P3s as an option in the toolbox

Lessons learned and best practices from across the transportation industry

According to an Office of Management and Budget fact sheet, "... public-private partnerships ... can help advance the nation's most important, regionally significant projects." Transportation agencies realize that and are implementing P3s at a measured pace. They understand the most important lesson of P3 application: P3s do not apply to every project. Each project or transaction is different, and every funding or financing solution is equally unique. Projects may include complex, interrelated issues of design, construction, operation, maintenance, funding, financing and opportunities for innovation for which a P3 with appropriate risk transfer may be the right solution.

P3 projects, using a design-build-finance-operate-maintain structure, may use toll concessions or availability payment models. These models combine traditional funding sources, debt and private equity. They offer agencies the ability to:

- Manage projects effectively while limiting impact to existing agency resources
- Designate a single point of responsibility
- Incorporate design and construction innovations
- Expedite design and construction delivery
- Transfer life-cycle and, in the case of toll concessions, revenue risks
- Establish performance measures that will incentivize quality

Despite those benefits, P3s in U.S. transportation haven't gone mainstream. Compared with traditional sources, private equity is more expensive and does not receive the same public-debt tax advantages, even though P3s typically finance much of the project through tax-exempt bonds and federal loans with attractive interest rates, such as TIFIA. Under a P3, although the agency may structure the transaction to facilitate the use of TIFIAs and private activity bonds, the actual financing decisions and responsibilities remain with the private concessionaire, not the owner.

In addition to financing, public and political acceptance, project readiness and project scope play important roles in determining if P3s are the best delivery method to use. For those reasons and others, projects with P3 potential should be evaluated on a case-by-case basis to ensure viability before initiating procurement.

DEVELOPMENTS AND LESSONS LEARNED

Several developments over the past decade indicate the U.S. may see more transportation agencies add P3s to their cadre of project delivery options when traditional delivery is not sufficient to address the complex challenges presented by some projects.

1. Public perception is changing

Americans have a more favorable opinion of private involvement. According to a September 2017 HNTB America THINKS survey, more than seven in 10 Americans support public-private partnerships for transportation infrastructure. That number jumps to 84 percent if any surplus revenues generated by a project

are guaranteed by law to exclusively fund transportation infrastructure needs. Generally, under a P3, there may be some revenue-sharing with the state agency. It is common for the state to use any surplus revenues from the sharing arrangement to invest in transportation projects.

The America THINKS survey also found nearly three in four Americans support public-private partnerships to maintain existing assets and build new transportation infrastructure. Fifty-two percent of Americans believe a combination of government and the private sector should be responsible for funding the maintenance and building of transportation infrastructure. And, 51 percent believe private-sector investment in infrastructure should be repaid through a combination of tolls and taxes. However, the deals must be structured properly, so the public gets the best return on its investment and is protected, should the private owner or project run into financial difficulties.

HNTB experts believe the U.S. will continue to see P3s as a viable option as traditional funding sources come under pressure.

2. DOTs are savvier about when to apply P3s

U.S. departments of transportation benefit from a decade-long P3 learning curve. They now have a body of U.S.-specific experience from which to draw, and state engineers are more confident the model works. DOTs are much savvier about when to apply P3s and the different procurement options available, such as optional scope bids, fixed-price with variable scope and others.

3. P3s can resolve governance uncertainties for major projects

A lack of decision-making clarity, the deferral of key operational decisions and uncertainties regarding project governance often hinder effective delivery of the most complex projects. Proposers in a competitive P3 require a complete knowledge of operational constraints. This requires the agency to document the performance standards, risk-allocation mechanisms, operational responsibilities, rewards and penalties in a transparent manner during the procurement process. A P3 also requires the agency to analyze each project for a long-term, life-cycle perspective, ensuring the total cost of ownership is considered and that a single party is responsible for operational success.

4. More states are authorizing P3s

Thirty-seven states now have enabling legislation, with Arkansas, Nebraska, Mississippi and Tennessee being the latest to enter the arena. State acceptance and recent DOT activity may indicate another wave of highway P3s is on its way.

According to the Federal Highway Administration's website in late 2017, there have been more than 16 design-build-finance-operate-maintain toll concessions, 12 design-build-finance-operate-maintain availability payment concessions and five long-term lease concessions.

5. Worst-case scenarios surrounding concessionaire models haven't materialized

Some experts predict DOTs will execute more lease and toll concessionaire P3 contracts in the future because many of the issues surrounding the model, such as noncompete clauses and public concern about private developers receiving all the financial benefits from toll revenues while states receive nothing, have been addressed or are unfounded.

There also was concern of the concessionaire going bankrupt and leaving state taxpayers holding the "bag." To the contrary, in the P3s where concessionaires have had to seek financial help, the state was held harmless, and state taxpayers were protected.

6. P3s are demonstrating their value and versatility with other modes

HNTB is seeing U.S. airports or their governing authorities turn to P3s as an alternative way to fund, finance and provide long-term operation of $100 billion in airport infrastructure.

Large aviation P3 projects in the U.S. include LaGuardia Airport's Central Terminal project, Delta's LGA Terminals C & D P3 project, Denver International Airport's Great Hall project and Los Angeles International Airport's Automated People Mover P3 project. JetBlue Airlines is in the process of soliciting a P3 team for the expansion of JFK Terminal 5.

Not limited to large, complex terminal buildings, P3s can deliver a piece or part of the airport facility, as evidenced by JFK International Airport's IAT T4 and AirTrain Light Rail System, Denver International Airport's Great Hall and LAX's Automated People Mover P3 project. The LAX people mover program will be delivered via a design-build-finance-operate-maintain contract and features a people-mover rail system that will shuttle passengers to and from the airport, LA Metro transit, long-term parking and a consolidated rental car facility.

P3s are making inroads in transit and rail, too, as Denver Regional Transportation District has shown. Denver RTD is the most recent transit agency in the nation to successfully pursue and complete a comprehensive P3 that includes a mix of federal loans and grants and private investments. The RTD's Eagle project was successfully advanced through the Federal Transit Administration's (Penta-P) P3 pilot program. Because the Eagle commuter rail was a new rail service type and a stand-alone system, it cleared the way for a P3 procurement.

The delivery model may have a role in helping other rail and transit owners consolidate and deliver multibillion-dollar capital programs, while realizing capital, operating and maintenance savings. Denver RTD realized hundreds of millions of dollars in savings without compromising its operational requirements.

Further, HNTB experts believe a stand-alone system like high-speed rail offers a unique opportunity for the U.S. to expand the use of P3 to a full concession delivery model. High-speed rail projects are good P3 candidates because of their complexity, longevity, expense and propensity to cross multiple boundaries outside of the owner agency's jurisdiction. HNTB experts say the U.S. likely will see high-speed rail delivered via design-build-finance-operate-maintain P3s, barring any legal or environmental limitations on procurement.

P3 APPLICABILITY

P3s are not a funding mechanism. They are a delivery method with some opportunities as a financing mechanism and, therefore, are not applicable to every project. While the entire universe of infrastructure needs cannot be resolved with P3s, using an approach that combines private financing supported by robust revenue streams can maximize infrastructure improvements when appropriate. ■

FUNDING VS. FINANCING

FUNDING is money used at the time of expenditure, typically a grant that does not have to be repaid. FINANCING is money that must be borrowed and paid back through a debt mechanism.

ACCORDING TO THE FHWA'S WEBSITE, TWO OF THE MOST COMMON P3 DELIVERY METHODS ARE:

1. Toll Concessions. Concessionaires receive compensation by obtaining the right to collect the tolls on a facility.

2. Availability payments. Concessionaires receive a periodic payment from the public partner based on the facility's availability at the specified performance level.