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An Introduction to Port Public-Private Partnerships

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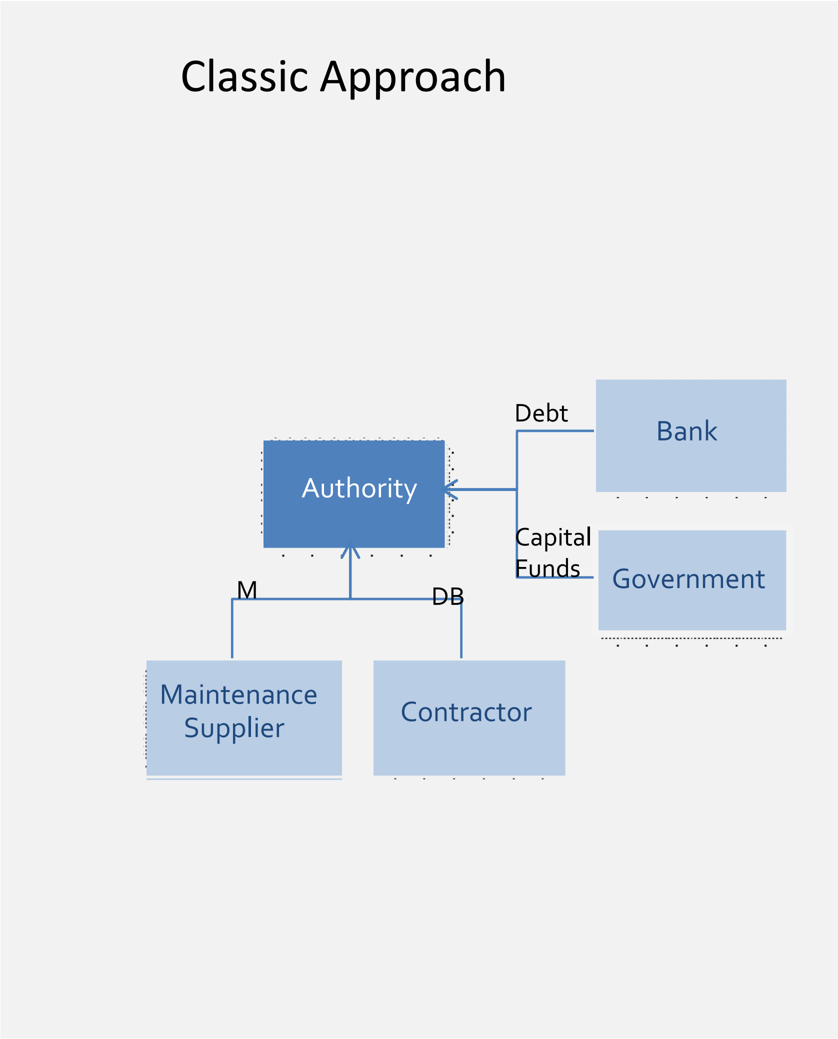
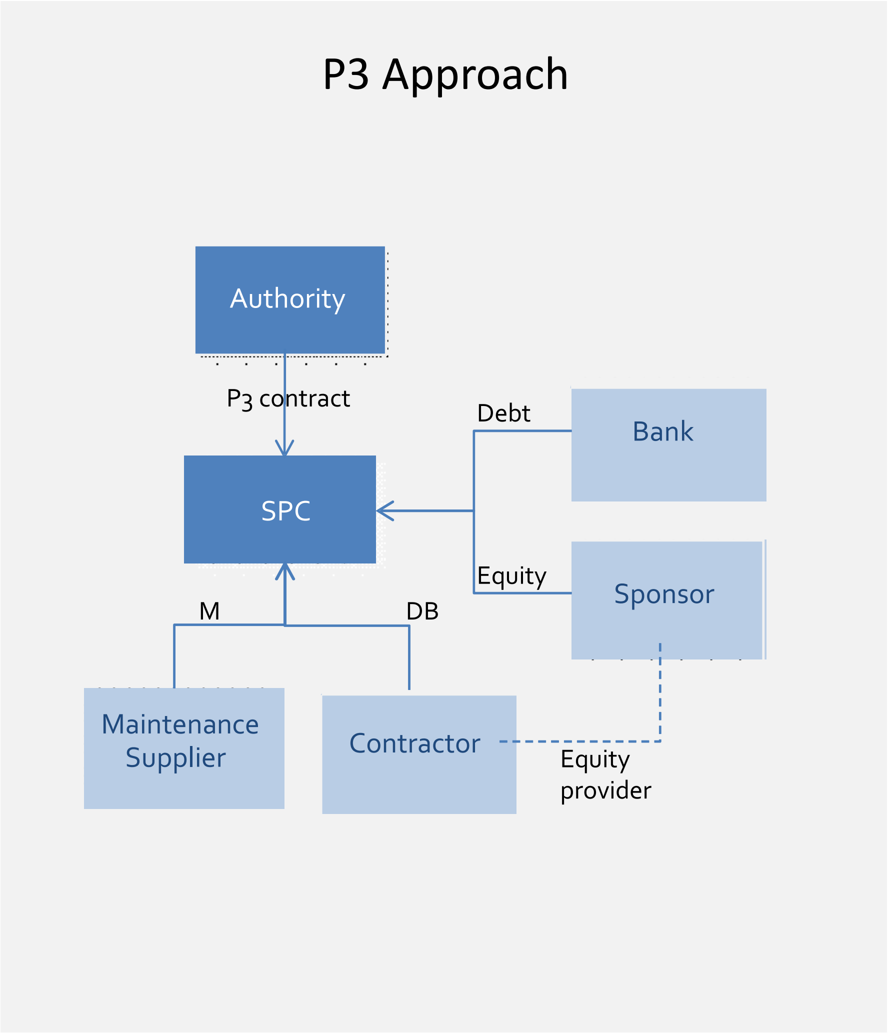
Public-Private Partnerships for Ports Are Not New

- Ports are inherently public-private partnerships
- Port authorities do business with multiple private sector partners
- Port authorities enter numerous transactions that are public-private partnerships
  - Terminal leases
  - Agreements with carriers
  - Rail and intermodal agreements
  - Related real estate development

Classic and P3 Structures





Port Concessions: Seagirt

- 50-year concession for Seagirt Terminal, a container terminal facility in Baltimore, Maryland to Ports America Chesapeake
- Payments to the government sector include an upfront payment at closing and ongoing revenue share payments
- Concessionaire obligated to undertake certain specific capital improvement requirements
- Financing for Concessionaire’s obligations utilized an innovative tax-exempt financing approach for state infrastructure secured by lease payments

Port Concessions: Kingston Container Terminal

- 30-year concession and lease of Port Authority of Jamaica's primary container operation in Kingston to Kingston Freeport Terminals Limited, an affiliate of French shipping company CMA CGM
- Payments to the government sector include an upfront payment of US$75 million, annual concession payments of US$15 million and a variable revenue share equal to 8% of the Concessionaire's gross revenues.
- Concessionaire obligated to undertake significant capital improvements in two phases:
  - Phase I: (i) Dredging at berths, turning basin, circle and access channel to a depth of 14.2 meters draught; (ii) quay wall reinforcements; (iii) capacity improvements to increase throughput maximum to 3.2 million TEUs
  - Phase II: (i) Dredging at berths, turning basin, circle and access channel to a depth of 15.5 meters draught and (ii) capacity expansions to increase throughput maximum to 3.6 million TEUs

Availability Payment Contracts

- Governmental entity enters into DBF(O)M contract with private sector entity
  - Design
  - Build
  - Finance
  - (Operate)
  - Maintain
- Private sector partner paid to the extent the project is "available" (i.e., completed on time and constructed and maintained according to specifications)
- Private sector partner finances project based on in part on payments to be paid by governmental entity

Why Consider Availability Payment Contracts?

- Limited public sector funding
- Specific projects need to move forward
- Concessions do not solve all problems
- Financial, operational, public policy, political factors may limit ability to utilize concession structure
- Some private sector investors not interested in non-revenue generating projects

Benefits of Availability Payment Contracts

- Governmental entity retains control over asset
- Revenues (if any) are controlled by and accrued to the governmental entity
- Integrated construction and maintenance over term of project
- Life cycle cost benefits
- Greater certainty related to project delivery
- Risk transfer
- Encourages private sector innovation
- Could help close funding gaps (through cost savings and private sector equity investment in project)

Availability Payment P3s for Port Projects

- Availability payment transactions may help solve the funding *gap* but they don't solve the funding *issue*
- Defining revenue sources is critical: federal, state and local funding, port authority funding, user fee charges, other project revenues, if any
- Only certain "common user facility" port projects are potentially viable for availability payment P3s:
  - Levees, dikes, access channel dredging, port basins
  - Berth reconstruction and maintenance
  - Connecting roads and bridges and rail inter-connections
  - Certain port expansion projects
- Factors to consider when selecting projects:
  - Long-life asset (20 or more years)
  - Substantial project size ($100 million or more)
  - Projects with substantial long-term maintenance component

Legal Considerations

- Authorization: *Does the port authority have legal authorization to enter into this type of transaction and enter into obligations under agreement?*
- Procurement Process: *Process that inspires public sector confidence; typically RFQ followed by intensive process with qualified bidders*
- Project Financing: *Private sector financing plan may involve issuance of tax-exempt debt by governmental entity or other government financing*
- Allocation of Risks: *Unforeseen site conditions, land acquisition, force majeure and delay events, changes in law and adverse actions can all affect payments to be made by governmental entity*

Legal Consideration

- Allocation of Operations and Maintenance: *Where government retains operation and private sector retains maintenance, need clear allocation of responsibilities between parties*
- Appropriation Risk: *What is the obligation of the governmental entity to appropriate and pay the required amounts?*
- Defaults and Termination: *Need sufficient remedies for public and private partners and financing parties; could affect availability payments to private sector; could require termination payments by governmental entity (even in the case of private sector default but at lower amount)*

What PPPs are NOT

- Easy Money: *Choose projects that are well suited to PPP structure—attractive to investors, can get done sooner and can free up public money for other projects*
- Always Big Upfront Payments: *Understand how PPPs can best be used for port projects*
- One Size Fits All: *Determine objectives, understand different structures and apply best model to transaction*
- Applicable to Every Project: *Use PPP strategically for the right projects*

What PPPs are NOT

- Traditional Procurement BUT Also NOT Outsourcing: *Learning to balance public and private interests sometimes can be difficult*
- A Way to Avoid Public Policies: *Determine public policy objectives as they relate to PPP process*
- Easy: *Come at PPPs with two feet in and an open mind*

Thank You

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