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

**Classic Approach**

- Authority
- Government
- Bank
- Maintenance Supplier
- Contractor

**P3 Approach**

- Authority
- SPC
- Bank
- Sponsor
- Maintenance Supplier
- Contractor

- Debt
- Capital Funds
- M
- DB
- P3 contract
- Equity
- Equity provider
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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