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SOLVING THE MYSTERY OF P3 PROCUREMENT AND BEST VALUE SELECTION:

A MUNICIPAL ATTORNEY'S PRIMER

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Fundamentals of Procurement

- Delivery Method Selection
  - Traditional (Low Bid) or Alternative Delivery (Qualifications Based/P3)
- Type of Project
  - New construction,
  - Expansion, or
  - Upgrade
- Appointment of Technical Team
  - Responsible for all aspects of procurement

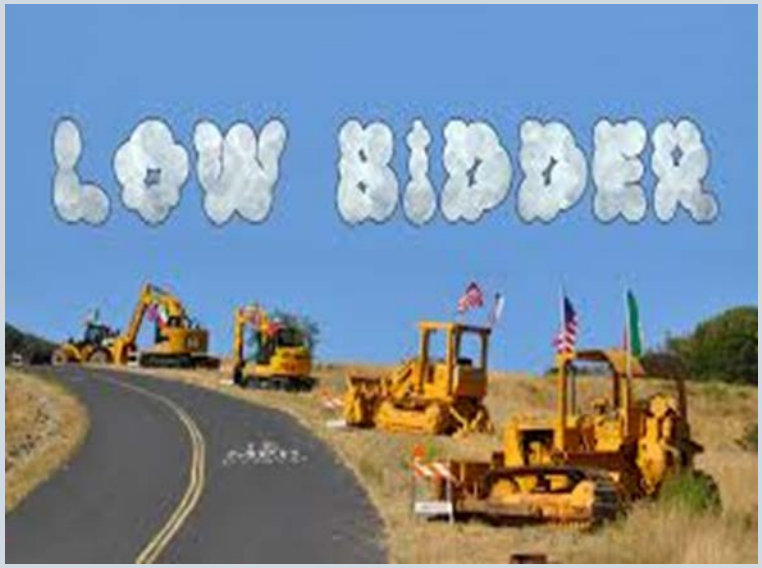
- Requests for …
  - Expression of Interest,
  - Qualifications,
  - Proposals, and
  - Qualifications and Proposals
- Proposal evaluations
- Contract award and contract negotiations

Traditional Project Delivery: Low Bid

Low Bid
Design-Bid-Build

- Public entity contracts separately with engineer to design project and contractor to construct project
- Decision is based on lowest cost bid from responsive, responsible bidder
- Public entity or private company operates and maintains facility

Drawbacks of Low Bid

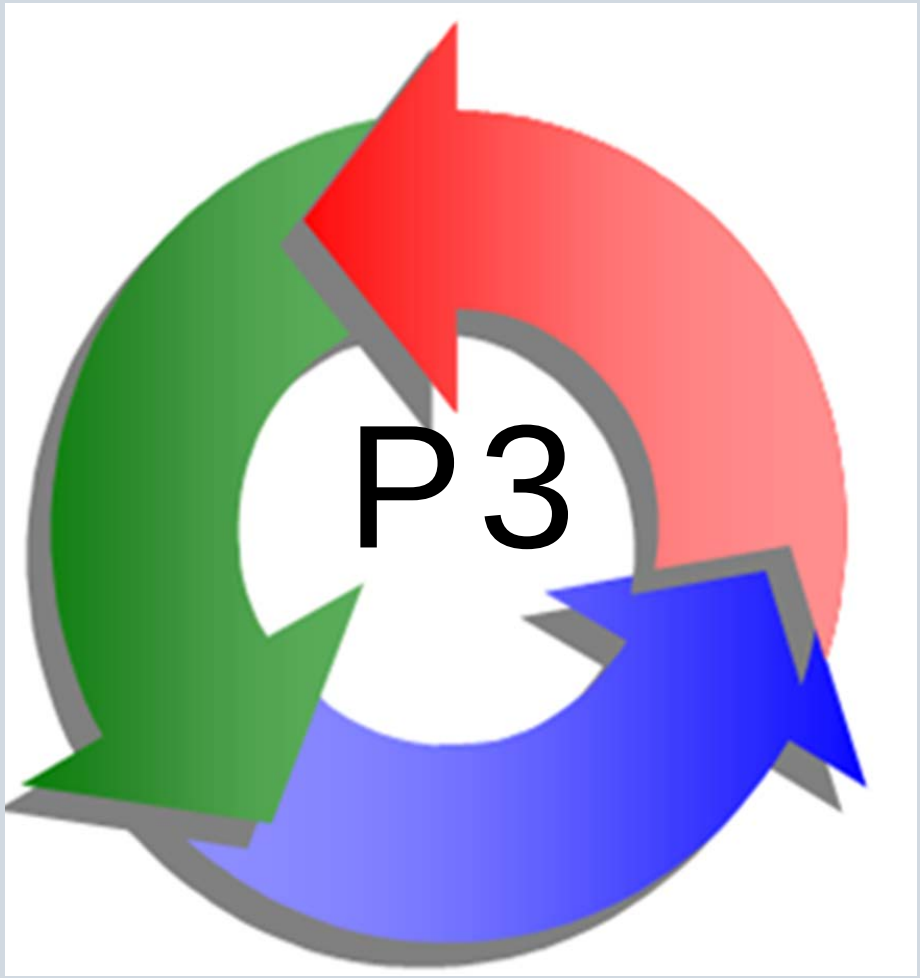


- Extended project duration
  - bidding begins after construction documents are completed
  - construction begins when bidding is complete and the contract is awarded
- Project costs unknown until bids are received
- Difficulty establishing budget early in the design process
- Bidding process is cumbersome and prone to challenge
- Errors or omissions in construction documents lead to contractor claims for extra compensation

Drawbacks of Low Bid [cont.]

- Difficulty administering project
- Conflict between the A/E and contractor
- Contractor's primary interest is profit, not guaranteeing high quality project
- Many contractors "lowball" their bids, generating claims and change order requests
- If there are deficiencies in construction, the A/E and general contractor deny responsibility and blame the other

Advantages of P3 Projects



- Faster project delivery
- Lower overall project costs
- Enables best value procurement
- Empowers private team's creativity
- Increases access to capital
- Greater efficiency

Forms of P3 Projects

- Design-build
- Design-build-operate
- Design-build-operate-finance
- Construction Manager at Risk
- Concessions



Project Delivery Type – Design Build

- Public Buildings/Schools/Public Safety
- Facilities
- Transportation





Project Delivery Type – Design Build Operate

- Utilities - Water/Wastewater/Energy
- Public Recreation
- Renewables







Project Delivery Type – Design Build Operate Finance

- Commercial
- Recreation/Entertainment
- Residential/mixed use







Sources of P3 Authority

State Law
Home Rule Authority
Special Legislation



2017 P3 State Laws*

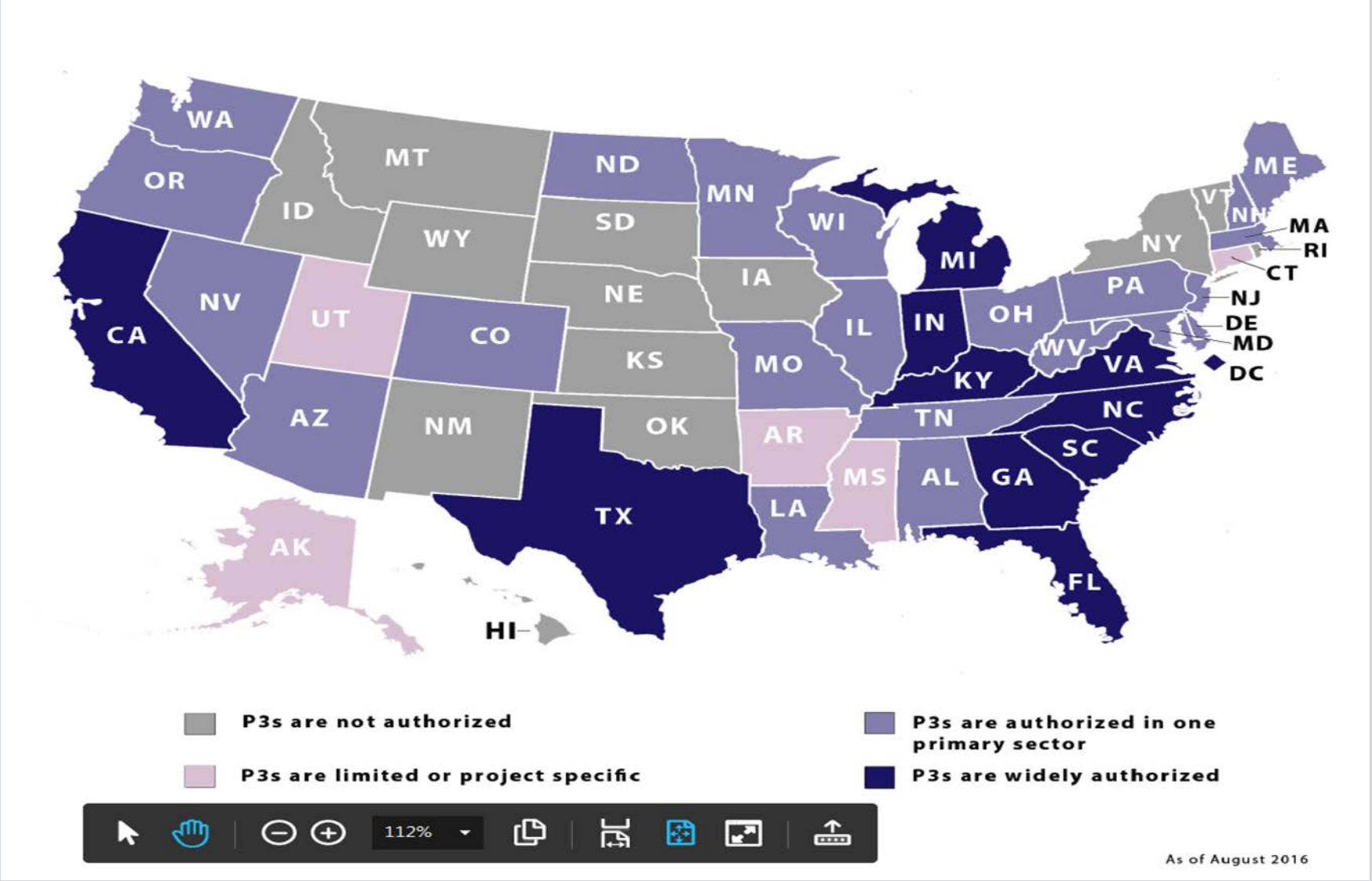


*image credit to Design Build Institute of America

Public-Private Partnerships Components of Legislation

- Ideal P3 legislation should expressly authorize the following:
  - Qualifications based selection (QBS)
  - Alternative project delivery arrangements
  - Collection of user fees
  - Long-term agreements
  - Provide for private, non-municipal finance
  - Limited restrictions on conveyance of public property
  - Shared profit or savings

Procurement Processes
Essential Components of Procurement Documents

- Introduction
- Project Overview, Description & Objectives
- Scope of Services
- Description of Existing Facilities
- Submission Requirements, Protocol, Process and Schedule
- Pre-Submittal Meeting and Site Visit
- Clarification Requests
- Respondent Interviews
- Evaluation Criteria
- Reference Documents
- Questions
- Terms & Conditions
- Forms/Appendices

Procurement Processes
Essential Components of Procurement Documents

- Requested information may include:
  - Basic corporate information and history
  - Financial information
  - Technical capability
  - Product information
  - References
  - Similar project examples
    - Scope/size/purpose

Request for Expression of Interest (RFEI)

- Used in the pre-project development phase to stimulate and assess interest in the project
- Can also be used to gather useful information from interested parties and adjust the project requirements accordingly
- Identify who will be eligible for the competitive selection process

Procurement Processes – Request for Qualifications (RFQ)

- Pre-qualification stage of the procurement process
- A screening step to establish a pool of qualified, potential proposers
- The response to the RFQ describes the firm's general qualifications, but will not include specific details or price proposals
- Only those firms who successfully respond to the RFQ and meet the qualification criteria will be included in the subsequent Request for Proposals solicitation process.

Procurement Processes –RFQ [cont.]

- Requirements of an RFQ include:
  - Firm name, address, phone number and contact person
  - Organizational chart identifying disciplines, specific personnel, and role of those who will be assigned to the project
  - Project approach
  - Firm's capacity, including resumes
  - Firm's litigation history
  - Firm's professional liability or errors and omissions insurance
  - References

Request for Proposals (RFP)

- Include conceptual design criteria
  - Performance specifications
  - Technical specifications (General)
- Identify key business terms
  - Term sheet
  - Contract principles
  - Negotiable/non-negotiable terms
- Draft agreement
- Pricing Form
- Proposal Bond
- Form of guaranty



Request for Qualifications & Proposals

Combined RFQ and RFP

Pass 1: Go to 2

Short List

Parallel of sequential negotiations



Evaluation Criteria

Standards that measure how well proposal meets requirements, needs and expectations of the project

- Experience and Qualifications – similar scope, size and purpose
- Demonstrate understand project
- Technical/Business Approach
- Price proposal
- Adherence to instructions and requirements/completeness of response
- Ability and willingness to meet all of the responsibilities and performance guarantees
- Selection not based solely on economics, but is a factor in the evaluation process



P3 Project Example: New York

Advanced Wastewater Treatment Plant | Rockland County

Requirements

- Environmentally friendly and aesthetically pleasing
- High performance standards
- Protect sole source aquifer

Political Will

- 1.5 mgd facility
- Services only 5,000 residents but paid for countywide



Price and Financing

- Design-Build-Operate
- Substantial savings
- Price increased due to high performance standards
- State revolving funds

Performance

- Treat to near drinking water standards
- Performance standards for effluent, sludge, odor

P3 Project Example: Design Build – Rhode Island

New Water Treatment Plant and **Upgrades** | **City** of Newport, RI

Requirements

- Environmentally friendly and aesthetically pleasing
- Compliance with RIDEM/RIDOH Consent Orders
- High performance standards
- 9 mgd and 7 mgd facilities



Price and Financing

- Design/Build
- $62 million fixed price
- Substantial savings
- Drinking Water State Revolving Fund

Performance

- Meets seasonal raw water quality discrepancy unique to Newport
- LEED certification

P3 Project Example: Nassau County | Nassau Veterans Memorial Coliseum

New Water Treatment Plant and **Upgrades** | **City** of Newport, RI

Procurement under Nassau County Charter

- Coliseum specific provisions
- Lease of real property
- Exemption from public work for event management and building maintenance

- $260.5m 100% private investment

$194.5m minimum guaranteed revenue to County



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THANK YOU!

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