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Public-Private Partnerships and Dispute Resolution.

We have extensively written about how public-private partnerships ("P3s") offer better, more efficient solutions to public infrastructure needs, and about how, given their effectiveness, they've become a preferred method for funding and managing infrastructure projects in and outside of the U.S. P3s, in short, effectively leverage private funding and expertise with government resources to more efficiently address public needs—often yielding extraordinary results. Yet, while P3s deliver more than just better results than traditional procurement methods tend to, they also incentivize more efficient dispute resolution, too. That is, while ordinary litigation options are typically still on the table, given the long-term arrangements between the parties involved, they tend to seek out faster dispute-resolution options like arbitration, for instance, instead of diving into years of costly, public litigation.

To be sure, P3 teaming arrangements are intricate and complex. A P3 proposer usually consists of a consortium of private entities who, through a special purpose vehicle, submit a proposal to the public entity and, if selected, enter into an agreement with that entity on the one hand, and numerous subcontractors on the other, to address a specific need—such as providing social infrastructure, transportation, or a new utility. From there, the P3 entity would then design, build, finance, operate, and maintain the asset for years to come. Essentially, they remain partners on a single, long-running project, as opposed to typical design-build arrangements where the private-party's interests are short term. So, given the long-term nature of and goals for any given P3 project, the proposer's and public entity's interests tend to be more aligned as both sides have an interest in the project's ongoing success given long-term operations and maintenance contracts are typically part of the deal.

None of that means disputes won't ever happen, of course. Inevitably, they will. The difference here is that each side now has more incentive to resolve their dispute efficiently. So quicker-moving dispute-resolution options like arbitration become more appealing than conventional litigation, especially since parties can (and should) select tribunals ahead of time—including arbitrators with specific expertise on P3 arrangements, as compared to a generalist judges with backlogged dockets. Plus, arbitration proceedings are kept private, are not as jurisdictionally confined (which matters as these projects often involve foreign investors), and are more efficient, as discovery and briefings are streamlined and parties often waive their appeal rights—attributes hardly resembling standard litigation. These practical considerations, among others, drive parties to skip litigation and arbitrate their disputes if (and when) they arise instead.

In short, P3s incentivize not only better project results, but also place the parties in longer-term, more collaborative arrangements that, in turn, nudge them to quickly and effectively resolve their disputes. And that is yet another reason why P3s offer a better path forward.

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