



## **P3 Potential The New Law and Your Municipality**

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# AIAI

Association for the Improvement  
of American Infrastructure

*Together, we move P3s forward.*

## Public-Private Partnerships for New Jersey

NJ League of Municipalities | ACC-NJ | AIAI • P3 Workshop, December 14, 2018



# P3 OPPORTUNITIES



# WHAT IS A P3?

## P3 Defined

- *A Public-Private Partnership (P3) is a contractual agreement between a public agency and a private entity that allows for greater private sector participation in the delivery and financing of a project.*

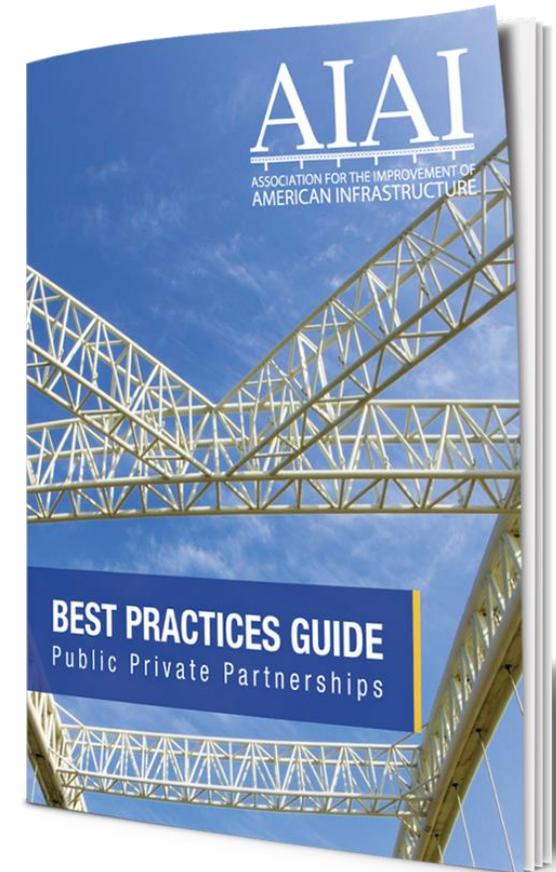
## ...but, why?

- Role for the private sector in solving any extraordinary public challenge (innovation, resources, risk)
- Performance-based, outcome-focused
- There should be a business case made for delivery method chosen for all complex projects that eliminates P3 based on full knowledge of cost of ownership

# IDENTIFYING A P3

## A P3 IS:

- **DESIGN AND CONSTRUCTION, FINANCING, OPERATIONS AND MAINTENANCE PARTNERSHIP**  
Public Sector enters into a long-term contract with private sector to deliver assets and services for the benefit of the general public
- **A RISK SHARING APPROACH**  
Private sector assumes financial, technical and operational risk, public sector sets policy and retains ownership
- **LIFECYCLE PROCUREMENT APPROACH THAT GUARANTEES PERFORMANCE**  
By integrating design, construction, and financing, with operations and maintenance, the asset performance is optimized for the long term
- **A TRANSPARENT RELATIONSHIP**  
Public stakeholders have full control and can expect to be regularly updated and informed throughout the project



# QUALIFYING A P3

## A P3 IS NOT:

- **PRIVATIZATION**

Public sector retains ownership and ultimate control of public asset

- **A FUNDING SOLUTION**

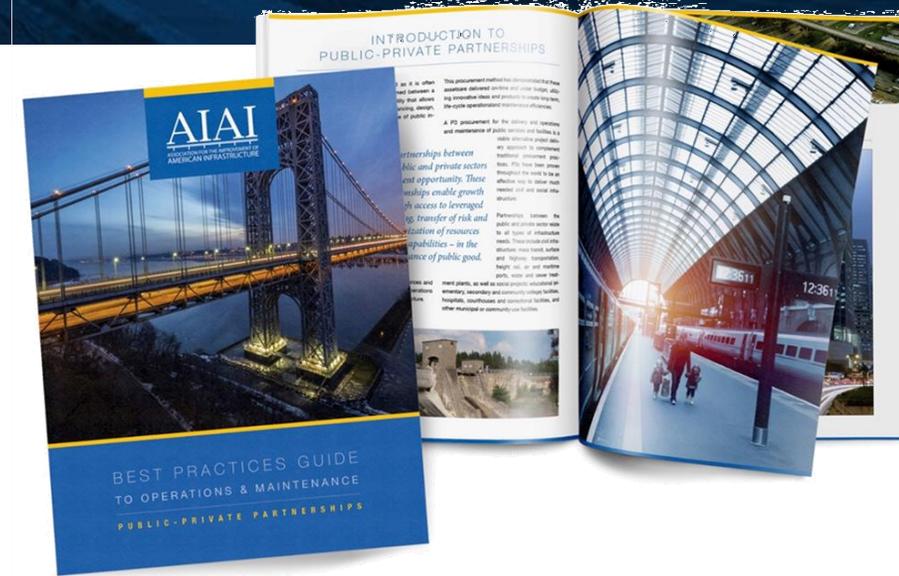
Government agency gains access to private debt and equity financing, which may not be available in regular public procurement, but project must still be creditworthy for debt and equity investors

- **A LOW QUALITY DELIVERY MODEL**

Private entity enters into a performance-based contract with financial penalties imposed by the public agency if availability and quality standards are not met

- **THE RIGHT SOLUTION FOR EVERY PROJECT**

A Value-for-Money analysis is performed by experienced legal, technical and financial advisors to determine if a P3 is right for your project



# BENEFITS OF P3s

- **Allocation of risk to parties best able to mitigate and manage risk**
- **Innovative delivery resulting in reduced project costs and construction timeline**
- **Guaranteed performance of lifecycle costs, including O&M and replacement**
- **Long term fixed payment terms and schedule**
- **Supplemental source of financing**



# CRITERIA FOR VIABLE P3 PROJECTS

## Legislation

- The owner has the appropriate legislative authority in place to undertake a P3 arrangement

## Project Size and Urgency

- In general, projects with construction costs less than \$50 million are not the best candidates for P3 arrangements with financing; however the use of bundling and other methods there are innovative ways to deliver projects

## Project Complexity

- In general, projects with higher technical complexity offer relatively higher opportunity for private sector innovation and integration of design, construction, financing, operations and maintenance

## Project Duration/Asset's Life

- Generally speaking, the value added through a P3 arrangement can increase with a longer duration of the P3 arrangement.

## Performance Characteristics

- P3 arrangements are structured primarily around performance based contracts. It is important for owners to evaluate whether it is feasible to clearly define objective performance standards for the project.

*Not every project is suitable for P3!*

# RISK TRANSFER

P3s transfer risk to the private sector.

Risk	Design-Bid-Build	Design-Build	DBFOM - P3 (Availability)	DBFOM - P3 (Demand)
Scope Changes (owner requested)	Public	Public	Public	Public
Environmental Approvals	Public	Public	Public	Public
Permits & Approvals	Public	Shared	Shared	Shared
Right of Way	Public	Public	Shared	Shared
Utility Relocation	Public	Shared	Shared	Shared
Design (errors & omissions)	Public	Shared	Private	Private
Ground Conditions	Public	Public	Shared	Shared
Environmental Contamination	Public	Shared	Shared	Shared
Construction (cost / schedule overruns)	Shared	Private	Private	Private
Labor Disputes	Public	Private	Private	Private
Quality Assurance/Control	Public	Shared	Private	Private
O&M + Lifecycle	Public	Public	Private	Private
Financing	Public	Public	Private	Private
Interest Rate/Credit Spread	Public	Public	Public	Public
Changes in Law	Public	Public	Shared	Shared
Force Majeure	Public	Shared	Shared	Shared
Traffic & Revenue	Public	Public	Public	Private
Toll Collection	Public	Public	Public	Private

# PROCUREMENT PROCESS

One of the key drivers for the successful development of a P3 project is a defined, properly structured procurement process that encourages private sector companies to bring forward their best people and ideas. The key stages of the P3 process include:

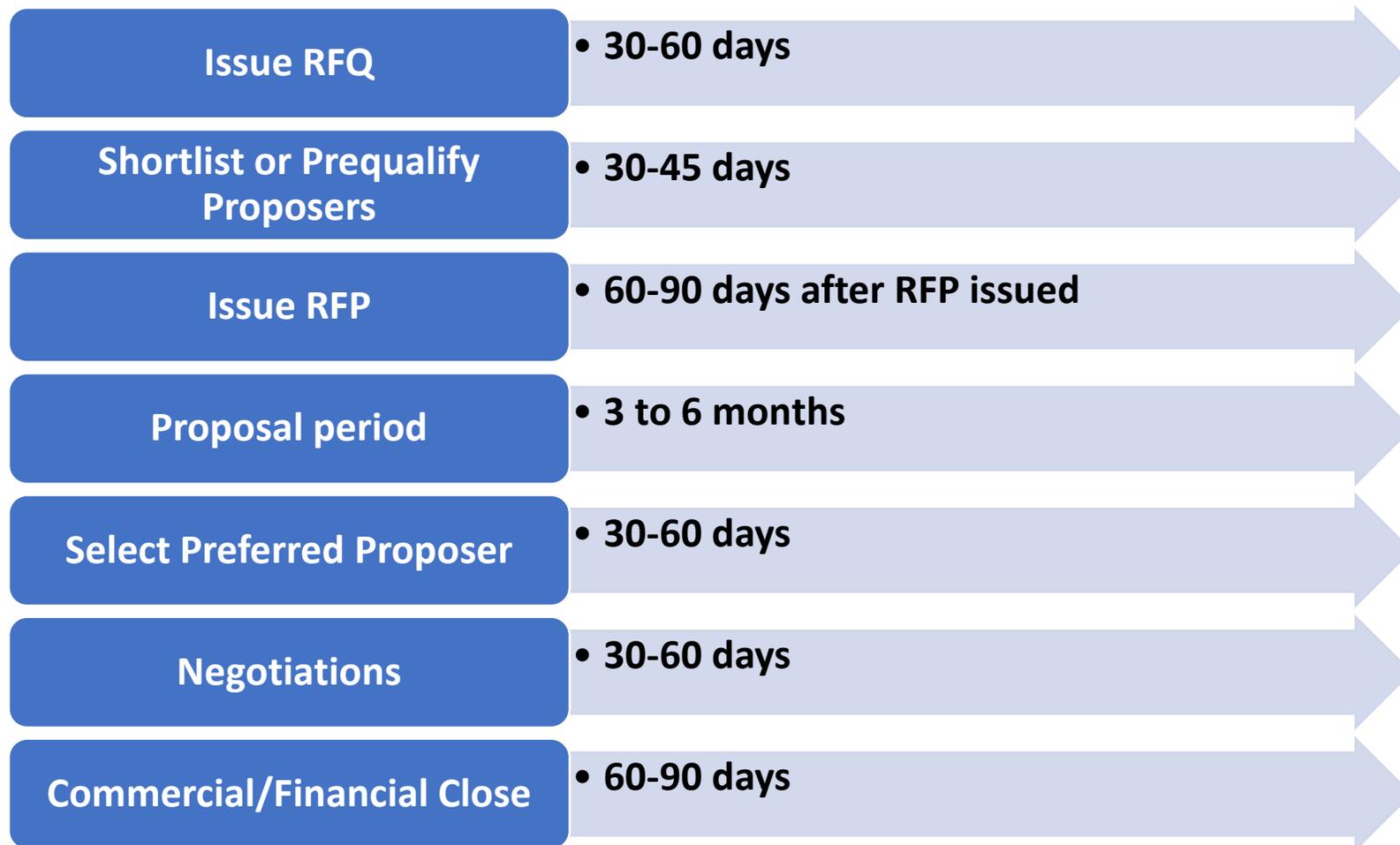


# TIMELINE

## TYPICAL DURATIONS FOR A PROCUREMENT

These timelines will vary by project and State legal requirements.

*Every project is different!*



# KEY PROCUREMENT GOALS

## AGENCY

Select bidder that proposes best value  
– balance technical quality, risk transfer, and price

Achieve contract award/project completion within target deadlines

Procurement Integrity (avoid bid protest)

Stakeholders support

## BIDDER

Private Sector wants: payment certainty, capped risks, transparency, full public/political buy-in

P3 procurement and negotiation:

Focus and performance (rather than specificity)

**Priceable** risks

**Reliable** payment stream

**Reduced** political risk – think statutory solutions before the start!

Partner attitude

Chance at the upside

# P3 ANALYSIS AND PLANNING

Identifying and developing a “good P3” typically involves a series of progressively more detailed and resource-intensive tiers of analysis and planning. With each tier, the definition and goal for what constitutes a “good P3” evolves, so owners should advance to subsequent tiers only if current tier goals are met.

Tier 1: High-Level Screening

Tier 2: Preliminary P3 Technical and Financial Analysis (Options Analysis; VFM; Market Intel)

Tier 3: Detailed Project Planning (Shadow Bid Model; Risk Allocation)

Project



Delivery

# LESSONS LEARNED

Know what you want	Get the right advisors	Have a clearly defined process
<ul style="list-style-type: none"> <li>• Establish clear goals and success criteria</li> <li>• Develop a strong program with clear output specifications</li> <li>• What do you want the partner to do?</li> <li>• What risk will you assume?</li> <li>• Benchmark costs and establish targets</li> <li>• Evaluate Financing strategies</li> </ul>	<ul style="list-style-type: none"> <li>• Real Estate and Development Advisory</li> <li>• Capital formation strategies and analysis</li> <li>• Legal and legislative</li> <li>• Public procurement process expertise</li> <li>• Expertise in complex evaluation and contract negotiations</li> <li>• Design and construction oversight</li> <li>• Communication and public outreach</li> </ul>	<ul style="list-style-type: none"> <li>• Transaction structure including financing considerations</li> <li>• Attainable schedule and milestones identified</li> <li>• Clear goals, expectations &amp; evaluation criteria</li> <li>• Clearly defined design process</li> <li>• Clearly defined performance specifications</li> <li>• Construction oversight</li> <li>• Ensure transparency and accountability in process</li> <li>• Communication plan for internal and external stakeholders</li> </ul>

# New Jersey's New Public-Private Partnership Law

N.J.S.A. 40A:11-52 *et seq.*



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# New Jersey's Track Record for PPP



- PPP's performed via N.J. Local Redevelopment and Housing Law.  
N.J.S.A. 40A:12A-1 et seq.
- *PPP's performed via 2009 Economic Stimulus Act*
  - *Limited to Higher Education*
  - *Eleven Projects / Six Colleges / Institutions*
  - *Dormitory, Dining, Co-Generation Plant and Infrastructure,  
Mixed Use, Commercial Retail and Parking (2010-2015)*
  - *Total Private Investment: \$934,606,831*

# N. J. Public-Private Partnership Law

## Who is a Local Government Unit?

- A county, a municipality, or any board, commission, committee, authority or agency thereof that is subject to the provisions of the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) –
- including a housing authority or redevelopment agency created or continued under the “Local Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et seq.).



# What Projects are Permitted?



- Project Defined:
  - development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of --
  - any building, local or county road, vertical structure, or facility constructed or acquired by a local government unit --
  - to operate local government functions, including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity

# Solicit or No Solicitation of Private Party



## **SOLICITATION:**

- RFQ – 45 Day Minimum
  - ❖ Website, at least one newspaper w/ State wide circulation
- Local Government Unit (LGU) determines Qualifications
  - ❖ Minimum Qualification Standards to be Promulgated by State Treasurer
- RFP to Qualified Respondents: Content
  - ❖ Relevant Technical Submission
  - ❖ Evaluation Criteria to be Promulgated by State Treasurer
- LGU may Require that Private Entity Assume Responsibility of all Costs Incurred by the LGU before Execution of a PPP Agreement

# Solicit or No Solicitation of Private Party

## UNSOLICITED:

- **Does it Meet the Minimum Requirements?**

- ❖ Project Description; Construction Cost Estimate
- ❖ Life Cycle Cost Estimate; Development Timeline
- ❖ Financing Plan
  - Revenue Projection
  - Public or Private Debt / Equity Inv.
- ❖ Description of how project meets needs of “Existing Plan”
- ❖ ID of Local, State, Federal Permits & Approvals
- ❖ Project Approval Schedule
- ❖ Statement of Risks, liabilities and Responsibilities to be Assumed by Private Entity

- **If Yes --**

- ❖ LGU Website, Newspaper Publication, Mailing to Municipalities / County Governments



# Solicitation / Unsolicitation Process for Private Party

-- Continued --

- LGU Ranks Proposals in Order of Preference
  - ❖ At a Minimum, based on Criteria to be Promulgated by State Treasurer
  - ❖ Other Factors, which may include:
    - Professional Qualifications
    - General Business Terms
    - Innovative Engineering
    - Architectural Services
    - Cost Reduction Terms
    - Finance Plans
    - Need for Government Funds to deliver the project and discharge the PPP Agreement



# LGU Decision Making – Part of RFQ / RFP Process



- **LGU shall determine:**

- ❖ Benefits to be realized by the Project;
- ❖ Cost of project if it is developed by the public sector supported by comparisons to comparable projects;
- ❖ Maximum public contribution that local government unit will allow under the public -private partnership;
- ❖ Comparison of the financial and non-financial benefits of the public private partnership compared to other options including the public sector option;
- ❖ List of risks, liabilities and responsibilities to be transferred to the private entity and those to be retained by the local government unit; and
- ❖ If the project has a high, medium or low level of project delivery risk and how the public is protected from these risks.

# LGU Public Hearing: Part of RFQ / RFP Process



- **LGU to Hold Public Hearing Upon Notice**

- ❖ At least 14 days prior to Hearing
- ❖ LGU Website
- ❖ At least one paper w/ State wide circulation

# LGU Public Hearing: Part of RFQ / RFP Process

- **At Public Hearing, LGU shall Find that the Project is in the Best Interest of the Public by Finding:**
  - ❖ **Cost** is  $\leq$  the public sector option, or if it costs  $\geq$  there are factors that warrant the additional expense;
  - ❖ There is a **public need** for the project and the project is consistent with existing long-term plans;
  - ❖ There are **specific significant benefits** to the project;
  - ❖ There are **specific significant benefits** to using the public-private partnership instead of other options including No-Build;
  - ❖ The private development will result in **timely and efficient** development and operation; and
  - ❖ The risks, liabilities and responsibilities **transferred** to the private entity provide sufficient benefits to warrant not using other means of procurement

# LGU's APPLICATION



- **LGU submits PPP Application to State Treasurer for Review and Approval, in consultation w/ NJEDA and NJDCA - Application to Include (but not limited to):**
  - a **full description of the proposed PPP agreement** between LGU and private developer, including all information obtained by and findings of the LGU pursuant to its review and public hearing
  - a **full description of the project**, including a description of any agreement for the lease of a revenue-producing facility related to the project; and
  - the **estimated costs and financial documentation** for the project showing the underlying financial models and assumptions that determined the estimated costs.
    - Financial documentation - at least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios;
    - The application shall contain a long-range maintenance plan and a long-range maintenance bond and shall specify the expenditures that qualify as an appropriate investment in maintenance. (To be approved by State Treasurer)

# LGU APPLICATION



- **Application to State Treasurer to also Include:**
  - **Timetable** for completion of the construction of the project;
  - **Analysis of all available funding options for the project**, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;
  - **Record of the public hearing** held by LGU, which shall have been made available to the public within seven days following the conclusion of the hearing; and
  - **Resolution** by the local government unit's governing body of its intent to enter into a public-private partnership agreement
  - **Any other requirements** that the State Treasurer deems appropriate or necessary.

# Express Findings



- **State Treasurer to make Following Findings, before a PPP Agreement can be Entered**

- LGU's **assumptions** regarding the project's scope, its benefits, its risks and the cost of the public sector option were **fully and reasonably developed**;
- **design** of the project is **feasible**;
- the experience and **qualifications** of the private entity;
- the **financial plan is sound**;
- the **long-range maintenance plan is adequate** to protect the investment;
- the project is in the **best interest of the public**, using the criteria at N.J.S.A 1.e(6)
- a **resolution** by the local government unit's governing body of its intent to enter into a public-private partnership agreement for the project has been received; and
- the **term sheet** for any proposed procurement contains all necessary elements.

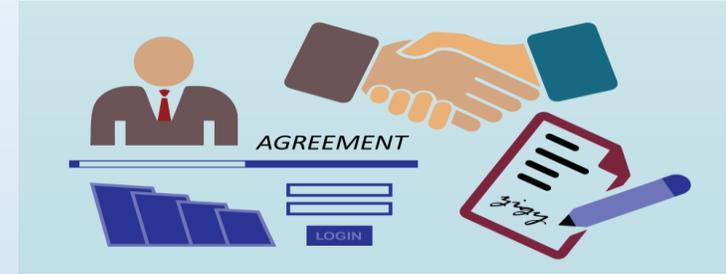
Retains right to revoke approval if project has substantially deviated from the plan

# PPP Agreement



- Agreement for the purpose of permitting a private entity to assume full financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the local government unit
  - that permits the private entity to assume full financial and administrative responsibility for a project of, or for the benefit of, the local government unit, provided that the project is financed in whole by the private entity and the local unit retains full ownership of the land upon which the project is located.

# PPP Agreement



- At a minimum:
  - (i) the term of the agreement;
  - (ii) the total project cost;
  - (iii) a completion date guarantee;
  - (iv) a provision for damages if the private entity fails to meet the completion date; and
  - (v) a maximum rate of return to the private entity and a provision for the distribution of excess earnings to the local government unit or to the private party for debt reduction.
- Project less than \$50 million - contractors cannot participate if contractor has contributed to the private entity's financing of the project  $\geq 10\%$  of the project's financing costs.
- Project labor agreement.
- LEED Design or Equivalent
- Posting of performance bond and payment bond; Construction Account
- Prevailing wage rate for the worker's craft or trade
- Work performed under the agreement are subject to the provisions of the "Construction Industry Independent Contractor Act,"

# PPP Agreement



- May Include:

Lease of a revenue-producing public building, road, structure, infrastructure, or facility

in exchange for –

up-front or structured financing by the private entity for the project.

Private entity shall be responsible for the management, operation, and maintenance of the building, road, structure, infrastructure, or facility. The private entity shall receive some or all, as per the agreement, of the revenue generated by the building, road, structure, infrastructure, or facility.

# PPP Risks / Limitations \*



- Potential for Unforeseen Challenges
- Fewer Bidders
- New Risks from Procurement Process
- Increased Financing Costs

\*"Successful Private/Public Partnerships,"

Urban Land Institute, 2016

# TAXPAYER PROTECTIONS – P3 LAW

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- Disclosure of project criteria
- P3 Proposals from at least two entities
- Uniform oversight & project review
- Public hearings on planned projects
- Performance bond requirement
- Delivering needed projects

# LABOR PROTECTIONS – P3 LAW

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- Prevailing Wage requirements
- Contractor Registration
- Project Labor Agreements
- Misclassification statute applicability

# CONTRACTOR PROTECTIONS – P3 LAW

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- Prequalification / Classification of Contractors
- P3 Construction Account
- Prohibition on “bundling” of projects
- Prompt Pay Act applicability
- Stipends

# CASE STUDIES

- **COURTHOUSE** | Long Beach, California
- **STUDENT LIVING** | Montclair, New Jersey
- **SAFETY – STREET LIGHTING** | Detroit, Michigan
- **COURTHOUSE** | Howard County, Maryland

# ACTIVE US P3 JUSTICE PROJECTS

- **Howard County Courthouse** | MARYLAND
- **Miami Dade Courthouse** | FLORIDA
- **Chatham County Courthouse** | GEORGIA
- **Travis County Courthouse** | TEXAS

# COURTHOUSE CASE STUDY

## **GOV. GEORGE DEUKMEJIAN COURTHOUSE** **Long Beach, California**

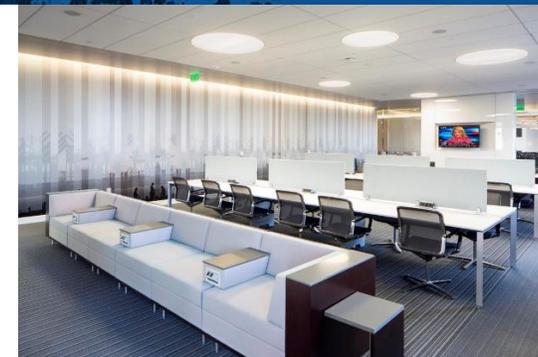
- **Courtrooms: 31 (+ 6 future expansion)**
- **5-Story, 545,000 SF**
- **415,000 SF Court, 5,500 SF Retail**
- **100,000 SF County Lease**
- **Design and Engineering, Parking upgrades and remodeling**
- **First social infrastructure project in US**



# COURTHOUSE CASE STUDY

## OPERATIONAL HIGHLIGHTS

- **Open since September 2013**
- **Seamless move by Courthouse staff**
- **Requirements for operations are stringent and aggressively short for penalties, requiring prompt response and correction**
- **High Level of Stakeholder Satisfaction**



# DORMITORY COMPLEX CASE STUDY

## Montclair State University, New Jersey

- **Student Living 8** dormitory buildings, containing **1,978** beds and **2,400 sf** dining hall
- **Value: Approx. \$200,000,000.**
- **Integrated State-of-the-art residential and dining facility for students**
- **24 months: design to project completion.**



# COURTHOUSE CASE STUDY



- **170-year old courthouse modernization**
- **Considered options for replacing or relocating key county facilities**
- **Benefits of using the P3 model:**
  - Risk sharing | transfer
  - Faster delivery
  - No payment until completion
  - Predictable future costs and
  - Efficiency gains & guaranteed performance.



# SAFETY • STREET LIGHTING

## MICHIGAN STREET LIGHTING

- Design & replace 15,000 fixtures LED technology & improvements
- 13 year O&M period, \$45M financed with private capital
- +50% energy reduction over life cycle, with energy savings guaranteed
- Innovative procurement - best value based on entire life cycle costs
- Accelerated construction, guaranteed completion date



Before



After



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of Municipalities

# Questions & Answers



## New Jersey State League of Municipalities



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