction and operating risk with some “outs”
- Generally large projects: \$250 million plus

Public Private Partnerships

- The FDOT is using P3's to deliver highway projects.
 - Strong tolling program with Florida Turnpike Enterprise helps to use P3's as a tool.
- In summary, P3 projects tend to be large, complex, and expensive and usually include a design/build component and often include more phases such as operations and maintenance.

Several States have done P3 projects

- Texas
- Virginia
- Indiana - Indiana Toll Highway - P3 Project Lease Agreement
- Illinois - City of Chicago- Skyway Bridge, P3 Project Lease Agreement

FDOT has several P3 Concession type projects

- Port of Miami Tunnel; DBFOM - \$700 million
- I-595; DBFOM - \$1.35 billion construction cost
- First Coast Outer Beltway (FCOB); DBFOM - \$2 billion
- Alligator Alley /I-75 – P3 Lease Agreement
- Several D/B Finance Projects which fall under P3's

FDOT Central Office Task Teams

- Finance/Legal
- Procurement
- Engineering and Operations
- These teams were developed to help “Mainstream P3 projects”.

Engineering and Operations Task Team

- The Engineering and Operations task team consists of various disciplines within the Department.
- The team is moving forward by developing Policies and Procedures and boilerplate documents (i.e. RFQ and RFP) to assist in the development of projects.
- The documents will be “living” and will change as we continue to learn lessons from P3 projects.

Public Private Partnerships

- FDOT has extensive experience in D/B
- FDOT has completed over 100 D/B projects to date
- FDOT has developed D/B documents
- FDOT has done D/B on bridge replacements, roadway widening, milling and resurfacing, guardrail, bascule bridge repair, ITS, bridge painting, etc...

Differences Between Design-Build and Concession

	Design-Build	Concession
Financing	<i>Provided by Owner</i>	<i>Provides Own Financing</i>
Equity	<i>Provided by Owner</i>	<i>Provides Own Equity</i>
Use of Public Funds	<i>Maximizes</i>	<i>Minimizes</i>
Development/Technical		✓
Financial		✓
Political	✓	✓

Differences Between Design-Build and Concession

- Design-Build Contract Included Within the Concession Agreement
- Long Term Lease; 30 to 99 years, per Florida Statute limited to 50 years w/o Secretary's approval.
- Concessionaire Provides Long Term Operations and Maintenance
- Owner
 - Oversight Engineer for Concession Agreement

P3 – Request for Qualifications (RFQ)

- Each P3 project goes through a RFQ process to determine the short listed proposers
- In the RFQ process each proposer submits a Statement of Qualifications (SOQ)
- Each SOQ is graded to determine the short list
- The Department may short list three or four proposers

P3 – The RFP Document

- Instructions to Proposers
- Concession Agreement and Appendices
- Technical Requirements

Instructions to Proposers

Consists of some of the following areas:

- Proposal Schedule
- Conduct
- FDOT Qualification of Construction and Design Firms
- Procurement Process
- Proposal content and Submittal Requirements
- Evaluation Process and Criteria
- Award and Execution
- Protests

Concession Agreement and Appendices

Consists of some of the following areas:

- Concession Term
- FDOT review and oversight
- Design and Construction with Concessionaire
- Operations and Maintenance
- Contracting and labor practices
- Financial models
- Project Financing
- Insurance
- Warranties
- Default
- Termination
- Federal Requirements
- Dispute Resolution

Concession Agreements

- Used for new projects (greenfield).
- Used for modifications to existing facilities (brownfield) through addition of high-occupancy or managed toll lanes
- A project could have a combination of each of these

Technical Requirements

- The technical requirements developed by the various design disciplines within the Department (i.e. Roadway Design, Pavements, Drainage, Structures, Traffic Operations, Construction, etc....)
- The technical requirements will cover the design and construction criteria required for the project.

Alternative Technical Concepts (ATC)

- The ATC process allows Proposers to incorporate innovation, flexibility, creativity and construction time and cost savings into the design and construction of a project and to obtain the best value for the public.
- FDOT standards and specifications are baseline
- ATC's are accepted by the Department at their discretion.

ATC's continued

- A concept is NOT an ATC if it reduces quality, performance, scope, or reliability.
- Strict confidentiality shall be maintained during the ATC review process through meetings.

ATC Advantages

- Promotes innovation and taps expertise
- Can result in reduction of project costs
- Justifies the stipend for unsuccessful Proposers when their ideas can be incorporated (SEP-14 from FHWA).
- Provides the Owner with new ideas, techniques, or materials to use in future projects

ATC Disadvantages

- Be careful not to accept proposals that cut the scope (i.e. drop lanes, reduce shoulder widths, delete components)
- Can make comparison of proposals somewhat difficult
- Typically adds extra month to the procurement process

Scoring

- The Department appoints a multidisciplinary team to review proposals with Technical Subcommittees.
- Technical proposals may be evaluated in the following areas: financial condition/capabilities/ sufficient financing, project development plan, technical solutions, quality management, etc...

Scoring

- The scoring will be based on the engineering and financial aspects, 50% score on engineering and 50% on financial.
- Adjectival scoring with five levels, poor through excellent.

Procurement Process

- The procurement process takes a long time from advertisement of the RFQ to Concession Contract
- I-595 – over one year
- FCOB - over one year

Stipends

- The Department is open to putting stipends on P3 projects to help with the competition and partially compensate unsuccessful proposers preparation costs.
 - I-595 \$2 million
 - FCOB \$1 million

Key Technical Terms

- Renewal Work – maintenance, reconstruction, repair, etc... during the Operating Period
 - Performance and Measurement Requirements
 - 5 year Renewal Work Plan/Schedule
- Capacity Improvements
 - Level of Service
 - Speed Measurement
- Handback Requirements
 - Residual Life Methodology
 - Inspections

Maintenance and Handback Requirements:

Cover some of the following areas:

- Customer Response
- Slopes
- Incident response
- Pavement Markings
- Congestion
- Smoothness
- Walls
- Fences
- Lighting
- Structures
- Signals
- ITS

Maintenance Requirements

- FDOT has extensive experience in Asset Management and Asset Maintenance Contracts.
- Asset Maintenance Contract criteria is included
- However, the Departments Asset Maintenance criteria is not all inclusive (i.e. pavement, bridge inspection)

Handback Requirements

- The terms, conditions, requirements and procedures governing the condition in which the Concessionaire is to deliver the Project Right-of-Way to the Owner upon expiration or earlier termination of the Agreement and Lease, as set forth in the Technical Requirements.
- Condition, performance, and residual life inspections
 - First Inspection – 48 to 60 months before Handback
 - Second Inspection – 12 and 24 months before Handback
 - Final Inspection – Not later than 60 days before Handback

Concessionaire Oversight Role

- Complies with the Approved Project Management Plan (PMP)
- Complies with all Contract Requirements
- Signs and Seals all Engineering Drawings
- Self-Reports on Non-Compliance
- Conducts Inspection Testing and Acceptance

Owner Oversight Role



Monitors Compliance with Concession Agreement

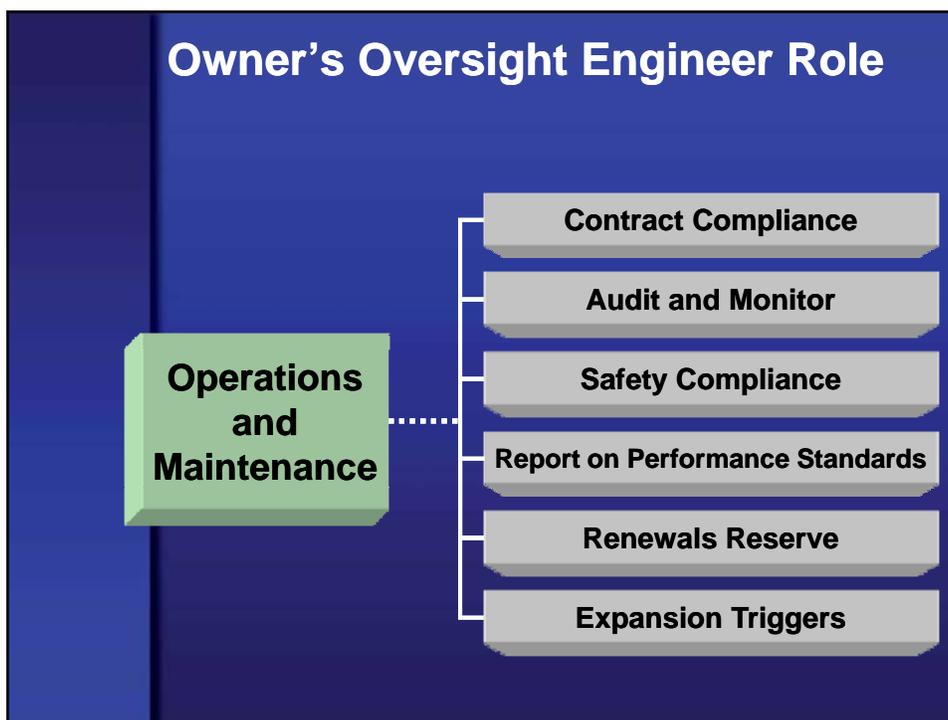
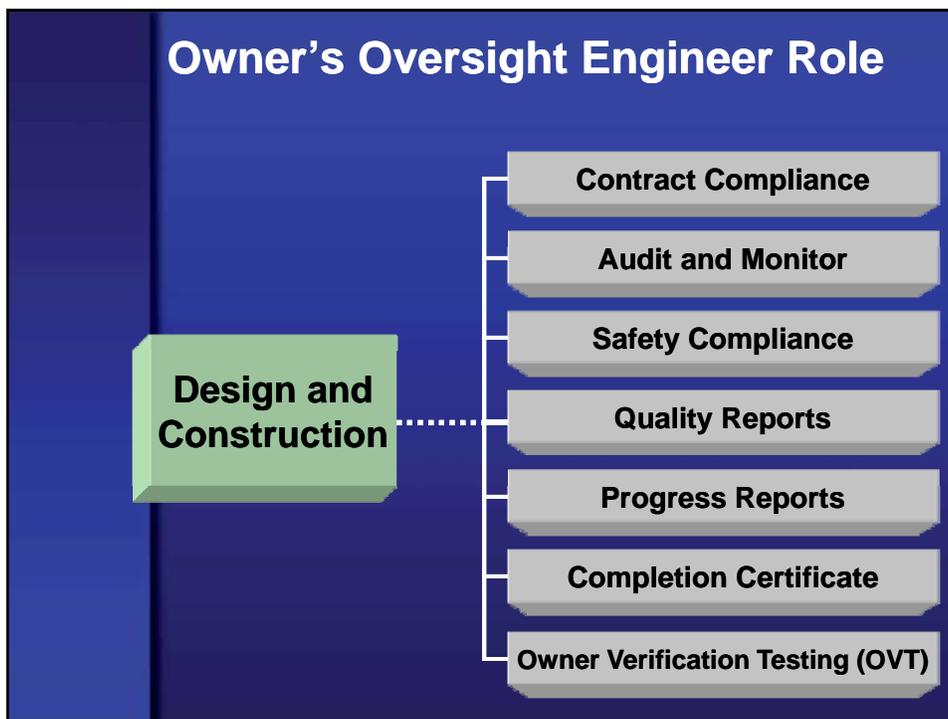
- Conformance to the Management Plans
- Public and End User Safety
- Monitors Project Performance Over Term of Concession Agreement
- Handback Requirements



Monitors the Owner Oversight Engineer

Owner Oversight Philosophy

- Materials Testing
 - Contractor - Quality Control (QC)
 - Concessionaire - CEI Verification Testing (VT)
 - Department - Independent Verification and Independent Assurance (IV and IA)
- Owner reserves the right to perform independent tests



Owner's Oversight Engineer Role

- Oversight Engineer **DOES NOT**
 - Approve any Design Document
 - Review in Detail Design or Drawings
 - Other than Random Audit Review
 - Provide Advice or Direction to Concessionaire through “Over the Shoulder Review”
 - Comment on Incomplete or Unsealed Documents
 - Comment Other Than Through Review Procedure or PMP

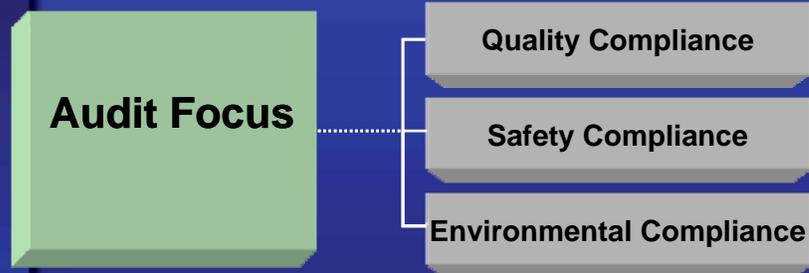
Owner's Oversight Engineer Role

- Oversight Engineer **DOES NOT**
 - Approve Any Work
 - Physically Inspect or Test the Work on a Regular, Predetermined or Statistical Basis
 - Other Than Random Audit Inspections
 - Undertake Concessionaire's QA/QC role
 - Act as Arbiter in Disputes
 - Except That Oversight Engineer's Report Taken Into Account by the Dispute Resolution Board

Owner's Oversight Engineer Role

- Non-Compliance
 - Determines Non-Compliance Through Own Audit or Concessionaire Audit
 - Aware of Cure Requirements
 - Prepares Notice of Non-Compliance for Owner
 - Determines When Cure is Completed
 - Keeps Record of Number of Active Points

Oversight Engineer Role

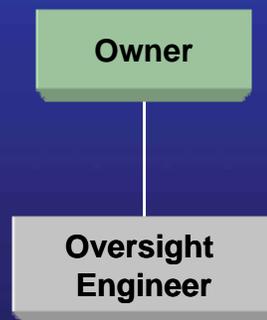


Audit Focus Ensures

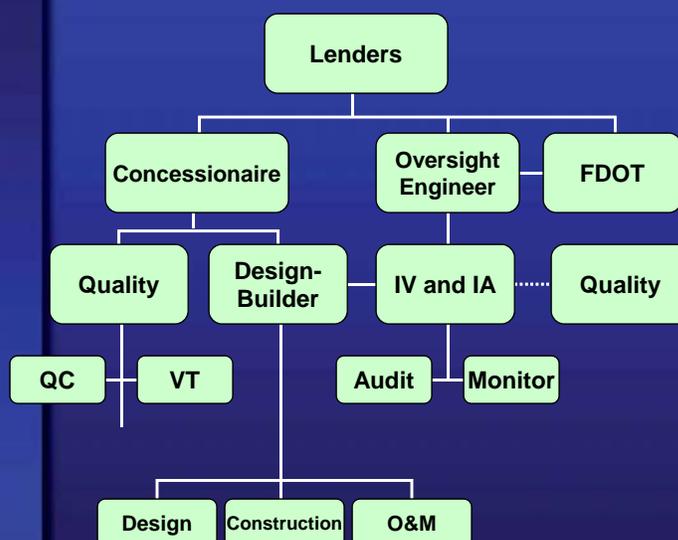
- ✓ Long Term Performance of Project
- ✓ User Satisfaction

Owner's Oversight Engineer Role

Oversight Engineer Reports to....



Oversight Roles



Next – P3 Guidelines

- The Engineering and Operations has plans to develop P3 Guidelines. The Guidelines will document the Department's activities with respect to implementing P3 projects.
- The manual will consist of sections that focus on the procurement process, from the planning phase through final completion.
- The goal is for the Department and Industry to be aware of the major considerations involved in the procurement process and will be able to promote the consistency necessary to ensure the best value statewide.

Controls

- Per the Florida Statute, limit on the Department funds to 15% of the Department's program for P3's.
- The majority of the Department's work program will be delivered by low bid project delivery system.

Concerns on P3's

- **CONCERN:** Toll increases perceived to benefit the Concessionaire at the expense of driving public
- Input of toll rates are retained per the contract. Contract has set maximum for toll rate increases.

Concerns for P3's

- **CONCERN:** Private investors will sacrifice quality for profit
- Contract must clearly define and control levels of quality desired through the agreement and oversight

Concerns for P3's

- **CONCERN:** Public sector will have to “bail out” the project if it fails plus facility can fall into disrepair
- Contract provisions require that Concessionaire meets standards operations, customer service and maintenance standards.
- Contract provisions have the right to enforce penalties and regain control of the asset if contract provisions are not met.

Concerns for P3's

- **CONCERN:** If the project is more profitable than expected only the private sector will benefit.
- Revenue can be shared, upside profit potential can be capped, share refinancing profits, early termination if profit target is reached, rebalancing of provisions

Concerns for P3's

- **CONCERN:** 50-99 years is too long to turn over public transportation facilities to private control
- Realistically, term length is often needed to reach public sector goals, but it is difficult to predict future events and circumstances over a lengthy timeframe

The success of P3's will be dependent upon the Department's committed staff and the private sector...