

Ten New Year's resolutions for Government infrastructure projects: Efficient procurements for design-build and P3 projects

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24/01/2013

As resources continue to be scarce for critical government infrastructure projects in the United States, state and local government agencies are increasingly implementing programs for infrastructure project procurements using design-build approaches and various forms of public-private-partnerships (“P3s”).

Implementing new procurement and project delivery methods can be challenging for government-owners and proposer-contractors alike. Developing efficiencies and economies of scale in the procurement and delivery process are essential to the success of any government infrastructure project. By implementing some “New Year’s resolutions” for alternative delivery procurements, government-owners and contractor-proposers can achieve the results they both want: efficiently and reliably developed projects that deliver value.

One

Projects must be relatively large, in cost and/or in scope, in order for an alternative delivery method to achieve the right efficiencies as compared to traditional design-bid-build contracting. This is especially true for new design-build or P3 programs, in which the government-owner must devote scarce time and resources to designing and implementing a possibly unfamiliar procurement process.

Moreover, governments must be realistic about the pool of available and interested proposers for projects of different types and sizes. For example, a simple, low-cost bridge construction project may not attract the proposers most capable of delivering the efficiencies and economies of scale necessary for a design-build or P3 project to be successful. Governments should be attuned to proposer feedback, and the P3 market generally, when evaluating a project’s profitability and private contractors’ willingness to take on financial risk.

Two

Workshops and one-on-one meetings between proposers and government procurement and project delivery staff are valuable communication tools. Both sides must be active participants in the procurement process, asking all necessary questions and preparing thoughtful and prompt

responses in order to ensure a smooth, effective procurement process and to produce the best, most accurate proposals. Agendas should be set in advance, ideally with input from both sides, allowing both sides to prepare appropriate questions and responses and to make sure that the right people — decision-makers, subject-matter experts — can participate. To facilitate productive communication, governments must value proposer confidentiality and develop safeguards to protect confidential information; an atmosphere of openness and honesty should be encouraged.

Three

Governments should make their procurement process, schedule, evaluation criteria and project goals simple and as clear as possible to proposers. For their part, proposers should sound the warning bell when a government-owner's expectations are unrealistic or unclear. Conscientious, focused comments give a proposer credibility and can help to streamline the procurement.

Although open communication and responsiveness to proposer feedback is important, governments should avoid extensive, complex addenda to documents and multiple procurement schedule changes. Late changes can introduce confusion and unpredictability into the procurement process, hindering proposers from properly allocating resources to preparing their best proposals.

Four

An unrealistically short procurement schedule can be detrimental to a procurement and project in several ways. A limited period to respond to an RFQ can provide little time for consortia to form and can chill proposer participation in a project. A short design-build proposal period can lead to rushed and inaccurate bids. Too long or too short a construction schedule can increase costs in both cases. Governments should consult with advisors and proposers on the ideal length for the procurement schedule, construction period and operation/maintenance period, if applicable, and marry that advice with the needs of the government agency and the public to the extent possible.

Five

Governments need to engage and rely on good advisors to assist in estimating project budgets. Estimated budgets must be updated regularly as circumstances change—material and fuel costs, labor availability and labor costs, and other cost-drivers are all changing rapidly in today's market and can have a significant impact on a project's cost. If a project depends on revenue flow for success, reliable revenue studies are important. Ultimately, it is better to be pleasantly surprised by better-than-expected bids than to have a procurement derailed by unanticipated low bids and high costs.

Six

Governments should be forthcoming about the amount and sources of federal, state and local government funds available for a project. Proposers should be given an opportunity before final proposals are received to tell the government-owner if a project will not make economic sense as

currently planned. On the other side, proposers must tell governments in advance if a budget is unworkable, rather than unnecessarily delaying a procurement process and negatively impacting the proposer's credibility.

Seven

There are a multitude of financing options available in the market today, from government retention of financing risk in a design-bid-build or design-build approach, a design-build-finance approach, or fully shifting financing risk to the private partner in an availability payment or concession approach. If shifting financing risk is preferred, governments need to assess whether to select an availability payment transaction in which they retain revenue risk and must identify a source of payments, whether from project revenues or other sources, or a concession transaction in which revenue risk is transferred to the developer. It is in the interest of both the government-owner and the private sector partner(s) to utilize the best-value financing method or methods. The parties should collaborate to determine who can most efficiently assume revenue risk and finance various portions of a project and at what cost. Competent, creative and disinterested advisors are essential to the development of an efficient and effective financing plan.

Eight

Risk sharing in areas such as permitting, hazardous materials management, utility management and relocation, and right-of-way acquisition are common issues that can stall or derail a procurement. Ultimately, they all boil down to efficient risk assessment and cost allocation. Taking the time to properly assess and efficiently allocate risks pays off for both sides. Governments should remember that there is a hard dollar cost to passing on these risks to the private sector, in the form of contingencies in proposal prices. Paying these contingencies, rather than retaining the risk of such costs, makes sense only if the private sector is somehow better able to quantify and/or bear those risks. For instance, although a government may be tempted to offload the risk of cost overruns and schedule delay resulting from the discovery of hazardous materials, it may be able to use historical data, surveys and other information to better assess and price the hazardous materials risk. In that case, it would be more efficient for the government-owner to retain that risk and pay actual hazardous material costs if they arise rather than pay a proposer's contingency.

Nine

Governments should take advantage of advisors to assist in setting appropriate security and insurance requirements so that the government-owner is sufficiently insulated from risk at a reasonable cost. This again is a balance of risks and dollars. Governments should be aware that unnecessarily expensive or off-market requirements may prevent otherwise well-qualified proposers from submitting a competitive proposal or from bidding on the project entirely. For instance, smaller companies may not be able to attain unduly expensive or unrealistic security, which may prevent the contractor from engaging subcontractors that offer the best value, or foreclose a proposer from simultaneously pursuing other projects. Proposers should speak up if they feel a

government-owner is over-secured or is requesting security or insurance that is unnecessarily expensive or is commercially difficult to obtain.

Ten

This is a different ballgame than traditional design-bid-build contracting. Collaboration is important to the success of any alternative delivery method in order to produce value for both governments and proposers, on individual projects and as part of a design-build/P3 program. Transparency and open, honest communication are essential to successful collaboration.

Governments are becoming more and more cognizant of the need to make critical infrastructure investments. As alternative delivery methods are successfully employed on government infrastructure projects and effective and efficient design-build and P3 programs are put in place, governments and contractors will want to repeat the process over and over again. Both sides can improve the chances of future success of all projects by being collaborative and professional in each interaction and procurement – in 2013 and beyond.

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