



The Perils of P3 ...

Public Private Partnerships, or P3s, have become increasingly popular in Texas and throughout the United States. A P3 is an alternative delivery method for a large public project where a contractor or group of contractors forms a team with financiers, subcontractors, engineers, and others. The team offers to finance, design, construct, operate and maintain a public facility in return for a revenue stream often based on user fees, such as highway tolls or water rates.

Public agencies are required by federal and state laws to select engineers using Qualification Based Selection procedures. Accordingly, agencies typically select a P3 team using a two-step procedure. The first scoring is on technical proposals and comprises 20-30% of the total. The second scoring is on financial proposals and comprises 70-80% of the total.

P3 projects are often completed in less time and at less cost than conventionally procured projects. The risks to public agencies are somewhat reduced, and project costs are largely transferred from taxpayers to users. This seems like a win-win approach. Is there a downside? For structural and civil engineers, P3s present many unique risks. Here are three examples.

Effort Not Rewarded: During the preparation of technical proposals, contractors ask engineers to work either pro-bono or for severely reduced fees. Engineers are not equity partners and influence no more than 30% of the total score.

A few years ago, a Texas engineering firm was asked to join a P3 team competing for an \$800M project. Wanting very much to win this project, the engineering firm moved several of their key people to the contractor's office for an extended period to prepare the technical proposal. In their absence, the firm's operations and profits suffered. But that seemed justified when the technical proposals were scored and the team placed first. Two weeks later, the financial proposals were scored and the team placed last.

Overall, the team finished third in a three-way competition. The engineering firm had nothing to show for their efforts because, unknown to them, the contractor never intended to aggressively price the project.

Bait & Switch: Public agencies typically require P3 teams to maintain their top leadership throughout design and construction, but they are more lax when it comes to subcontractors. In the P3 world, engineers are considered to be subcontractors and they can generally be replaced at the discretion of the contractors.

The lead engineering firm on the winning team for the project described above faced a dilemma. Shortly after the contractor signed the master agreement, the engineering firm was told to cut their fees by 50% or they would be replaced. Not wanting to abandon the project, the engineering firm reluctantly agreed to cut their fees. Then they promptly outsourced all of the design work to a low-cost overseas affiliate. Ultimately, the biggest loser in this saga was the local engineering community.

Fox Guarding Henhouse: By definition, P3 projects are design/build projects. As with all such projects, engineers are at risk because their clients are the contractors who build their designs. All engineers are bound by their professional licenses to hold paramount the health, safety, and welfare of the public. This becomes problematic when their client, a contractor, decides to cut corners in an effort to save time or money. An engineer's business sense tells them to do what their client asks, while their integrity tells them to do what is right. In P3 projects, the stakes rise because of intense schedule and budget pressure. Usually, the right decisions are made, but when good judgment is lacking the results sometimes appear in the local news.

In summary, P3 projects bring many benefits and their popularity will not wane anytime soon. However, these projects also bring unique risks for engineers, and these risks cannot be ignored.