



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

SEP 13 2018

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Policy for Developing the Civil Works Public-Private Partnership (P3) Pilot Program

1. To be responsive to the President's initiative on building U.S. infrastructure and the direction provided in the FY18 Appropriations Act Conference Report, this policy is provided to address how proposals for public-private partnerships (P3) will be considered by the Corps and how these partnerships will be incorporated into budget policy. The Corps needs to develop and utilize P3 approaches to deliver resilient, reliable and sustainable water resources infrastructure, with the goal of sustaining performance, extending service life, buying down risk, accelerating delivery, reducing life cycle costs, achieving earlier accrual of project benefits to the nation, increasing the Federal return on investment, and extracting value from employed capital and existing infrastructure assets to offset costs and promote cost recovery. P3 is a tool that will be used, in addition to traditional delivery approaches, to meet these goals and improve the implementation of national infrastructure.

2. For the purposes of this policy, the following Definitions will be utilized.

a. A Public-Private Partnership (P3) generally refers to a long-term contractual relationship between a public sector contracting authority and a private sector entity for the financing and delivery of public infrastructure and/or the provision of public services. This can be done as any combination of design, build, finance, operate and/or maintain (DBFOM, DBFM, etc). P3s differ from more traditional delivery structures in that the goal is to transfer risk associated with the delivery and performance of the project to the private partner.

b. Federally-led P3s are P3 contracts directly between the Corps and a competitively selected non-Federal entity for the design, construction, financing, operation and/or maintenance of the Federally authorized project.

c. Locally-led P3s refer to contractual relationships executed between a non-Federal project sponsor and a private entity for the design, construction, financing, operation and/or maintenance of an infrastructure asset over a stipulated period of time, whereby the non-Federal project sponsor has a separate project-partnership agreement (PPA), memorandum of agreement, and/or a memorandum of understanding with the Corps setting forth the rights and responsibilities of both the Corps and non-Federal entities with respect to the project.

3. Policy: The Corps will use the criteria below to select projects for a pilot program with the goal of demonstrating the viability of new delivery methods that can significantly reduce the cost and time of project delivery. Pilot projects should be nationally or regionally

**SUBJECT: Policy for Developing the Civil Works Public-Private Partnership (P3) Pilot Program**

significant with respect to generation of economic and public benefits.

a. During the pilot phase of the Corps P3 initiative, the Corps will develop a matrix to evaluate project proposals based on the following initial screening criteria:

(1) The P3 proposal:

- (a) has a construction cost in excess of \$50 million;
- (b) has non-Federal sponsor support;
- (c) includes design, build, finance, operation and maintenance (DBFOM) or some combination thereof for Federally authorized projects;
- (d) accelerates project delivery; and
- (e) has the ability to generate revenue or leverage non-Federal funding sources.

(2) Existing authorities are sufficient to allow the P3 project to be completed.

(3) An initial Value for Money analysis demonstrating that a P3 contract structure will deliver the project faster and more cost effectively than traditional approaches to project delivery.

b. P3 proposals that meet the initial screening criteria noted above will be evaluated and selected on the basis of the following criteria:

(1) Budget Criteria: Return on Federal Investment

(a) P3 Project Proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI). ROFI will be calculated by annualizing the total project benefits and Federal costs utilizing the current discount rate, and applying the formula:  $(\text{Benefits} - \text{Federal Costs}) / (\text{Federal Cost})$ .

(b) For any P3 project where it has been determined that a reduction in the non-Federal share is warranted with authority provided in 33 USC 2213, the ROFI calculation will be adjusted to account for those modifications and address concerns pertaining to equity.

(2) Replicability: Project proposals that are replicable, meaning the proposed P3 structure or underlying concepts may be applied to other prospective projects.

(3) Reliable Funding Sources: Reliable non-Federal funding sources for the construction, operation and maintenance of Federally authorized water resource projects are identified.

**SUBJECT: Policy for Developing the Civil Works Public-Private Partnership (P3) Pilot Program**

(4) Risk Allocation: Project effectively allocates delivery and performance risk to non-Federal entities and minimizes Federal direct and contingent liabilities associated with the project.

c. The Corps will identify up to 10 additional P3 pilot projects, based on the criteria above, with the goal of demonstrating the viability of new delivery methods that can significantly reduce the cost and time of project delivery. The pilots will be used to inform future policy and direction of the program. The 10 pilot projects will be in addition to the one identified project already selected as a new start in fiscal year 2016. The Corps shall continue to include requirements in the annual budget process, requesting that each Major Subordinate Command develop at least one P3 demonstration project proposal to include any of the business lines at any stage of the project process. Considering that the Corps has been gathering P3 project input for no less than 3 budget cycles, the Corps will finalize a list of the selected pilot projects no later than 180 days from the date of this memorandum.

d. For the purposes of the P3 pilot program, the amount of the Corps budget allocated to P3 projects will be based on the capabilities determined by the Corps for the selected pilot projects. If the identified projects require a new start designation the Corps shall include an affordability analysis to ensure that future budget requests can be supported at capability levels. The Corps will maintain a life-cycle budget for pilot projects that covers all years of anticipated budget requests to ensure that there is a clear understanding of the future budget requirements to support these pilots. The life-cycle budget recommendation will be prepared concurrently with the final list of selected pilot projects and updated annually as part of the budget process.

e. The Corps will continue to exercise governance and oversight of projects delivered under a P3 arrangement. Specific management controls will be based on complexity and other factors for each specific project and clearly articulated in the PPA, when applicable, and other supporting documents.

4. Given the importance of this policy and the overall initiative, the Corps Infrastructure Team will take the lead on implementation of this policy and the P3 Pilot initiative in accordance with the terms established herein. It is imperative that the Corps continue to make progress on use of P3 and other alternative resourcing and delivery tools to improve delivery of water resources infrastructure for the nation.



R.D. James  
Assistant Secretary of the Army  
(Civil Works)