Eno Center for Transportation
P3 Technical Assistance Awards

Summary:
Metropolitan Transportation Commission (MTC) P3 Summit

1. Introduction
In May 2016, the Eno Center of Transportation held its third Public-Private Partnership (P3) Technical Assistance Awards with the Metropolitan Transportation Commission (MTC) in San Francisco, CA. The intent of the awards is to educate public-sector professionals about the P3 development process and lessons learned, and spur P3 action at the local level where appropriate. While the award is focused on transportation P3s, the fundamental concepts are transferrable to other sectors. This program is funded by a grant from the Surdna Foundation.

As part of its award, the MTC received a one-day summit about local P3 issues and a one-day course session about the P3 development process. Attendees included professionals and directors from various departments within MTC and from regional county transportation authorities. The full list of attendees is at the end of the summary.

2. Overview of Eno’s Partnership Financing report
*Presentation and discussion led by Paul Lewis, Eno Center for Transportation*

This session provided a brief overview of the basics of P3s and the findings from Eno’s Partnership Financing report, released in 2014. The Partnership Financing report studied state and local experiences with transportation P3s, and identified the most common barriers to P3s in the U.S. These barriers included political and public opposition; lack of dedicated and skilled staff; limiting features of enabling legislation; and shortcomings in institutional development and management. Among other things, the report found that although the amount of P3 investment in transportation infrastructure in the U.S. has increased dramatically in recent years, it is still a small part of the
global market. P3s in the U.S. accounted for only 9 percent of the global share between 1985 and 2014.

The lack of P3s in the U.S. can be partly attributed to a primary concept: transportation P3s are complicated. They require robust economic analysis, complex negotiations, intense public scrutiny, long-term commitments, and political leadership—skills new to many public sector employees and policymakers. Despite these challenges, P3s can make sense in a number of different situations. For example, P3s can be structured to allow the public sector to avoid adding to their long-term debt obligations by using private sector capital financing for a project. This is by no means “free money,” but it does allow the public sector to mitigate the upfront borrowing costs and sometimes even receive a one-time cash payment for an asset’s operating rights.

Many private sector firms also have access to technologies, materials, and management techniques that exceed the capabilities of a governmental agency or department. P3s are one way to harness the ideas and breadth of experience the private sector brings to projects by fully incorporating them into the procurement process. P3s are also one way for the public sector to monetize or improve untapped or non-inherently governmental assets (such as a port or parking garage) without ceding public ownership.

3. Overview of SR 37 project

*Presentation led by Janet Adams, Solano Transportation Authority*

This session discussed a project that was recently proposed as a P3, providing a real-life project idea for the attendees as a focus of discussion.

SR-37 is a four-lane route that runs through the Solano, Napa, Sonoma, and Marin counties. It serves as a major corridor for freight, work commuters, and recreational activities, as well as a designated route for earthquake evacuations. Today the corridor suffers from major traffic congestion complicated by its location in an environmentally sensitive wetlands area. The road’s location along the San Pablo Bay makes SR-37 vulnerable to increasing sea levels and limits the options for alternate routes. Options for reconstructing the road have been proposed, but cost estimates vary and all the affected counties face limited funding as well as competing transportation priorities.

To help address these obstacles, several agencies in the region joined a SR-37 Memorandum of Understanding (MOU) Partnership, focusing on strategies for project funding, financing, and implementation. The MOU Partnership has explored other project delivery options besides P3s, such as traditional public
financing and full privatization. However, major steps lay ahead, including insufficient funding for environmental documents.

4. Overview of the P3 development process
*Presentation and discussion led by Roy Kienitz, Roy Kienitz LLC*

This session provided an overview of the P3 development process and the decision-making roles. It primarily focused on the motivating reasons behind a P3 and the role of risk transfer.

While P3s can meet a variety of needs, the project development process differs from the conventional design-build process. Because thoughtful allocation of project rewards and risks is the basis of a successful P3, it is also important to understand the role of risk and how it changes. In a P3, the public sector passes the costs of building and/or maintaining certain elements of a transportation asset to the private sector, usually without directly assuming any financial risk. The public sector may also receive a one-time payment from the concessionaire for the right to operate the asset, and, in some cases, a recurring payment or profit sharing. The private sector is rewarded with a long-term recurring revenue source, either through tolls, fees, or through an availability payment. Risk sharing, on the other hand, is much more complicated. These agreements can take a wide variety of forms, often specifically tailored to an individual project.

Given the financial and legal complexities of P3 projects, the public sector needs to ensure they have experts involved (typically in the form of consultants). Unfortunately, a major challenge is that there are few P3 project examples to satisfy the growing interest among state and local governments for lessons learned and best practices. Furthermore, many places have inadequate staffing capacity to fully handle the P3 development process.

5. Understanding California’s P3 legislation
*Presentation led by Nizar Melehani, Caltrans
Discussion moderated by Paul Lewis, Eno Center for Transportation*

The session provided an overview of California’s P3 legislation to ensure an overall understanding of the current regulations.

California has a long history with P3 legislation, beginning with its first P3 legislation, Assembly Bill 680 (AB 680) in 1989. The enabling authority contained in the legislation was limited in scope: it authorized Caltrans to enter into up to four demonstration projects, with the private sector entirely financing
and building the asset. The maximum length of a lease was 35 years. The bill also allowed developers to charge tolls on the facilities. This legislation led to two projects, the SR-91 Express Lanes and the SR-125 Southbay Expressway, both in southern California.

The next piece of legislation was Assembly Bill 1467 (AB 1467) in 2006, which focused on facilitating the movement of freight. It expanded on the provisions in AB 680, allowing four P3 projects: two in northern California and two in southern California. It also allowed regional and local transportation agencies, in addition to Caltrans, to nominate projects. The law also prohibited non-compete clauses, which led to difficulties in the SR-91 project under the previous legislation (discussed in the next section).

The current legislation, Senate Bill 4 (SBX2 4), was passed in 2009. No longer limiting the number of projects, eligible project types include highways, transit, and rail. The legislation established a Public Infrastructure Advisory Commission to advise Caltrans and regional transportation agencies on the development of performance-based infrastructure partnerships. While Caltrans or a local agency nominates the project, the California Transportation Commission is responsible for evaluating the proposal based on statutory performance objectives (improved mobility, air quality, etc.). This bill will sunset on January 1, 2017.

6. P3s around the U.S.: lessons learned and best practices for the Bay Area region

Presentation and discussion moderated by Alex Bond, Eno Center for Transportation
Panelists: Mary Peters, Working Group Co-Chair; Donald Cohen, In The Public Interest; Brian Taylor, University of California Los Angeles

This session focused on three selected projects and their potential lessons for the Bay Area: Presidio Parkway, the SR 91 Express Lanes, and the Port of Miami tunnel in Florida.

The Presidio Parkway in San Francisco is a relatively recent project, opening to road users in 2016. It was implemented as a two-phase project: the first through traditional project delivery with Caltrans designing, financing, and constructing and the second as a P3 using availability payments. The first P3 under the 2009 legislation, it was under a partnership between Caltrans and the San Francisco County Transportation Authority. The funding and financing combined federal Transportation Infrastructure Finance and Innovation Act (TIFIA) program loans, federal grants, and local funding sources.
The SR-91 Express Lanes first opened to road users in 1995. The project was overseen by Caltrans and was the first all-electronic toll road in the U.S. as well as the first to include variable toll pricing. Operating under a 35-year contract, the project was privately funded with some additional financing from the Orange County Transportation Authority (OCTA). In 2002, OCTA purchased the toll road and the project will be handed back to Caltrans when the project debt is paid off or by 2030. Political trouble emerged, however, when Caltrans and OCTA wanted to expand the general-purpose lanes adjacent to the toll lanes. At that point, the private franchisee used its contractual rights to stop the improvement, arguing successfully that under the non-compete clause in the P3 contract, this expanded capacity would undermine its ability to pay its bills. Although the franchisee prevailed, the media and political fallout was substantial and the outcome of this case has created challenges for California P3s ever since.

The contract for the Port of Miami tunnel was awarded in 2009 and the project opened to users in August 2014. The $1 billion project, overseen by the Florida Department of Transportation (FDOT), was intended to direct vehicular traffic from the port as a means of reducing road congestion. Due to the availability payment structure, where the public agency pays the concessionaire for making the project available for public use, there is no transfer of traffic or revenue risk. The lack of revenue risk facilitated the deal closure during the depth of financial market uncertainty in 2009. Without the risk transfer, the project had a simpler structure, was less expensive because the revenue risk transfer was not priced into the deal, and lacked the threat of user resistance to road pricing. The project was also able to manage environmental risk in each project phase by requiring the concessionaire to meet the FDOT-approved environmental protection plan, which included aspects ranging from water quality to manatee protection.

Discussion themes

Navigating the P3 process

Much of the discussion focused on how to understand multiple aspects of a P3, such as operations and maintenance (O&M), contract management, and the range of financing options.

Questions focused on tackling the first steps towards a P3. One suggestion was issuing a Request for Information (RFI), whereby potential bidders outline their project capacity. This helps the public agency understand whether the private sector is receptive to a project idea and capable of carrying it out. In addition, during the procurement process, providing a small stipend to bidders is also a mechanism to help incentivize feasible proposals. This also communicates to
the private sector that the agency is serious about the project idea. It is also important for the public agency to understand that bidders are aware of the politics of a region, and will bear that in mind when considering whether to submit a proposal.

The discussion also emphasized the need to have a system of incentives and penalties in the contract in order to ensure a good project outcome. This depends on the public agency and the private company understanding each other’s objectives. This will minimize any misunderstandings or disputes later that may lead to delays and cost increases.

While the availability payment model provides an option for P3s that would not otherwise have their own self-sustaining revenue stream, some local governments are wary. For example, these types of transactions can preclude future budgetary flexibility and may end up costing users or taxpayers more over the long term, depending on the structure of the deal. Availability payments could be considered to be a form of “debt” since they require an ongoing public expenditure and a binding budgetary obligation.

However, an availability payment model has the potential to help spur a project when traditional project delivery methods have not worked (where state legislation allows). In the case of limited funding availability, the public sector may not have the funds to entirely design, construct, and operate a project. But it can use what limited funding it does have towards availability payments, along with incentives and penalties to oversee the private company. Contract length will vary by project but the intention is to be long enough to get a decent price from the private sector.

**The public sector role**

Throughout the discussion, a topic that emerged was the role of the public sector in P3s. This addresses many aspects, such as the workforce and the relationship between the public and public sectors.

The public sector needs to have both skilled consultants and skilled in-house staff, especially those who have backgrounds in finance or law. The in-house expertise is crucial for understanding the complexities of a P3 project. They also need to understand that a P3 is among a variety of arrangements when it comes to project delivery. In addition, throughout the project phases, the public sector is responsible for managing how it communicates with the private company. Ensuring frequent communication between the public agency and private company can facilitate quicker action towards fixing any problems.
7. Overcoming obstacles to P3s in the Bay Area

Brief presentation by Andrew Fremier, Deputy Executive Director, MTC
Discussion moderated by Robert Puentes, President/CEO, Eno Center for Transportation
Panelists: Mary Peters, Working Group Co-Chair; Donald Cohen, In The Public Interest; Brian Taylor, University of California Los Angeles

The session began with an overview of the Bay Area Toll Authority, with the rest of the session focusing on topics raised throughout the summit.

Discussion themes

Knowing what the public sector wants out of a P3 project
Much of the decision-making for a P3 is deciding what the public agency hopes to achieve from a project and whether the private market is receptive to the idea. While P3s are often touted as a form of overall project cost savings, the public sector needs to understand where it is willing to reduce costs. Many kinds of “front end” issues need to be dealt with directly because they cannot be resolved by simply doing a P3. For example, if the public sector contracts out the design-build phase but still experiences challenges with respect to operations, the procurement approach will not address the core issue.

In addition, the contract itself is a crucial part of the P3 process and has a significant role in the project outcomes. The more detailed and specific the public sector can be about what it wishes to achieve or wants to include in a project, the more likely it is that it will be addressed in the contract and ultimately accomplished. However, if some aspects are more uncertain and the public agency does not entirely specify, the project outcome may not match the original intention. But it is worth deciding which aspects must have specific criteria and which ones less so. Sometimes, less specificity can allow the private sector to devise a more creative solution.

Understanding what it really means to get involved in a P3
For a public agency to pursue a P3, they must understand a multitude of processes. Simply stating that a project needs to be a P3 or that it needs to be built by the public sector before the actual idea has been developed will oftentimes inflate costs if the public agency does not consider the most appropriate form of project delivery. This is where one-on-one discussions with the private sector could be useful and help inform the public agency about what projects are feasible as P3s from the private sector perspective.
8. Conclusion

The P3 summit for MTC provided a forum for public-sector professionals to discuss relevant and local P3 issues as well as provide a platform to convene other government entities that may also be involved with the P3 development process in the future. For MTC and the Bay Area county authorities, this summit should spur the internal dialogues necessary towards building the foundations of the P3 development process for the region.
Full list of attendees
MTC P3 summit, May 26, 2016

Working Group Members
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