

Where Are We Going: Opportunities in Federal Public-Private Partnerships



Federal Interest in P3 Projects

Recently Enacted Laws Referencing “Public-Private Partnerships”

Agency/Office	Public Law	Title	Latest Action	Description
FDA	PL 115-52	FDA Reauthorization Act of 2017	Became law 8/18/17	Sec. 602. Reauthorization of the Critical Path Public-Private Partnerships.
Veterans Affairs	PL 115-46	VA Choice and Quality Employment Act of 2017	Became law 8/12/17	To authorize appropriations and to appropriate amounts for the Veterans Choice Program of the Department of Veterans Affairs, to improve hiring authorities of the Department, to authorize major medical facility leases...“. The term ‘private-sector entity’ includes an entity operating under a public-private partnership.
Commerce	PL 115-25	Weather Research and Forecasting Innovation Act of 2017	Became law 4/18/17	“The strategy shall assess the range of commercial opportunities, including public-private partnerships, for obtaining surface-based, aviation-based, and space-based weather observations.”
NASA	PL 115-10	National Aeronautics and Space Administration Transition Authorization Act of 2017	Became law 3/21/17	Sec. 510. Astrobiology public-private partnerships. Sec. 512. Near-Earth objects public-private partnerships.
Various	PL 114-318	Federal Property Management Reform Act of 2016	Became law 12/16/16	“(7) Public-private partnership.--The term ‘public-private partnership’ means any partnership or working relationship between a Federal agency and a corporation, individual, or nonprofit organization for the purpose of financing, constructing, operating, managing, or maintaining one or more Federal real property assets.”

Pending Legislation Referencing “Public-Private Partnerships”

- 53 bills containing provisions related to public-private partnerships have been introduced in the 115th Congress
 - Several of the bills include provisions about energy storage, utilities, aviation, and military installations
- There is legislative movement on some of the introduced bills, such as:
 - H.R. 2810, the National Defense Authorization Act, passed the House and Senate and presented to the President
 - H.R. 1367, a bill related to hiring VA physicians and employees, passed the House
 - S. 1757, which contains a provision about real property donations through public-private partnerships, has been placed on the Senate Legislative Calendar

Examples of P3 Solicitations in Progress

- Request for Proposals for the Smithsonian National Zoological Park Central Parking Facility P3 Project –
<https://www.fbo.gov/index?s=opportunity&mode=form&id=7edbe6cffc0229b2cb79a76f3bf97e5&tab=core&cvview=0>
- Request for Information for Optimization of Partnership Opportunities Pursuant to the CHIP In for Veterans Act of 2016 at Several Locations Nationwide –
<https://www.fbo.gov/index?s=opportunity&mode=form&id=dff2a80ea513b931ba8e0030504d27a5&tab=core&cvview=0>

Potential Areas of Focus for New Federal P3s

- Utilities
 - Electric
 - Natural Gas
 - Building resilience
- Enhanced use leases, exchanges, and other real estate-based P3s
- Roads, bridges, dams
- Parking facilities
- Clinics

Key Considerations for Becoming Involved in a Federal P3 Project

Understanding Authority and Establishing Goals

- Scope of statutory authority / regulations
- Federal funding availability and limitations
- Procurement processes
 - Clarity in expectations and requirements from both Federal and private parties
 - Key questions that enable parties to evaluate likelihood of project success
 - Use procurement process as an opportunity to advance negotiations and ensure picking a like-minded partner

Negotiating and Documenting Agreement(s)

- Identification of a mutually beneficial transaction structure
- Clear roles and responsibilities for all parties
- Definitive performance milestones and explicit reasons why such milestones could be delayed
- Allocation of risks, revenues, and rewards
- Establishing metrics for success
- Goals and requirements of other key parties that are not signatories (i.e. investors, community)
- Termination rights and processes

Project Implementation

- System for monitoring milestones and responsibilities
- Approvals for future work / decisions / contingencies
- Reporting / status meetings / audits
- Dispute resolution processes
- Amendment or termination when necessary

Questions?

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