



Public-Private Partnerships (P3) Peer Exchange

Summary Report

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EXECUTIVE SUMMARY

PEER EXCHANGE OVERVIEW

The BATIC Institute is a partnership between the American Association of State Highway and Transportation Officials (AASHTO) and the United States Department of Transportation (USDOT). The BATIC Institute promotes public sector capacity building in the analysis, understanding, and use of innovative project finance techniques through a program of training, sharing of best practices, and technical assistance to all state Departments of Transportation (DOTs) and their local partner agencies.

This Public-Private Partnerships (P3) Peer Exchange was organized in partnership with the USDOT and the Public Private Partnerships Division of the American Road & Transportation Builders Association (ARTBA). The event provided an opportunity for State DOT professionals to exchange ideas and best practices, and discuss challenges with and opportunities for P3 project development and delivery. Participants also included a small group of experienced private industry representatives.

Participants discussed P3 implementation through the lens of four topics: P3 Project Identification, Scoping, and Screening; Value for Money; Project Finance; and Performance Requirements, Innovation, Contract Negotiations and Oversight. The one-day event used facilitated discussions to address pre-identified questions under each topic area. Mid-day, participants heard from representatives of the Transurban Group, Macquarie Capital, and Mayer Brown about Australia's experience with "asset recycling," a strategy currently being debated in federal policy circles. As a result of the event, participants were able to have in-depth conversations with public and private sector leaders, share information between states, and suggest further activities, research, and related events to advance the successful practice of P3 project delivery. The peer exchange concluded with an owner's only discussion.

HIGHLIGHTS BY TOPIC

P3 Project Identification, Scoping and Screening

This focus area considered the best practices and challenges associated with P3 project identification. Participants discussed the timing of planning activities and the participation of stakeholders, such as DOT planners, engineers, procurement and P3 officials, the private sector, and community members. Participants also commented on the importance of gaining clarity on the owner's goals and objectives for the project as the drivers behind successful identification, scoping and screening. The discussion identified various challenges, such as: the difficulty in funding planning efforts; collaborating with stakeholders to align a myriad of interests; internal education to change the mindset toward approaching P3 projects like a business enterprise; institutionalizing processes and planning for succession; and the need to look at projects holistically as supporting a large capital program rather than on a singular, opportunistic basis.

Value for Money

During this session, participants discussed Value for Money (VfM) as an analysis tool used in the decision-making process. Participants explored the benefits of and drawbacks to a standardized VfM analysis, including how to address discount rates and sensitivities, and choosing the right delivery method as the public sector comparator. State participants cautioned against prescriptive processes and suggested that the emphasis should be on intent. Participants also discussed how to communicate the results of VfM to stakeholders, particularly legislators and financing entities. The session focused on using VfM as an iterative process in decision-making rather than a hard analysis that precisely

determines delivery outcomes. Participants discussed the value of the VfM process in helping public agencies conduct self-examination and inform their choices.

Project Finance

Participants addressed a number of issues related to project finance, such as the relative higher cost of private financing relative to public financing. Those participants working on behalf of project owners cited several examples where the public interest was protected in the course of a bankrupt P3 project, where risk was transferred to the private sector via the P3 concession agreement. There was discussion about the need for better benchmarking data and knowledge sharing on O&M and lifecycle cost estimates as those elements tend to be critical components of the project financing for P3 projects. Participants discussed the differences between payment structures and their influence on developer behavior in a P3 project.

Performance Requirements, Innovation, Contract Negotiations, and Oversight

This session focused on the timing, mechanisms, and best practices for incorporating innovation and performance requirements into a P3. Best practices include using a market sounding process to identify innovations, documenting the evolution of performance requirements and the DOT's experience in oversight, and training DOT staff on the contract terms and performance oversight practices. Participants identified the concessionaire's responsibility to self-report as a potential concern, but also cited the onerous nature of performance monitoring that the project owner assumes with alternative delivery. Participants also considered the philosophical shift toward an asset management perspective at the DOT level, in which DOTs are more invested in optimizing their assets and driving performance. The participants also touched upon the contract negotiations process and comparisons between a predevelopment agreement (PDA) approach and a competitive procurement.

BACKGROUND AND SCOPE OF THE PEER EXCHANGE

The Build America Transportation Investment Center (BATIC) Institute: An AASHTO Center for Excellence supports public sector capacity building in the area of infrastructure finance. One of the services provided by the BATIC Institute is the development and delivery of customized peer exchanges that enable the participants to engage directly with individuals from other organizations who have similar responsibilities and challenges. The 2017 Public-Private Partnership (P3) Peer Exchange was a partnership with the American Road and Transportation Builders Association (ARTBA) that provided a forum for transportation agency representatives to exchange ideas and best practices, and identify common challenges and opportunities in implementing P3s. The Peer Exchange agenda is provided as Appendix A.

There were 17 public participants from 12 states and the USDOT along with six private sector participants (selected by ARTBA) in attendance at the one-day peer exchange. Additionally, six observers from the USDOT's Build America Bureau were in attendance. See Appendix B for a list of the P3 Peer Exchange participants and facilitators. The event was held in Washington, DC on July 12, 2017, in conjunction with ARTBA's annual P3 Conference. This summary report captures the essence of the interactions at the event as well as some of the common themes that emerged in terms of noteworthy practices and current challenges faced by the participating agencies.

Participants discussed P3 implementation through the lens of four topics: P3 Project Identification, Scoping, and Screening; Value for Money; Project Finance; and Performance Requirements, Innovation, Contract Negotiations and Oversight. The following notes show the pre-identified questions and significant discussion points. Also included is a brief summary of the asset recycling presentation and moderated discussion between representatives of the Transurban Group, Macquarie Capital, and Mayer Brown. As a result of the event, participants were able to have in-depth conversations with public and private sector leaders, share information between states, and suggest further activities, research, and related events to advance the successful practice of P3 project delivery.

PEER EXCHANGE FOCUS AREA DISCUSSIONS

P3 PROJECT IDENTIFICATION, SCOPING AND SCREENING

Introductory Remarks: Nadine Lee, Los Angeles County Metropolitan Transportation Authority (LACMTA), Deputy Chief Innovation Officer

Framing questions were identified in advance to guide the discussion and include:

- What are current/best practices, and challenges, experienced with P3 project identification?
- How early/often should the private sector be engaged in identifying/scoping potential P3s?
- Are different approaches or screening criteria used based on transportation mode?
- What factors beyond the screening criteria can determine whether to advance consideration for P3 delivery?
- How do agencies handle unsolicited proposals? What are the pros and cons?
- Is there an optimal size and scope of a P3? What is the experience with "small" P3s?

Takeaways from Group Discussion:

- *There is no single best way or “magic formula” for undertaking a P3.*
- *It is important to gain clarity on the owner's goals and objectives, which are the drivers behind successful project identification, scoping and screening.*
- *Owners need a strategic process for bringing forward major projects that might be suitable for a P3. Are P3 projects looked at holistically from a network perspective or on a singular basis? How closely do P3 / Alternative Delivery Office personnel work with engineers and planners to help identify potential projects? Can this collaborative process be formalized instead of being just an ad hoc process based on a few key personal relationships?*
- *It is important for owners to demonstrate their credibility and commitment to the process.*
- *Internal and external education about P3s is key.*
- *All stakeholders need to be involved in a P3 project development process early and throughout.*

VALUE FOR MONEY (VfM)

Introductory Remarks: Morteza Farajian, Virginia Department of Transportation, P3 Director; and Jeff Ensor, Maryland Transit Administration (MTA), Chief of Staff, Transit Development and Delivery; and Director, Project Delivery & Finance

Framing questions were identified in advance to guide the discussion and include:

- What are current/best practices for conducting a well-structured analysis?
- When/how often should VfM analysis occur?
- Should VfM be more standardized and used more consistently?
- Does the lack of it contribute to confusion and inconsistent or unreliable results?
- What are the key components/assumptions (e.g., definition of public sector comparator, risk quantifications, financing assumptions, discount rates, qualitative components) that drive the results?
- What about tax considerations and “competitive neutrality?”
- What are best practices for quantifying risks transferred and retained?
- Should social welfare analysis (BCA) be incorporated?
- What are the best approaches to present and communicate results to various stakeholders – unions, public, elected officials, media, etc.?

Takeaways from Group Discussion:

- *Consideration of the Public Sector Comparator (PSC) is critical – how would the state finance and deliver the project without a P3?*
- *The VfM process can serve as a decision-making tool in helping public agencies conduct a self-examination.*
- *VfM is a useful tool for examining tradeoffs and informing choices, but it should not be taken as a definitive “answer” based on precise outputs. Too many assumptions are both difficult to quantify and apt to change over time.*

- *USDOT should not prescribe how states utilize VfM (or similar analyses). States should decide how best to structure its process for assessing the potential value of a P3 approach.*
- *VfM should focus on key drivers (cost estimates, revenue projections) and not become a theoretical exercise overly concerned with less relevant items (like tax considerations). Keep it simple!*
- *Revisiting the VfM before commercial close of a P3 project has become standard practice at some agencies.*

PROJECT FINANCE

Introductory Remarks: Benjamin Asher, Texas Department of Transportation, Director, Project Finance, Debt and Strategic Contracts

To frame the conversation, questions were identified in advance to guide the discussion and include:

- What about cost of capital? To what extent does the higher cost of private financing relative to public financing create push-back when seeking to pursue P3 delivery?
- Does the use of VfM help justify the increased cost of capital - between private equity and tax-exempt municipal debt - to decision makers or more general audiences?
- What are standard assumptions for modeling public vs. private financing (sources of available capital, required rates of return)?
- How does DBF or DBOM compare with DBFOM concessions? What about DB with public financing?
- What more (e.g., streamline credit, enhance PABs, other changes) should the federal government do to support P3 financings?

Takeaways from Group Discussion:

- *P3 should not be seen strictly a financing tool. The focus should be on the value of risk transfer in project delivery.*
- *Much conversation about the value of revenue risk in a P3, including a discussion on how much value there is in private financing compared with alternative approaches where the public arranges the financing (e.g., DBOM). While adding private financing brings additional rigor over the lifecycle of the project through monitoring performance, operations, and asset management, it comes as a cost and an owner would need to see the value in it.*
- *Public agency owners are experienced in estimating capital costs, but not as experienced at estimating life-cycle costs (O&M based on performance standards) or assessing revenue risk.*

PERFORMANCE REQUIREMENTS, INNOVATION, CONTRACT NEGOTIATIONS AND OVERSIGHT

Introductory Remarks: David Spector, Colorado Department of Transportation, Director, High-Performance Transportation Enterprise and Rodger Rochelle, North Carolina Turnpike Authority, Chief Engineer

To frame the conversation, questions were identified in advance to guide the discussion and include:

- To what extent can innovations be sought before, during or after the NEPA process?

- What are recommended processes for seeking private sector innovation (including early input)?
- What are standard/recommended performance requirements for P3 projects?
- What are some best practices in evaluating trade-offs for proposed alternative technical concepts, particularly when they impact operation and maintenance?
- How do owners manage the negotiation process for a P3 contract?
- What are private sector “pain points” as they relate to P3s? Specifically, what are triggers for equity partners, constructors, and operators based on lessons learned from other projects?
- What is the appropriate level of owner involvement throughout the construction and performance period?
- How are owners equipping themselves to perform the oversight role?

Takeaways from Group Discussion:

- *Both local stakeholders and private partners should be involved early to help identify potential innovations / alternative concepts. Industry forums / market soundings can be quite informative.*
- *There is no ideal, standard set of performance requirements. The hard part is to figure out the right amount of detail. For instance, design is often more prescriptive and O&M less prescriptive.*
- *Negotiating and managing P3 contracts is difficult because it requires experience and time. DOTs need more experience with “letting go” and monitoring the activities / reports of the concessionaire. Focus on what is important, don’t sweat the small stuff, and understand the difference!*
- *Everybody is watching, so be transparent and keep public and various stakeholders up-to-date during negotiations and throughout contract / project oversight.*
- *In comparing competitive procurements vs. Project Development Agreements (PDAs), think about: how well-defined the project is, where the project is in the NEPA process, and how flexible you are in considering alternative approaches. A PDA might make sense for a “fuzzy” project that is not far along, where the benefits of early input / innovation from the private sector might offset the lack of competition.*

LUNCH PRESENTATION - ASSET RECYCLING

Geoff Segal, Macquarie Capital; Jennifer Aument, Transurban Group; Joe Seliga, Mayer Brown

The lunch discussion focused on “asset recycling”, a strategy that is gaining consideration in the US. In Australia, asset recycling has been used to raise capital from mature assets to fund new infrastructure. Geoff Segal presented the strategy as one that can “make more productive use of value of assets.” Projects like toll roads and airports have existing revenue streams that could be “unlocked” under a lease concession structure and raise capital to support different projects. Since asset recycling is now a part of the federal policy conversation, the speakers talked about creating incentives and mechanisms to help state governments put assets into a lease structure. Generally, most states have legal authority to do this, but it is not a common practice in the US.

In developing its asset recycling initiative, Australia faced no shortage of investor capital but (like the US) a limited project pipeline. For each dollar raised and subsequently invested by a state in productive infrastructure, the national government provided an investment “bonus” of 15 percent. It was noted that individual projects used proceeds from the leases combined with national government to put \$20 billion (USD) into infrastructure projects. The speakers took care to explain that they were not advocating for the Australian model, but thought it helpful to understand what incentives have (or have not) worked when using this strategy.

Asset recycling often, but not always, results in privatization. The Sydney Airport was sold to a private entity that is now on the Australian stock exchange. In other instances, like transmission systems, Australian project owners still retain the ownership rights. There is flexibility in terms of the timeline of asset lease terms and ownership structures. Like P3, there must be an alignment in terms of risk allocation and shared risk.

Participants then discussed how their respective firms/agencies have approached this issue. Participants shared questions on the typical length of the lease agreement, financing assumptions, and role of public participation in using asset recycling as another project finance strategy. In response to a question about how Australia handled labor issues, it was mentioned the county did not prescribe rules, but left it to individual states to set such criteria.

APPENDIX A: PEER EXCHANGE AGENDA

| SESSION | DESCRIPTION | FACILITATOR |
|--|--|---|
| WELCOME AND OPENING REMARKS (8:30 – 8:40) | | Jennifer Brickett (BATIC Institute) & Steve DeWitt (ACS Infrastructure, ARTBA P3) |
| 1 | Overview and Introductions (8:40 – 9:30) 50 mins Each participant provides a brief overview of their state of affairs, projects, and their expectations from the peer exchange. | Deborah Brown (WSP) |
| 2 | P3 Project Identification, Scoping and Screening (9:30 – 10:15) 45 mins <ul style="list-style-type: none"> ▪ Participant Introductory Remarks (5 minutes) ▪ Facilitated Discussion using pre-identified questions/ topics (40 minutes) | Deborah Brown (WSP) & Bryan Grote (Mercator Advisors) |
| BREAK (10:15-10:30) | | |
| 3 | Value for Money (10:30 – 11:30) 60 mins <ul style="list-style-type: none"> ▪ Participant Introductory Remarks (10 minutes) ▪ Facilitated Discussion using pre-identified questions/ topics (50 minutes) | Deborah Brown (WSP) & Patrick DeCorla-Souza (FHWA) |
| 4 | Project Finance (11:30 – 12:15) 45 mins <ul style="list-style-type: none"> ▪ Participant Introductory Remarks (5 minutes) ▪ Facilitated Discussion using pre-identified questions/ topics (40 minutes) | Deborah Brown (WSP) & Bryan Grote (Mercator Advisors) |
| LUNCH (12:15-1:30) 1 hour 15 minutes | | |
| Panel Discussion 30 minutes Featuring a lively discussion by private sector experts and public participants on the pros and cons of “asset recycling”. | | Steve DeWitt (ACS Infrastructure, ARTBA P3) |
| 5 | Performance Requirements, Innovation, Contract Negotiations and Oversight (1:30 – 2:30) 60 mins <ul style="list-style-type: none"> ▪ Participant Introductory Remarks (10 minutes) ▪ Facilitated Discussion using pre-identified questions/ topics (50 minutes) | Deborah Brown (WSP) & Bryan Grote (Mercator Advisors) |
| 6 | Key Takeaways/Open Discussion (2:30 – 3:15) 45 mins | Deborah Brown (WSP) |
| BREAK (3:15-3:30) | | |
| 7 [Owners Only] | Owner’s Discussion (3:30 – 4:30) 60 mins Overall Q/A and open discussion including what activities or follow-up would be most beneficial to help owner’s overcome their agency-specific challenges in applying what was discussed. | |

APPENDIX B: PEER EXCHANGE PARTICIPANTS

State Department of Transportation Participants

- **Ryan Chamberlain**, *California Department of Transportation, District 12 Director*
- **Nadine Lee**, *Los Angeles County Metropolitan Transportation Authority, Deputy Chief Innovation Officer*
- **David Spector**, *Colorado Department of Transportation, Director, High-Performance Transportation Enterprise*
- **Sam Beydoun**, *Illinois Department of Transportation, Bureau Chief, Innovative Project Delivery*
- **Jeff Ensor**, *Maryland Transit Administration, Chief of Staff, Transit Development and Delivery; and Director, Project Delivery & Finance*
- **Jaclyn Hartman**, *Maryland Transportation Authority, Chief Financial Officer*
- **Mark Dubay**, *Michigan Department of Transportation, Innovative Contracts Engineer*
- **Rodger Rochelle**, *North Carolina Turnpike Authority, Chief Engineer*
- **Eric Kahlig**, *Ohio Department of Transportation, Administrator, Alternative Project Delivery*
- **Art James**, *Oregon Department of Transportation, Senior Project Executive, Office of Innovative Partnerships*
- **Michael Bonini**, *Pennsylvania Department of Transportation, Director, Office of Public-Private Transportation Partnerships*
- **Benjamin Asher**, *Texas Department of Transportation, Director, Project Finance, Debt and Strategic Contracts*
- **Marcus Coronado**, *Texas Department of Transportation, P3 Project Manager*
- **Alex Fisher-Willis**, *Utah Department of Transportation / AASHTO, Innovative Contracting Engineer/AASHTO Transportation Management Fellow*
- **Morteza Farajian**, *Virginia Department of Transportation, P3 Director*

US Department of Transportation

- **Patrick DeCorla-Souza**, *Federal Highway Administration/Build America Bureau, P3 Program Manager*
- **Mark Sullivan**, *Federal Highway Administration, Director, Center for Innovative Finance Support*

Private Sector Participants

- **Jennifer Aument**, *Transurban, Group General Manager, North America*
- **Ed Crooks**, *Transurban, Vice-President, Development & Major Project Delivery*
- **Steve DeWitt**, *ACS Infrastructure, Senior Vice President Business Development*
- **Sue Lee**, *Ernst & Young Infrastructure Advisors, Senior Managing Director*
- **Simon Santiago**, *Nossaman, Partner*

- **Joe Seliga**, *Mayer Brown, Partner*

Other Peer Exchange Participants

- **Jennifer Brickett**, *BATIC Institute: An AASHTO Center for Excellence, Director*
- **Deborah Brown**, *WSP, Vice President Consultant-Facilitator*
- **Bryan Grote**, *Mercator Advisors, Principal Consultant-Facilitator*
- **Julian Gonsalves**, *WSP, Consultant-Coordinator/Note-taker*
- **Alex Clegg**, *BATIC Institute: An AASHTO Center for Excellence, Program Specialist-Coordinator*

Observers

- **Jodie Misiak**, *Build America Bureau, Implementation Project Manager*
- **Michael Whalen**, *Build America Bureau, Senior Advisor to the Executive Director*
- **Kylie Cannon**, *Build America Bureau, Project Development Lead (Rail)*
- **Tom Halloran**, *Build America Bureau, Project Development Lead (Transit & P3)*
- **Amir Khan**, *Build America Bureau, Financial Analyst*
- **Rachel Galowich**, *Build America Bureau, Intern*
- **Joung Lee**, *AASHTO, Policy Director*
- **Megan Kenney**, *AASHTO, AASHTO Fellow*