



A Contractor's View on P3 Procurement Structure..... *What works, what doesn't*

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Flatiron's P3 experience & perspective....

- **Canadian market:**

- Actively involved for last 6 years
- Bid 6, Won
- Combined construction value of \$4 B
- 1 completed, 2 under construction, 1 Closes next month
- Another ~\$1B project bidding on in 2009

- **US market:**

- Semi-active over last ~4 years;
- Very active in industry
- 4 projects pursued, none won. 3 have “died”
- Tracking many many more



Topics today....

- 1) Hurdles facing the P3 industry in the US
- 2) Business Decisions for a Design-Builder's on P3 projects
- 3) P3 procurement matters – *Things to Remember*



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P3's in US..... So what's the hold up?

- **Political –**
 - *Political control with Transportation bill/committee*
 - *Stimulus bill's perverse effect on P3's*
- **Public -**
 - *Public perception of foreign “ownership” taking profits overseas*
 - *Public perception of tolls as double-taxation*
 - *Existing “Asset-Sale” perception – only solving a financial issue and not bringing new capacity*
- **Legal Authority – jurisdiction by jurisdiction?**



P3's in US..... So what's the hold up?

- Little momentum -
 - Recent history of cancelled P3 procurements – *a project “melts away”*
 - Political or public policy issues (*Miami Tunnel*)
 - Legal authority or challenges (*Penn Turnpike*)
 - Permit challenges (*Foothills South, Legacy*)
 - Funding limitations or budgets (*BART's OAC, MoDOT's 800 Bridges*)
 - Financial feasibility does not work (*OR bridges*)
 - Procurement completely changed (*SH121*)



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1) Hurdles facing the P3 industry in the US

2) **Business Decisions for a Design-Builder on P3 projects**

3) P3 procurement matters – *Things to Remember*



What is the P3 market for Design-Builder's today?

- **LONG** list of potential P3 projects in the pipeline
 - CANADA is extensive and proven
 - DOT's in Texas, Georgia, North Carolina, South Carolina, Florida, Virginia, California, Detroit-Windsor, Mississippi, Colorado, Tennessee,
 - International crossing in Detroit-Windsor
 - Transit agencies – Denver, Oakland, High-speed rail, etc.
- **SHORT** list of civil contractors large enough to lead a DB team
 - Limited expertise and experience with large/mega projects
 - Limited further by those actually experienced to build vs. CM
 - Strong financial standing to satisfy lenders
 - Backlogs are very HIGH for most of these companies



Business Issue #1 – Procurement costs

- Represents a huge investment
- Extensive senior management time -
potential for lost opportunity
- Spend ~1.0 – 1.5% of project value -
(engineering, estimating, legal)
- Contractor's limited resources
 - Experienced procurement personnel
 - Business Development \$



Business Issue #2 – Higher P3 contract risks

DB type risk – and then some

- LD amount – tied to financing amount (*I-35W example - \$200k/day*)
- Force Majeure – VERY limited protection
- Site Conditions and Geotech
- Cost escalation
- Longer term warranty (*latent and patent*)
- Cashflow matters (*behind and ahead*)



P3 Decision making.....Go/No-go for a design-builder

- Long list of potential projects
- Backlogs are High
- High pre-bid costs - win, lose or draw
- Risk of project “melting away”
- Higher risk if successful

*Project
Priority List*

Project Environment is KEY for us to CHOOSE a project...i.e. an Owner’s approach can drastically affect assessment of these risks



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What makes for a good P3 procurement environment?

1) Factors of a strict “business decision” – *limited resources*

- Shortlist number (no more than 3)
- Stipend (~1% of Capital cost)
- Reasonable & industry acceptable contract terms

2) Project Certainty – *projects will not “go away”*

- Political will of leaders.... *Project has “a champion”*
- Public Sentiment is strong
- Past history of procurements (bid phase; financial close phase)
- Legal authority is definitive
- 3rd party issues are resolved



What makes for a good P3 business environment ?

3) Owner's Procurement Process –

- Owner's knowledge - P3 expertise in-house or consultants
- Consistency in documents - you know what to expect
- Impartiality and Transparency in selection - fairness
- One-on-One before/during procurement - listening to industry
- Debriefs - useful feedback



What about Performance Bonds on P3's?

- **Mismatch of concepts - Why do Owner's require bonds?**
 - Financial pre-screen of contractors.....Now handled by the lenders
 - Step-in during non-performance....delay with bond vs. immediate by lenders
 - The risk of non-performance & over-payment has been shifted to private sector
- **Lender's Security requirements mandatory.....LC's and PCG's**
 - These are both typically costs to the DB.... *passed along to Owner*
- **States' efforts to change laws with ~25% performance bonds**
 - Does not solve the issue
 - Surety typically charges full amount at full rate & full value of construction
 - Therefore, a waste of money for Owner AND limits competitors
(*limits bonding AND Letter of Credit capacities for DB contractor*)
- **Logistical Issues of a performance bond....**
 - Co-obligees of Owner and lenders.....*who is primary and call provisions*
 - Contractor provides with no contract with Owner....*not industry standard*



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