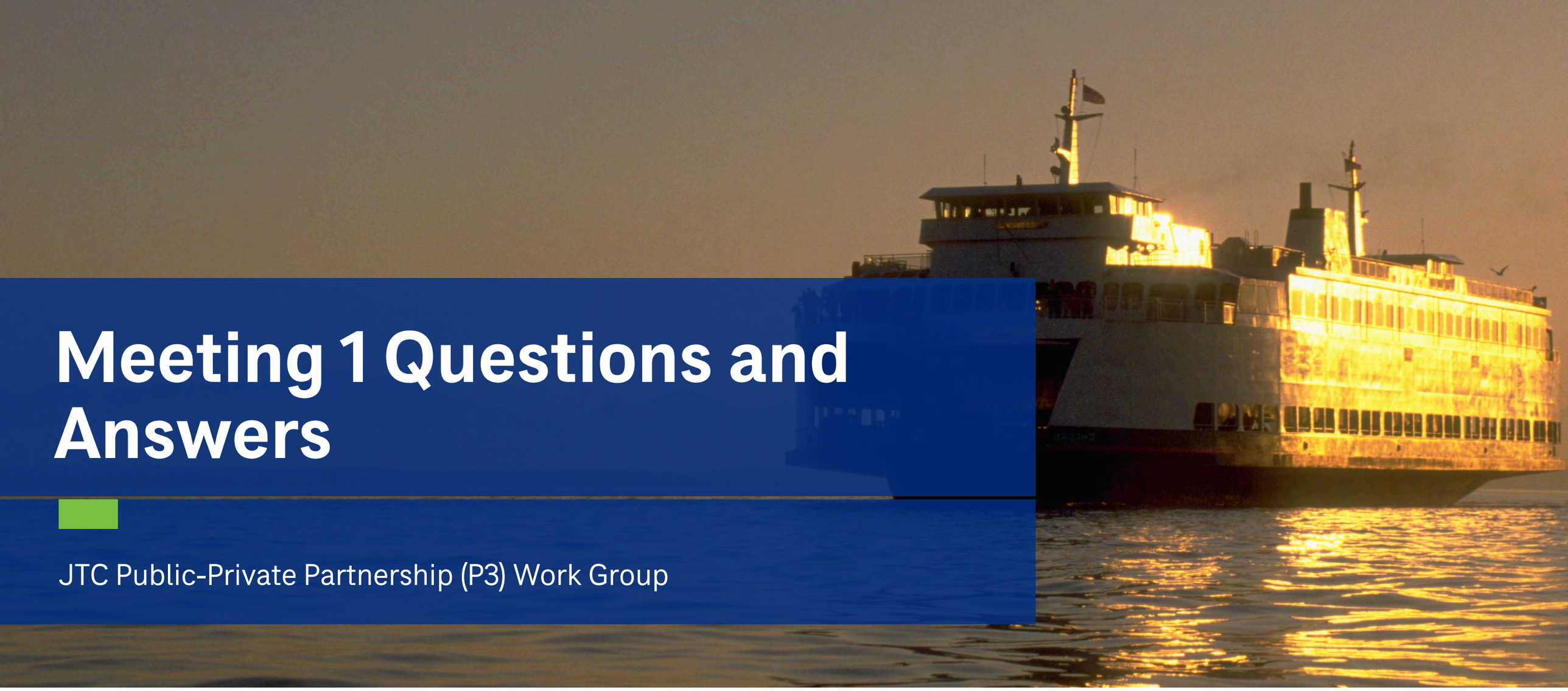


Meeting 1 Questions and Answers

JTC Public-Private Partnership (P3) Work Group

October 13, 2023

CDM Smith

Key questions from Work Group meeting 1

1. Explain and share an example of Value for Money (VfM), including how one can tell when “traditional delivery” is less viable?
2. Explain and share an example of availability payments (including what happens when payments are missed/not appropriated)?
3. What are some examples of P3 failures?
4. What is a range of project size and/or costs that makes sense for a P3?
5. What is the ideal starting point for a P3 (e.g., right of way acquisition)?
6. How can and/or do P3s impact state credit ratings?
7. What is the cost of operating a P3 office?

Q1. Value for Money (VfM) analysis: the process

1A. Develop a Public Sector Comparator Model

- The “Public Sector Comparator” (PSC) is a model that represents the traditional project delivery approach. It illustrates expected project delivery costs, including delivery method, financing assumptions, timing assumptions, construction costs, revenue and operations costs. The purpose is to provide a detailed lifecycle cost estimate for the entire project under conventional procurement assumptions.

1B. Develop a P3 Model

- The P3 approach is called a “Shadow Bid.” It offers a cost estimate following the same categories used in the PSC (financing, timing, construction, revenue, operations, etc.) but under P3 procurement assumptions

2. Conduct VfM Analysis

- The PSC and Shadow Bid results constitute inputs to the VfM analysis. VfM identifies which method provides best value, or the greatest monetary benefit, to the State.
- Costs are compared on the basis of net present value of the PSC and Shadow Bid models. Net present value is the difference between the present value of cash inflows and the present value of cash outflows over a period of time. Adjustments for certain non-financial costs, like retained risks, can be made.

Q1. VfM example: I-405/SR 167 Express Toll Lanes comparative financial model assumptions and outputs

The 2012 JTC P3 report identified several case study projects to illustrate VfM. The staff workgroup (SWG) and WSDOT determined the assumptions to use in the financial modeling, which considered project-specific inputs, delivery model, financing assumptions, timing assumptions, construction costs, revenue, and operations costs.

Key Assumptions

Item	Public Sector Comparator (PSC)	P3 Shadow Bid
Delivery method	DB	DBFOM
Term	50 years	50 years
Assumed revenue source	Toll revenue bond or GO bonds	Toll concession
Assumed toll rates	Equivalent	

High-level Outputs

Item	PSC	P3
Initial construction costs*	$1.317B	$1.116B
Preservation costs/total lifecycle costs*	$0.739B	$0.664B
O&M costs	$5.187B	$3.408B
Value of risk apportionment**	$0.240B	$0.140B
Schedule	10 years	7.5 years

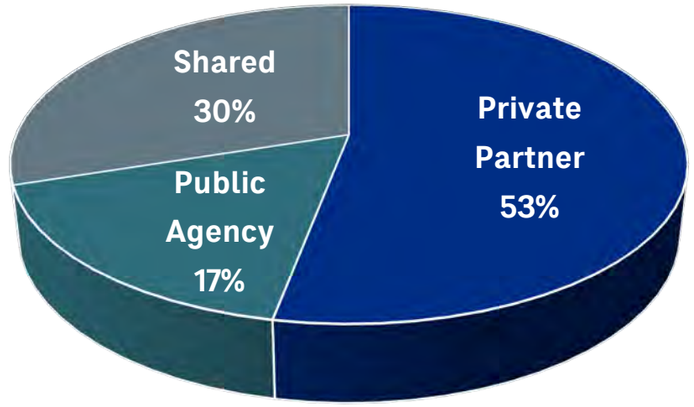
*Detailed forecasts provided in Table 3.10, 3.11, 3.12 in the 2012 report
**Detailed risk assessment provided in section 3.6.3

Source: Evaluation of Public Private Partnerships, Washington State JTC, January 2012

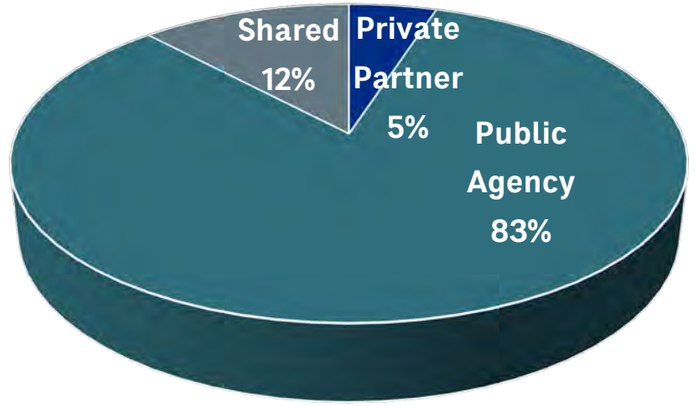
Q1. VfM example: I-405/SR 167 Express Toll Lanes risk assessment

- The purpose of risk assessment is to quantify risk and allocate it optimally to the appropriate parties (private or public).
- Risk assessment breaks risk into categories such as permits and approvals, land delivery and access, design, site conditions and environmental factors, construction, commissioning, and operations. The value of each category of risk is quantified under a PSC vs. P3 model to identify which risks are best managed by the respective parties.
- An example of the proportional allocation of risk by party for the I-405/SR 167 Express Toll Lanes case study is shown at right.

P3 Risk Allocation



PSC Risk Allocation



Q1. VfM example: I-405/SR 167 Express Toll Lanes results

The results of the comparative analysis for the PSC and Shadow Bid models are used as inputs for the VfM analysis. The net present value (NPV) of the project's cash flows under each model are compared to decide which delivery method provided the best value to the state. In the case of a project with toll revenues, the net present value of the revenue over the life of the project is included as positive cash flow in the calculation of NPV. In addition, in a P3 project with a revenue stream like tolling, it is possible to "sell" the revenue stream to the private partner for an upfront concession payment. These upfront payments may be more valuable to the state than what the state might expect to earn over the project lifespan, even using the same toll rate and traffic assumptions.

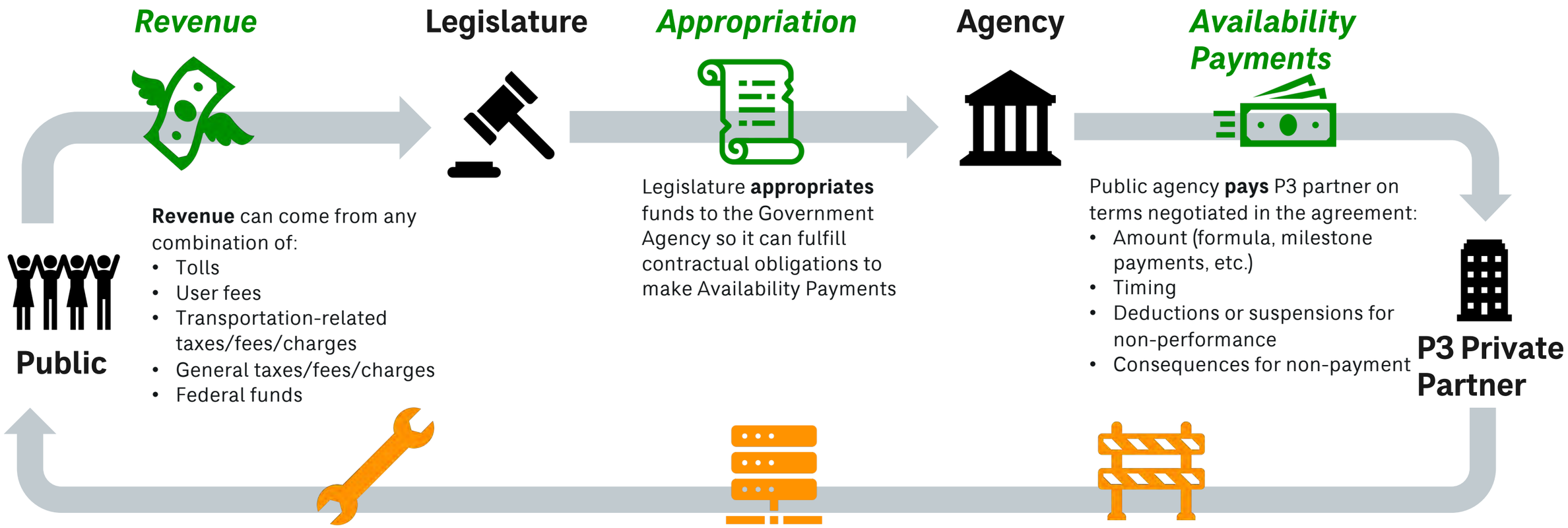
In the I-405/SR 167 example, the VfM results resulted in the following NPV under the two traditional delivery models and the P3 Model. Note that these numbers are outdated and were used at the time of the analysis (2012), so is only meant here to illustrate the VfM example:

- PSC toll revenue bond had an NPV to the state ranging from $340M-$470M
- GO Bond model had an NPV of $510M
- The P3 model had an NPV of $910M

After comparing each model, **a P3 delivery may provide value somewhere between $400M and $570M greater than either of the traditional delivery models.**

Q2. How do availability payments work?

Availability payments are contractually obligated payments from a government agency to a P3 partner made in exchange for successful completion of delivery (i.e., capital construction) of an asset, ongoing operations of a facility or provision of a service, or ongoing maintenance of an asset.



Revenue can come from any combination of:
- Tolls
- User fees
- Transportation-related taxes/fees/charges
- General taxes/fees/charges
- Federal funds

Legislature **appropriates** funds to the Government Agency so it can fulfill contractual obligations to make Availability Payments

Public agency **pays** P3 partner on terms negotiated in the agreement:
- Amount (formula, milestone payments, etc.)
- Timing
- Deductions or suspensions for non-performance
- Consequences for non-payment

P3 partner **maintains** an asset (bridge, ferry terminal, etc.)

P3 partner **operates** a facility (e.g., toll road) or provides a service (e.g., passenger rail)

P3 partner **develops** an asset (roadway, bridge, etc.) and makes it "available" for use by the public

Q2. What are the advantages and disadvantages of using availability payments?

Advantages

- Projects can be completed without issuance of state bonds.
- Repayment terms are negotiated – more flexibility to fit the specific project and/or budgetary circumstances.
- General revenues, and/or multiple revenue sources, can be used to make payments – not limited to just project revenues (e.g., tolls).
- Availability Payment obligations *might not* count against the state's constitutional or statutory debt limits, depending on the terms of repayment.
- Provides a means to hold private partners accountable to meet agreed performance standards for the full term of the agreement.

Disadvantages

- Depending on the repayment period, it can result in a long-term financial commitment, potentially beyond a typical 25 or 30-year bond repayment period.
- Cost of financing is higher than state government borrowing.
- Limited flexibility for state to revise the availability payment structure – state cannot simply refinance whenever it is advantageous to do so.
- Availability Payment obligations likely to be considered a "debt" of the state by credit rating agencies and factored into the state's bond ratings.
- Compels the legislature to prioritize appropriations for availability payments above other needs (similar to how debt service payments on state bonds are prioritized).
- If a state does not make payments as contractually agreed, private partner's remedies could be costly.

Q2. How do availability payments affect the state's credit?

There are two primary credit considerations related to the use of availability payments: A) how they affect the state's debt limit; and B) how they might affect the state's credit rating.

A. Are availability payments subject to Washington's debt limit laws?

Washington has both a constitutional limit (Art. VIII, Section 1 of the Washington State Constitution), and a statutory limit (RCW 39.42.140) on the amount of debt the state can incur. The determination and calculations must be conducted at the end of each fiscal year by the State Treasurer. It cannot be said with certainty whether availability payments would be exempt from Washington's debt limit laws, although there may be examples where similar financing arrangements (e.g., Certificates of Participation) have been deemed not subject to the state's debt limit.

Historically, "state debt" has been interpreted broadly to mean all borrowed money secured by the full faith and credit of the state or required to be repaid (directly or indirectly) from general state revenues. However, certain types of state obligations are not subject to the state's limit on debt, such as bonds to be repaid with non-tax revenue (for example, tolls), revenue dedicated to highway purposes (e.g., gas taxes), etc.

If availability payments are structured so they are only payable from exempt revenue sources, they are more likely to be excluded from the state's debt limit. Some states that have used availability payments have done so without being subject to their state's debt limit laws, including Ohio and Maryland. However, specific provisions, case law, and interpretations can differ from state to state. Florida and North Carolina have taken a different view, treating availability payments (or at least the portion of those payments used to repay the P3 developer for capital construction) as a debt of the state that must be included in debt limit calculations.

Conclusion:
Even if availability payments are deemed to constitute a debt of the state and therefore subject to the state's debt limit, this does not mean availability payments cannot be utilized; this just means that funds expended on availability payments could theoretically "crowd out" other expenditures subject to the debt limit that the state may want (or need) to make.

Q2. How do availability payments affect the state's credit? (cont'd)

B. Do credit ratings agencies view availability payments as a liability of the state that factors into the state's overall credit rating?

While availability payments can be used to fund infrastructure projects without being considered "debt" under the state's debt limit laws, legislatures prioritize them for repayment during the state's annual budget appropriations process, similar to how debt service payments are prioritized.

When the state sells bonds to fund capital improvements for schools, public buildings, roadways, etc., the credit rating given by the ratings agencies impact the resulting amount that investors are willing to pay for those bonds, which in turn determines the interest rate that must be paid to those investors. The ratings agencies take into account the state's total financial obligations in their ratings; the ratings agencies are not constrained by the state's own definition of what constitutes "debt."

All three major ratings agencies view availability payments as "debt-like obligations." Two of the agencies consider only the portion of the availability payment that is attributed to capital construction costs at completion of the project, while a third agency (Standard & Poor) also includes any milestone payments made prior to project completion as debt.

Q2. What are some examples of availability payments?

Rapid Bridge Replacement project, PennDOT

- An availability payment P3 where Walsh Keystone Partners were responsible for the **design, construction, financing, and life cycle maintenance** of 558 replacement bridges.
- Work on the project started in 2015. All bridges were constructed by 2019 and the 25-year life cycle maintenance began after substantial completion of each bridge.
- $1.1 billion in capital cost.

Milestone payments

- $225 million in **milestone payments** from PennDOT to facilitate the construction process.
- Payments were made at notice to proceed with construction and again at 12, 18, 24 and 30 months
- Each payment constituted half the construction cost, with the other half covered by private sources.

Availability payments

- $35.8 million in **availability payments** per year for 25 years starting after substantial completion.
- Appropriations made to PennDOT for these payments are in the capital budget along with all other budget needs. Since it is an existing contract, it will be a prioritized payout.
- See appendix for contractual provisions related to availability payments.

Source and Further Reading: https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2016/10/BPC-Infrastructure-Rapid-Bridge.pdf

Q2. What are some examples of availability payments? (cont'd)

What happens if Pennsylvania fails to make an availability payment?

- Under the Rapid Bridge Replacement contract, failure to provide payment to a private entity would likely result in a "Compensation Event."
- If a compensation event occurs, remedies include extensions on work, relief from compliance on certain obligations, and compensation for costs as a result of the event.
- To obtain relief or compensation as a result of a compensation event, the private entity must provide evidence documenting that such a compensation event is impacting its ability to perform under the contract.
- Depending on the nature of compensation and impact on performance of work, the private entity may, pursuant to the contract, enter in an agreement with PennDOT to obtain appropriate relief and compensation.

Q2. What are some examples of availability payments? (cont'd)

The Eagle Project, Colorado

- An availability payment P3 where the P3 developer ("Denver Transit Partners") is responsible for **design, construction, finance, operation, and maintenance** through a 34-year contract for several RTD commuter rail lines.
- Work began in 2010 and rail lines opened by 2016.
- $2.086 billion in capital costs

- Contracting party is the Regional Transportation District.
- $777 million paid by RTD during the construction period for right-of-way, project management, utility relocation, and other costs alongside private investments.

- $33 million in **availability payments** per year for 34 years after substantial completion
- Availability payments are subject to annual appropriation by the RTD Board, which raised concern for bidders, so RTD committed not to use its remaining borrowing authority for other FasTracks projects.

Source and Further Reading:
https://pwfinance.net/document/research_reprints/7%20denver%20eagle.pdf

Q3. What are some examples of P3 failures?

Indiana I-69 Section 5: Interstate Reconstruction

- In 2013, Indiana was reconstructing I-69 to interstate standards
- Four other sections had been completed using funds from the lease of the Indiana Toll Road, but there was difficulty in finding enough funding for Section 5.
- The state initiated a P3 process to finance the construction of the road.

What went wrong?

- The Indiana Finance Authority (IFA) selected I-69 Development Partners (IDP) for the contract, which used an availability payment for the DBFOM of the facility for 35 years. The IFA was created by the state to issue bonds and can facilitate issues of tax-exempt debt for private borrowers. Almost immediately after signing the agreement, there were issues, from construction delays to failure of the private partner, IDP, to make payments to contractors.
- As an availability payment (AP) was used, that meant the revenue risk was held by the state, rather than IDP. IFA originally agreed to pay $80M in AP. As IFA understood that IDP may be facing financial insolvency, IFA agreed to increase the AP by 35%. However, even that could not shore up IDP and the IFA decided not to proceed with that increase in the AP.
- Eventually, due to a multitude of performance failures on the part of IDP, the state terminated the agreement in 2017 and took back over the facility. The settlement agreement stipulated that IFA would refund all the Private Activity Bonds (PABs*) principle and accrued interest, primarily by issuing revenue bonds to refund the PAB holders. The agreement also provided a $50M compensation to IFA for completing the project.
- There were a confluence of factors that led to this failure—a primary cited reason is that the contractor selected had a lack of experience in the U.S. in P3s, did not have sound project financing (a majority stakeholder, Isolux, was facing poor performance and financing on other international projects), and did not have the right project management team.

*PABs are government issued bonds that are tax exempt that allow private sector participation.
For more information: https://www.americanprogress.org/article/public-private-partnerships-fail-look-southern-indianas-69-project

Q3. What are some examples of P3 failures? (cont'd)

Indiana I-69 Section 5

Examples of news clips and headlines related to the Indiana I-69 Section 5 echoing public perception (click the headline to link to the article):

Q3. What are some examples of P3 failures? (cont'd)

Chicago Parking Meters

- In 2008, Chicago entered a 75-year contract to lease parking meters to Chicago Parking Meters LLC (CPM).
- $1.1B concession for approximately 36,000 meters.
- CPM made upgrades to move from coin-based meters to meters that accept cash and credit/debit cards.

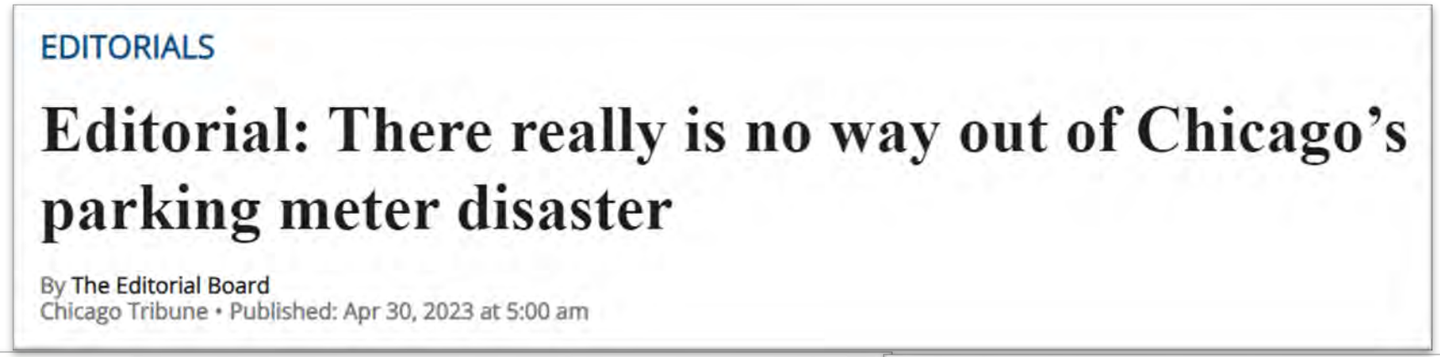
What went wrong?

- Several elements of the deal resulted in negative impacts to the City's finances. First, it was found that the City undervalued the asset by approximately $1 billion. The parking rates were allowed to increase and CPM is now making profits each year. CPM recouped their investment and made profit 15 years into the lease agreement. In 2022, it was estimated that CPM had accrued approximately $140M in revenues.
- Adding to the negative perception of this P3 deal were the compensation events and resultant "true up payments" the City is required to make per the terms of the lease. The City must pay the private investor if certain events prevent the ability to use the meters. For example, when the City has a road closure for an event, must remove a meter for construction, or wants to construct a protected bike lane (essentially anything that takes the meter out of service) the City must compensate the concessionaire (CPM) for that revenue loss potential.

Q3. What are some examples of P3 failures? (cont'd)

Chicago Parking Meters

Examples of news clips and headlines related to Chicago's parking meters P3 echoing public perception (click the headline to link to the article):



EDITORIALS

Editorial: There really is no way out of Chicago's parking meter disaster

By The Editorial Board
Chicago Tribune • Published: Apr 30, 2023 at 5:00 am

CITY HALL NEWS POLITICS

Parking meter deal keeps on giving — for private investors, not Chicago taxpayers

Results of the latest parking meter audit by accounting giant KPMG shows meter revenues reached a record $140.4 million last year - with 60 years left on a 75-year lease.

By Fran Spielman | Jun 11, 2023, 8:48am PDT

LISA DENT

With 61 years left on Chicago's parking meter deal, it could get worse for taxpayers

by: Brian Althimer
Posted: May 31, 2022 / 07:39 PM CDT
Updated: Jun 1, 2022 / 05:39 PM CDT

Q4. What is a range of project size/costs that make sense for P3?

- P3s are often used for large infrastructure projects such as roads, bridges, water treatment facilities, and public transport systems. However, the range of project size, cost or type that makes sense for P3 can vary significantly depending on the context.
- Due to the complex nature of the P3 model, there is a threshold below which P3 might not make sense. The costs of P3 procurement and contract management can outweigh the benefits. Projects with capital costs below $50 million are generally not ideal for P3.
- At the other end of the scale, there is no upper limit to the size of projects that can be pursued as P3s. Some of the world's largest infrastructure projects, costing several billion dollars, have been delivered using P3 models, since larger projects attract significant private sector interest and can leverage economies of scale.

Source: AIAI

Q5. What is the typical or ideal starting point for a P3 (e.g., ROW acquisition)?

- Any prospective P3 should begin with a comprehensive feasibility study for the project, followed by analysis (including VfM and business case analysis) to determine the optimal delivery method.

Feasibility Study and VfM

The study should evaluate the viability of the project, including technical, financial, environmental, and other relevant factors. It should also determine whether a P3 is the best delivery method when compared to traditional public procurement.

Pre-Development

For P3s involving design (e.g., design-build, DBFOM), involvement of the private partners should begin before the design phase, either initial or final design. **This is the most common starting point for transportation P3s**. Right-of-way acquisition, if needed, is typically a responsibility of the public agency given eminent domain powers.

Development

Some P3s combine construction, operations, and maintenance, without design occurring prior (e.g., Build-Operate-Transfer). In these cases, design is completed using traditional procurement. It is appropriate to introduce the private partner to begin work during the design phase.

Operations & Maintenance

There are examples of P3 projects that involve private involvement only in the operations and/or maintenance of an existing facility. For these cases, design and construction are less relevant. VfM analysis would focus on the benefits of private participation in operations and maintenance of the project.

Source: AIAI

Q6. How can/do P3s impact state credit ratings?

The potential impact to the state's credit rating when developing a transportation facility under a P3 agreement will depend on how the financing is structured, and where the revenue to pay for the project will ultimately come from. That said, one of the main attributes of a P3 that includes a financing component is to insulate the state's overall credit rating from being affected by the P3 project.

How different types of P3 financing arrangements might impact a state's credit rating (high-level):

- **Revenue Concession** (state receives upfront cash payment in exchange for the right to collect revenue on an existing revenue-producing facility): no impact, or possibly credit positive, because the state is monetizing an existing asset without incurring a new liability. Example: Indiana Toll Road concession.

- **P3 financed with toll revenue**: if the state does not pledge any other source of revenue in its promise to pay, so that the financing arrangement relies solely on toll revenue as the source of repayment, there should be no impact to the state's overall credit rating. If any debt is issued, ratings agencies will consider only the strength of the toll revenue stream in their toll project bond ratings.

- **P3 financed with availability payments:** if the source for the availability payment is not strictly limited to toll revenue, then the rating agencies will most likely consider these as financial obligations of the state similar to bonds, which in turn could factor into any overall rating the agencies give to general obligation bonds issued by the state.

Q7. What is the cost of setting up a P3 office?

The issue of how to best organize the P3 office will be taken up during implementation planning in Task 4 which is expected to begin in January 2024. The following information was gathered in the interim. The exact costs to set up and maintain a P3 office will vary depending on several factors. These could include the authority given to the P3 office by legislation, the longevity and experience of a P3 office, and how P3s are administered. The following examples highlight the number of full-time equivalent (FTE) employees and corresponding salaries to provide a sense of annual staff and administrative costs. Most P3 offices also retain outside consultants and counsel.

Illinois DOT

- **Staff:** One Bureau Chief and one staff person
- **Salaries:** Approximately $200,000 annually

Penn DOT

- **Staff:** One director, one staff person
- **Salaries**: Approximately $200,000 annually

Michigan DOT

- **Staff:** One director, 6 project managers, and one office person
- **Salaries:** Approximately $850,000 annually

APPENDIX

P3 Contractual Provisions for Availability Payments

Example Definition of a Compensation Event from an Availability Payment Contract (Pennsylvania)

Compensation Event means any of the following:

(a) any material breach of an obligation in this PPA by the Department including, but not limited to:

(i) any failure by the Department to deliver a Department Obtained Governmental Approval to the Development Entity by March 31, 2015;

(ii) any failure (in whole or in part) by the Department to provide Access to the Project in accordance with the Project Documents;

(iii) any failure by the Department to issue any certificate that it is required to issue pursuant to Article 7 (Design and Construction), but to the extent that such failure represents a breach by the Department of its obligations thereunder; and

(iv) the occurrence of any Department Default;

(b) violation of any Applicable Law by the Department;

(c) any Qualifying Change in Law;

(d) any Department Change or the issuance of any Directive Letter;

(e) the release of any Hazardous Material into a Project Site at any time after the Commercial Closing Date, but only to the extent that such release:

(i) constitutes a Hazardous Environmental Condition; and

(ii) does not constitute a Development Entity Release of Hazardous Material;

(f) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under Applicable Law, which injunction, order, restraint or prohibition materially and adversely affects the Department's or the Development Entity's performance under this PPA, except to the extent resulting from the negligence, willful misconduct, recklessness, breach of contract or Applicable Law, or violation of a Governmental Approval, by any Development Entity-Related Entity;

(g) the Department or any Utility Owner requires the Development Entity to perform any Undisclosed Utility Incorporated Work or the presence of an Unforeseeable Utility otherwise impacts the D&C Work in respect of an Early Completion Bridge;

(h) the issuance by the Department of any Safety Compliance Order in respect of the implementation of any Safety Compliance that does not arise as a direct result of any Development Entity-Related Entity's failure to comply with any Safety Standards;

(i) any Required Action taken by the Department that is the subject of Section 25.4 (Step-in without Development Entity Breach);

(j) the discovery of any Undisclosed Hazardous Environmental Condition by the Development Entity;

(k) any suspension of the Construction Work or Maintenance Work has occurred and is considered a Compensation Event pursuant to Section 7.9(b) or 8.10(b), respectively;

(l) the discovery of any Undisclosed Endangered Species by the Development Entity during the carrying out of the Construction Work;

(m) the discovery of any Archaeological Remains by the Development Entity during the carrying out of the Construction Work;

(n) the discovery of any man-made mine by the Development Entity during the carrying out of the Construction Work;

(o) in respect of a Karst Bridge, Total Driven Pile Length exceeds Assumed Driven Pile Length;

(p) any delay in obtaining any Major Governmental Approval by the Major Governmental Approval Deadline;

(q) any Department Obtained Governmental Approvals in respect of an Early Completion Bridge, when delivered to the Development Entity pursuant to the terms of this PPA:

(i) does not reflect the ECB Permit Constraints for the relevant Early Completion Bridge; or

Example Definition of a Compensation Event from an Availability Payment Contract (Pennsylvania) (cont'd)

(ii) contains any conditions that were not referenced or highlighted in the Disclosed Information on or prior to the Setting Date.

(r) any claim, cause of action or Loss initiated, prosecuted, incurred or suffered by the Development Entity or any Development Entity-Related Entity as a result of or arising out of any Hazardous Materials for which the Department is deemed to be the generator or arranger pursuant to Article 6 (Hazardous Materials);

(s) any single incident of Department Retained O&M Damage for which the Development Entity will incur a Capital Expenditure in excess of $10,000 (subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism)) to repair; **provided**, for the avoidance of doubt, that multiple incidents of Department Retained O&M Damage which, when aggregated together, will result in the Development Entity incurring Capital Expenditure in excess of $10,000 (subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism)) to repair shall not constitute a Compensation Event, either individually or in the aggregate;

(t) any physical damage to a Replacement Bridge directly caused by a Utility Owner or any other Person (in each case acting under a permit issued by the Department) undertaking work on the Replacement Bridge;

(u) either the Department or FHWA determines not to construct a Replacement Bridge for any reason related to NEPA;

(v) the discovery by the Development Entity of asbestos at any Project Site that is not identified in Schedule 3 (Project Sites with Asbestos);

(w) a Replacement Bridge is not eligible for a Bridge and Roadway Programmatic Agreement, a CE1 or a CE2;

(x) the Department does not complete the ROW acquisition process in respect of a Replacement Bridge within the relevant ROW Acquisition Period, but only to the extent that the Department receives a proposed final ROW Acquisition Plan (complete in both form and substance in accordance with Section 7 (Right-of-Way) of the Technical Provisions) in respect of the relevant Replacement Bridge within thirty (30) days of the commencement of the relevant ROW Acquisition Period;

(y) in respect of a Replacement Bridge, any failure of a Utility Owner to cooperate with the Development Entity in relation to a Utility Relocation (including but not limited to an unreasonable request by a Utility Owner that, in connection with any Utility Relocation Work, a Utility Enhancement be completed) in such manner that would:

(i) in the case of any Utility Relocation where the anticipated completion date of such Utility Relocation is prior to the commencement of Construction Work for such Replacement Bridge (i.e., "prior work"), delay the commencement of that Construction Work (as set out in the Development Entity's Project Baseline Schedule) beyond the relevant ROW Acquisition Period; and

(ii) in the case of any Utility Relocation which can only be performed concurrently with the Construction Work for such Replacement Bridge (i.e., is not "prior work"), result in a delay to that Construction Work (as set out in the Development Entity's Project Baseline Schedule) of more than thirty (30) days;

provided, that the Development Entity shall have continued to satisfy the "conditions to assistance" set out in Section 5.2(e)(ii)(A) for the duration of such failure to cooperate by the Utility Owner;

(z) any hydrologic and hydraulic report in respect of an Early Completion Bridge included in the Disclosed Information contains a material error or omission;

(aa) subject to Section 7.1(c)(ii), the NEPA approval process in respect of a Remaining Eligible Bridge requires environmental mitigation action (including, without limitation, wetland replacement, Phase III archaeology data recovery excavation, associated interpretive materials, recordation of historic bridge and/or associated historic district, and context sensitive design elements) to be taken in respect of that Replacement Bridge; and

(bb) The SEP-15 Variance is either rescinded or any of its conditions are not satisfied;

except, in each case, to the extent attributable to any breach of this PPA by, or any negligent act or negligent omission of, a Development Entity-Related Entity.

Example Compensation Event from an Availability Payment Contract (Pennsylvania)

- The Compensation Event must cause or is likely to cause the Development Entity to:
  - (i) fail to commence the Construction Work by the Construction Commencement Deadline or (following the Construction Commencement Deadline) suffer further delay in the commencement of the Construction Work; and/or
  - (ii) fail to achieve Substantial Project Completion by the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) suffer further delay in the achievement of Substantial Project Completion; and/or
  - (iii) fail to comply with its obligations under this PPA; and/or
  - (iv) incur costs or lose revenue,