The Maryland Approach to P3s

The Council of State Governments Transportation Policy Academy
September 17, 2014
Developing MD’s P3 Legal and Regulatory Framework

- **2010 P3 Law**
  - (Chapters 640 and 641 of 2010)

- **Joint Legislative and Executive Commission on Oversight of P3s (2011)**

- **2013 P3 Law (Chapter 5 of 2013)**

- **Executive Order establishing P3 Sub-Cabinet**
  - (Summer 2013)

- **MDOT Regulations: COMAR 11.01.17**
  - (Summer/Fall 2013)
Maryland’s P3 Law: Definition

• Method for delivering public infrastructure assets using a long-term, performance-based agreement between a Reporting Agency and a Private Entity.

• Appropriate risks and benefits can be allocated in a cost-effective manner between the contractual partners.

• Private Entity performs functions normally undertaken by the government, but Reporting Agency remains ultimately accountable for the public infrastructure asset and its public function.

• State may retain ownership in the public infrastructure asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated and maintained over its lifecycle.

• Does not include an asset sale or a short-term operating space lease.
Maryland’s P3 Law: Details

• Creates predictable, transparent, and streamlined approach, incorporating best practices and lessons learned from other states, while addressing the needs of Marylanders

• Allows agencies to consider unsolicited proposals for potential competitive solicitations

• Outlines key requirements for competitive solicitation processes

• Exempts P3s from state procurement (Division II of State Procurement Article)

• Requires that reporting agencies promulgate regulations for the development, solicitation, evaluation, award, and delivery of future P3 projects

• Requires that BPW designate any potential P3, ensuring that future P3 projects receive the highest level of scrutiny BEFORE the State seeks proposals from potential partners

• Outlines key terms and provisions that should be part of a P3 Agreement
Regulatory Process to Advance Transportation P3 Concepts

1. Receive internally generated P3 concept
2. Receive unsolicited proposal P3 concept
3. High level screening
   - Initial screening of appropriateness, viability, and effectiveness as a P3
4. Detailed level screening
   - More comprehensive screening, including relevant analyses and due diligence
5. Presolicitation development
   - Complete relevant tasks required for the development of a presolicitation report
6. Secretary’s recommendation to submit a presolicitation report
Existing P3s: Seagirt Terminal

Key Terms

• In 2010, MPA entered into a 50-year DBFOM with Ports America Chesapeake for redevelopment of Seagirt.
• $105 million project to construct deep berth and cranes completed in 2012, two years ahead of schedule.
• $140 million upfront payment, reinvested in shovel-ready transportation projects along I-95 and the Chesapeake Bay Bridge.
• Annual payment of $3.2 million, grown at inflation starting in Yr 5.

Ongoing Achievements

• Seagirt set 4th consecutive cargo record in 2013, with tonnage growth 3.1% better than 2012.
• MPA recently received a USDOT TIGER Grant to bring rail to Fairfield, redevelop Fairfield Ship Basin, and to straighten and widen Seagirt access channel.
• The world’s three largest container lines have formed an alliance called the P3; this alliance will bring additional carrier options (Maersk and CMA vessels) to the Port.
• Amazon announced that it is building a large distribution center adjacent to Seagirt.
Existing P3s: I-95 Travel Plazas

- In 2012, MDTA entered into a 35-year DBFOM with Areas USA for redevelopment of the two travel plazas on I-95.
- Areas USA is currently investing $56 million for reconstruction of the Maryland House and Chesapeake House travel plazas.
- Areas USA will operate and maintain the travel plazas through 2047, while the MDTA retains ownership and oversight of the plazas.
- State will receive approximately $400 million in estimated revenue payments from Areas USA over a 35-year period.
- Operations of both travel plazas transferred to Areas USA in September 2012.
- P3 project will support 400 construction and 575 operational jobs.
- Maryland House re-opened to the public in January 2014, Chesapeake House re-opened in Summer 2014.
Proposed 16+ mile light rail line extending from Bethesda in Montgomery County to New Carrollton in Prince George's County, enhancing connections in the Washington DC metro area.
Determining P3 Potential for the Purple Line


Release of Request for Information (RFI) to the P3 market in April 2013; responses received May 8, 2013

Industry Forum on May 15, 2013

Complete P3 screening process and analyses in July 2013

Issue presolicitation report for a DBFOM P3 approach on August 5, 2013

Solicitation approach approved by BPW on November 6, 2013
Key Reasons for Using a DBFOM P3 for Purple

• Operational factors
  – The Purple Line is a natural stand-alone asset and the P3 approach will also increase the likelihood of consistently excellent, highly responsive service.

• Risk transfer efficiencies
  – P3 will integrate various project elements into a single agreement that clearly outlines the optimal allocation of project risk between the public and private partners.

• Whole life-cycle planning and cost optimization
  – P3 will provide greater incentive to make investment decisions that are optimized over the life of the asset.

• Schedule discipline
  – P3 agreement structure focused on asset availability will provide strong incentives for the concessionaire to maintain schedule discipline during asset delivery.

• Enhanced opportunities for innovation
  – P3 will provide the private sector with opportunities and incentives to propose enhancements to the asset design and delivery approach that could benefit long-term operating and maintenance performance.

• Potential financial value
  – Due to the operational benefits, risk transfer efficiencies, life-cycle planning, scheduling discipline, and innovation opportunities of the P3 approach, there is potential for long-term financial savings relative to a traditional project delivery approach.
# Key Purple Line Solicitation Milestones

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Board of Public Works Approves MDOT/MTA Purple Line P3 Proposal</td>
<td>November 6, 2013</td>
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<tr>
<td>Request for Qualifications Issued</td>
<td>November 8, 2013</td>
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<tr>
<td>Statements of Qualifications Submitted by Proposers</td>
<td>December 11, 2013</td>
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<tr>
<td>Shortlist of Qualified Proposers Determined</td>
<td>January 8, 2014</td>
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<td>Draft Request for Proposals Issued to Shortlisted Proposers</td>
<td>January 2014</td>
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<tr>
<td>Recommendation for $900 Million FFGA for Purple Line</td>
<td>March 5, 2014</td>
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<td>Record of Decision</td>
<td>March 19, 2014</td>
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<tr>
<td>Final Request for Proposals Issued to Shortlisted Proposers</td>
<td>July 28, 2014</td>
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<tr>
<td>Final Proposals Due</td>
<td>January 2015</td>
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<tr>
<td>Selected Proposer Announced and P3 Agreement Finalized</td>
<td>Winter 2015</td>
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<tr>
<td>Final P3 Agreement Submitted to Comptroller, Treasurer, Budget</td>
<td>Winter/Spring 2015</td>
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<td>Committees, Dept. Legislative Services for Review and Comment</td>
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<tr>
<td>Final P3 Agreement Recommended to BPW / Commercial Close</td>
<td>Spring 2015</td>
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<tr>
<td>Financial Close</td>
<td>Summer 2015</td>
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Future P3 Project Potential: Baltimore Red Line

Proposed east-west light rail transit line connects existing rail lines (Baltimore Light Rail, Metro, MARC)
Contact Information

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