BCFC ISSUE PAPER: Public-Private Partnerships (P3s)
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Government officials have recognized that properly structured and executed P3s can produce a win-win solution for the public and private sectors. P3s have become an important tool to finance and deliver public projects and basic services. With current and future public funding challenges at all levels of government, P3s offer the promise of delivering high-quality public projects and basic services in a timely and cost-effective way. If structured and executed correctly, P3s provide up-front capital for public projects and basic services that may not be otherwise accomplished.

A P3 is defined by the National Council for Public-Private Partnership (NCPPP) as: *"a contractual arrangement whereby the resources, risks, and rewards of both the public agency and private company are combined to provide greater efficiency, better access to capital, and improved compliance with a range of government regulations regarding the environment and workplace."* These arrangements between a public agency (federal, state, or local) and the private sector entity performing a service can help alleviate budgetary issues for public projects and also help improve the quality of basic services offered. Through this contractual agreement, the skills and assets of each sector (public and private) are shared in delivering a service, product or facility for the use of the general public. The public sector will continue to own the project or service but the assets will be supplied up front by the private sector, which will then be compensated by the owner in the form of payments. As a proven policy management tool to deliver better services at a lower cost, the P3 process is complex, and requires care and best practices.

While P3s have been used in the United States for over 200 years, they are becoming more of a widely recognized method of delivering a variety of public projects and basic services today. These contractual arrangements between government entities and private companies for the delivery of public projects and basic services are used for courthouses, higher education efforts, military housing, transportation, urban development, water/wastewater, and delivery of social services, to name only a few. Today, the average American city works with private sector partners to perform 23 out of 65 basic municipal services. The use of P3s is increasing because they provide an effective tool in meeting public needs, maintaining a high level of public control, improving the quality of services, and are more cost effective than traditional delivery methods.

Decades apart, former Governors Mitch Daniels (R-IN) and Mario Cuomo (D-NY) said it best:

- Then-Indiana Governor Mitch Daniels wrote in his May 10, 2012 Op-ed published in The Washington Post: *"...senators should encourage innovation and more partnerships with the private sector, where tens of billions of dollars stand ready to be invested, ensuring our nation the strongest possible economic backbone."*; and
- Then-New York Governor Mario Cuomo was quoted in the May 28, 1985 article published in the New York Times: *"It is not government's obligation to provide services, but to see they're provided."*

Also called privatization, contracting out, outsourcing, competitive sourcing, and competitive tendering, P3s range from simple partnerships to large-scale asset sales and joint ventures; tap private capital in most powerful versions; corporate sponsorships; naming rights; volunteer initiatives; service contracting; outsourcing; and competitive sourcing. Infrastructure P3s combine design, construction, financing and/or operations and maintenance (O&M) in delivery of assets, while leveraging private capital. P3s are not a panacea. Private finance may help close a funding gap, and P3 project delivery is likely to deliver more projects for a given dollar of revenue, but P3s do not eliminate all risks or possibilities for conflict or claims. The same challenges that face a publicly funded project can also occur on a P3.

While a P3 infrastructure project may be managed by a private sector entity, the completed project is for the benefit and welfare of the public and can revert to an asset of the government at some future point.

Efficient allocation of risk is important to creating P3 value. Performance and payment bonds are required to ensure successful performance of federal construction projects. Similar requirements are employed on state construction projects. Governmental entities do not have adequate resources to perform all of the tasks of the surety, such as thorough prequalification of contractors or the servicing of claims brought on by contractor default. P3 project requirements should include surety bonding requirements in the form of performance and payment bonds, as such requirements ensure that infrastructure or transportation construction services are performed by qualified companies and that subcontracting firms supplying labor, materials, or equipment on such projects have payment remedies in the event they are unpaid. Surety bond requirements on P3 projects offer public partners some ability to hold private partners accountable for the resultant quality of the infrastructure or transportation project but will not infringe on the private partner's ability to innovate.

Recently, there has been a great deal of activity at both the state and federal level where lawmakers are considering legislation to arrange financing for infrastructure projects using investments from private entities. Even in the best of times, governments at all levels are challenged to keep pace with the demands of their constituencies. During periods of slow growth, government revenues are frequently insufficient to meet spending demands, necessitating painful spending cuts or tax increases. P3s can provide a continued or improved level of service, at reduced costs. And equally important, P3s can also provide the capital needed for construction of major facilities. By developing P3s with private-sector entities, governments can maintain quality services despite budget limitations.

As state governments struggle to meet growing transportation infrastructure needs while revenues dwindle, leveraging existing resources through the use of P3s has become increasingly attractive. According to the National Conference of State Legislatures (NCSL), as of February 2014, thirty-three states and Puerto Rico had laws authorizing P3s for highway and bridge projects, and more than $46 billion had been invested in these projects over the last 20 years. In addition, NCSL reported that P3s are authorized in 39 states for either transportation or so-called "vertical" or "social" P3s, referring primarily to public facilities such as housing, government office buildings and school facilities. Social impact bonds, referred commonly to as pay for success and social innovation financing, are contracts designed to shift the financial and implementation risks of these initiatives to the private sector. In the short-term, P3s inject immediate funds into state treasuries.

The Business Coalition for Fair Competition (BCFC) strongly advocates increased awareness and use of P3s. One additional end product to P3s can be reducing unfair government competition with and duplication of the private sector, including small businesses. Government should not be a competitor in commercial markets. Unfair government competition is antithetical to a successful free market and unfair to American taxpayers and shareholders of private sector business, who are forced to compete with publicly-funded government entities. Unlike publicly-funded functions providing goods and services, private sector operators and service providers must cover their fully allocated (operating and capital) costs when pricing contracts and services allowing for equitable competition. BCFC believes that public dollars should be used in the most efficient way possible and not as a tool to disenfranchise, undercut and potentially shutter private businesses. P3s reduce long-term public costs and the risk associated with construction (including cost overruns) and financing, all of which we believe to be taxpayer-friendly benefits.

ACTION REQUESTED: Congress and various levels of government should be encouraging, incentivizing and removing barriers to such innovative financing arrangements. With a nearly $1 trillion annual deficit and a $17.8 trillion national debt, the Nation should encourage and enhance the use of P3s. Legislative and regulatory provisions that prohibit, impede, interfere, obstruct, encumber, or delay the use of P3s, or other similar options to use private financing and capacity to help fund public projects and basic services should be avoided and/or repealed. For more information, contact BCFC's John "JB" Byrd at jbyrd@jmpa.us or 703-787-6665.