

# Monitoring and Oversight for Public–Private Partnerships (P3s)



## P3 TOOLKIT

### Quick Facts

- Outcome-based performance specifications make service delivery more efficient by allowing the concessionaire flexibility to decide how best to achieve the intended results.
- Contract management responsibilities include monitoring technical and financial performance, assessing payments and penalties for performance, resolving disputes and managing handback of the facility.
- Public agencies can promote effective contract governance by facilitating knowledge-sharing between the procurement team and the contract management team and planning for skill and knowledge retention over the period of the contract.

### For Further Information

Learn more about FHWA's *P3 Toolkit*, available at

<http://www.fhwa.dot.gov/ipd/p3/index.htm>.



The use of public–private partnerships (P3s) marks a shift away from traditional ways of procuring and financing highway projects. Under traditional procurement processes, private contractors construct projects based on a public design by using public funding, and the projects are then operated and maintained by public agencies. With the P3 model, a private partner may participate in some combination of design, construction, financing, operations, and maintenance, including the collection of toll revenues.

After a P3 agreement is signed, the public agency must manage the contract to ensure that it achieves the performance standards established in the agreement. The performance-monitoring and oversight phase will require building a strong set of skills within the public agency due to the need to maintain these oversight responsibilities in-house. This includes the need for contract management skills to monitor the established performance standards and to manage accordingly. In addition, the capacity to monitor technical performance during construction and operations can be critical to ensuring efficient service delivery.

### Setting Performance Standards

P3 agreements can create efficiencies through establishing long-term Design–Build–Finance–Operate–Maintain (DBFOM) contracts that include outcome-based performance specifications. Outcome-based performance specifications focus on what a facility is intended to achieve rather than prescribing methods and materials for achieving facility goals. The purpose of using outcome-based performance specifications is to make service delivery more efficient by allowing the concessionaire flexibility to decide how best to achieve the intended results.

There is a natural tension, however, between flexibility and accountability in performance management. If a standard is too flexible, the public sector risks not obtaining the highest possible level of performance from a concession. If a standard is inflexible, it may not adapt to changing technology needs. For



example, one contract set a performance standard for customer service on a tollway that was based on how quickly the concessionaire responded to phone queries. By the time the concession was active, most of the customer queries were received by email and through a Web site, which were not included in the performance standards.

### Managing the P3 Contract

After the agreement is signed, the public agency must manage the contract to ensure that it achieves the performance standards established in the agreement. Contract management responsibilities include:

**Monitoring Technical and Financial Performance:** Performance-monitoring procedures can include self-reporting procedures, independent audits, regular meetings and reports, and the use of intelligent transportation systems that automate data collection and reporting processes.

**Assessing Payments and Penalties for Performance:** Penalties typically consist of payment reductions or retentions and non-compliance or default points. Once noncompliance or default points reach a specified level, they can result in increased oversight, work by the owner at the contractor's expense, suspension of work, or termination of the contract.

**Resolving Disputes:** P3 contracts typically specify dispute-resolution processes to reduce the risk of legal conflict over technical issues or differences



in contract interpretation. Alternative dispute-resolution processes may include mediation and third party arbitration following a period of time allowed for both parties to make good faith efforts to resolve the dispute themselves.

Prior to mediation or arbitration, dispute-resolution processes often define tiered systems of problem identification and resolution through negotiation to encourage problems to be resolved at the lowest levels. For example, the contract may specify a process whereby the parties to a dispute are given a set time period to seek ways to resolve their dispute before it is elevated to their respective managers.

**Managing Handback:** P3 contracts generally specify the required condition of the facility at the end of the contract term. The condition of a facility at handback depends on the maintenance and operation procedures employed throughout the life cycle of the facility; thus, the concessionaire is typically required to develop a capital replacement or asset management plan for equipment, systems, and assets. To manage the financial risks associated with handback, some P3 agreements require the concessionaire to establish a handback reserve account that begins to accrue toward the end of an agreement and may be used for unplanned repairs required prior to or shortly after handback of a facility to the public owner.

## Effective Contract Governance

Public agencies can promote effective contract governance by facilitating knowledge-sharing between the procurement team and the contract management team, planning for skill and knowledge retention over the period of the contract, and balancing the use of internal capacity and external advisors to ensure retention of that knowledge and skill.

Some public agencies have found that the best way for the contract management team to understand and manage contract provisions is for team members to have played a role in the development and negotiation of the contract. Public agencies can also improve the sustainability of effective contract governance practices by ensuring that decisions and processes are documented and that succession planning takes place.

Mechanisms such as regularly scheduled face-to-face meetings can facilitate the development of an effective relationship between the government and the concessionaire. To maintain this relationship, enforcement mechanisms should be used consistently and proportionally.



### PROGRAM AREAS OF THE OFFICE OF INNOVATIVE PROGRAM DELIVERY

**IPD provides a one-stop source for expertise, guidance, research, decision tools, and publications on program delivery innovations. Our Web page, workshops, and other resources help build the capacity of transportation professionals to deliver innovation.**

#### PROJECT DELIVERY

IPD's project delivery team covers cost estimate reviews, financial planning, and project management and assists FHWA Divisions with statutory requirements for major projects (e.g., cost estimate reviews, financial plans, and project management plans).

#### PROJECT FINANCE

IPD's project finance program focuses on alternative financing, including State Infrastructure Banks (SIBs), Grant Anticipation Revenue Vehicles (GARVEEs), and Build America Bonds (BABs).

#### PUBLIC-PRIVATE PARTNERSHIPS

IPD's P3 program covers alternative procurement and payment models (e.g., toll and availability payments), which can reduce cost, improve project quality, and provide additional financing options.

#### REVENUE

IPD's revenue program focuses on how governments can use innovation to generate revenue from transportation projects (e.g., value capture, developer mitigation fees, air rights, and road pricing).

#### TIFIA

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for significant projects. Many surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible to apply for assistance.

