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Expert Panel Highlights Best Practices for Successful P3 Approaches: Nossaman

On December 1, 2022, Nossaman partner Simon Santiago moderated a panel at the 2022 P3 Government Conference held in Arlington, Virginia, titled, “Best Practices for Successful P3 Procurements: Identify the Appropriate P3 Process for Your P3 Approach.” The panelists, comprised of Jack Callahan (Partner and Construction Industry Practice Leader, CohnReznick); Michael Kerrigan (Principal, Delgany Advisory); and Brandey McDonald (Project Director, Infrastructure Asset Management, Fengate), offered a variety of perspectives from the lens of legal, technical and equity provider perspectives.

The panel examined the key issues that public agencies must consider when structuring a P3 process, starting with project planning, transitioning into procurement activities, and then implementing and administering the P3 project. Below are key takeaways from the panel discussion:

Upfront Planning

- In order to identify project goals and objectives, it is necessary to have candid and transparent conversations amongst all stakeholders. Clear communication is crucial to properly define the project scope, achieve the project objectives, and effectively collaborate. Failing to effectively communicate at the outset can result in setbacks later down the line.
- A diligent analysis of the anticipated project risks will help public agencies assess the viability of a P3 project. As an owner, due diligence is critical for gaining market support for a P3 project, including by providing investigatory information on key technical risks and taking proactive measures to mitigate risks prior to initiating a procurement.

Structuring a Procurement Process

- Establishing a procurement process that recognizes the time and effort required for proposers to submit a proposal can help maximize participation. When developing the procurement documents, public owners should ask for information that is most relevant to assessing the capability of a proposer and avoid onerous submittal requirements. Also, owners should offer a stipend that takes into account the level of effort required to submit a proposal.
- The procurement documents and evaluation criteria should be structured to promote and reward innovation. There should be flexibility in design, construction, operation and maintenance scope and standards.

Project Implementation

- Public agencies should employ oversight and monitoring measures that properly balances the public’s need for accountability and the private sector’s need to control and manage its own resources.
- It is essential for the public and private sector to work collaboratively to ensure that contractual obligations are being met and that performance is reported accurately.

Throughout the session, the panelists stressed the importance of retaining and consulting with experienced advisors early on and at every stage of the P3 process.

In conclusion, as a driving point, the panelists wanted audience members to remember that a successful approach to a P3 procurement is not a one-size-fits-all approach. The panelists emphasized that if you have overseen one successful P3 project, that you've only seen *just one*. Every project is distinct; thus, it is important to recall best practices when identifying the appropriate P3 process for every new project.

By Adeyemi Ojudun on 12.29.2022

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