LA Metro / AGC Joint P3 Committee (Revised 5/3/13)

AGC Group "Key Commercial Issue" Comment Table

#	Metro item	AGC response	Metro Comments on General P3 Procurements	Planned to Be Available By		
				RFQ	Draft RFP	RFP
1	Amount of stipend, if any • Need to stress P3 stipends are >> than DB via evidence and for a reason • Ideas/ATC's can definitely be given, but they should be done so after procurement is over (i.e. contract signed)	Stipend amount needs to be larger than DB stipends due to the financial involvement in a P3. Typically P3 stipends are twice the size of DB, although there are market examples "all over the board". Smaller P3's tend to have a higher % stipend due to relative "fixed cost" of financial side of pursuit. Amount is also directly tied to shortlist number (larger the shortlist, larger the stipend needs to be for a proper business decision by private sector). We strongly recommend a shortlist of no more than 3, and a stipend value of ~.5% of construction cost estimate (i.e. Presidio was over 1%). In addition, Owners should include stipend agreements in procurement documents, which would deal with cost reimbursement to some level if the procurement is cancelled at any time after RFP issuance.	FHWA's design-build rule (23 CFR 636.113) recommends payment of stipends (also called "payment for work product") on large projects where there is substantial opportunity for innovation and the cost of submitting a proposal is significant, to: (1) encourage competition and not put smaller companies at a competitive disadvantage and (2) compensate unsuccessful offerors for a portion of their costs (usually 1/3 to 1/2 of the estimated proposal development cost). Stipends are important for P3 projects as well as DB projects, but generally are considered to provide compensation for technical work product rather than to pay for financial costs. It is not clear that a P3 stipend should be larger than a DB stipend. The FHWA rule does not allow the procuring agency to use ideas from unsuccessful offerors unless the offeror accepts a stipend. To that end, the owner may wish to consider the value of the work product in setting the stipend amount, as well as considering the cost of submitting a proposal. We agree that 3 proposers is ideal but it may be advisable to shortlist more than 3 to ensure that at least 3 responsive proposals are received. We agree and will plan to have a draft stipend agreement with the draft RFP and an agreement ready for execution with the final RFP. All of these statements are consistent with Caltrans policy for joint procurements.	Will indicate whether stipend will be available	Will provide a proposed amount for the stipend	Will propose to include an executed stipend agreement.

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2	Duration, Frequency, & Timing of Availability Payments	Duration of APs (typically ~30 years starting at revenue commencement or substantial completion) should be relevant to the asset type, lifecycle and planned hand-back. The frequency of APs vary, but monthly is common and provides a regular cash flow to the concessionaire while providing enhanced payment control to the owner. (e.g., Presidio is quarterly). It should be noted that large milestone payments while reducing the cost of capital also reduce the amount of Equity's skin in the game over the operating period. The smaller the % of private funds in the deal the higher percentage of equity which effectively drives up cost of private funds.	Our initial thinking is that quarterly availability payments would be made to minimize the reporting and verification requirements. Monthly payments are still an option and we are open for discussion. We recognize that both monthly and quarterly have precedent on other P3 projects in the U.S. At this time the only options for milestone payments are the SHOPP funds for the rehabilitation work on I-5 N. There may be a state requirement that these be paid as the work is done.	No	Yes	Yes
3	Security for Availability Payments	Depends on ... • Overall credit of LA Metro – i.e. should generally be enough to support non-recourse debt • The priority to make availability payments relative to Metro's outstanding bond and debt (existing and future) • Appropriation risk • Termination obligations (Is there anything that would impede comp on termination payments?)	The draft RFP will include information about the relative priority of Metro's obligations. The contract will address requirements for annual budget approval by Metro's board and will include requirements relating to payment of termination compensation	No	Yes	Yes

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4	Contractor's ability to set toll rates and business rules • Traffic risk sharing needs to be disclosed in RFQ doc due to impacts to teaming	This varies by project and is only relevant for demand risk P3s. The Public Agency typically establishes a tolling policy (framework) within which the concessionaire must operate, and this framework needs to be financeable (i.e. low traffic AND tolls, along with any other payments from Owner, still need to at a bare minimum pay debt service). The policy should address how best to incentivize the concessionaire (more throughput vs. higher per vehicle revenue) while balancing the public's interest. The type of toll environment also plays a role. For example, HOT lanes can be subject to congestion based tolling whereas toll roads typically cannot.	At this time the plan is for Metro to set the toll rates and business rules, however we are open to discussion on ways to incentivize the private operator to optimize revenue and keep operating costs low. The Availability Payment (AP) structure is easier to finance than anticipated toll revenues. Aps include negative incentives, in the form of penalties for failure to meet performance requirements. Sharing of the revenue risk is still an option for discussion.	No	Preliminary only	Yes

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<tr><td>5</td><td>Allocation of revenue risk/terms for sharing/info on which to base revenue forecasts

• If AP payment mechanism, Metro gets benefit of additional revenues/accelerated ramp-up, etc.</td><td>These items must all be clearly defined and are subject to the factors unique to each project. It should be noted that public sector clients who look to share in the upside (better than expected revenue) should conversely provide downside protection to concessionaires for lower than anticipated revenue.

If private side has traffic/revenue risk, they will have to conduct their own Investment Grade Traffic & Revenue Study. However, it should be noted that the private sector would typically downgrade or approach any traffic and revenue study very conservatively.

Availability payment structure for toll roads would allow the contractor to access less expensive, simplified financing with the public sector, likely including higher debt/equity ratios and capturing all of toll revenues from revenue service date.

Overall, availability projects, even if the new infrastructure is tolled by the public owner, are typically more positively received by the public than toll roads where the private partner is responsible for demand driven toll income.</td><td>At this time the plan is for Metro to keep the revenue risk and set the toll rates and business rules, however we are open to discussion on ways to incentivize the private operator to optimize revenue and keep operating costs low.

Sharing of the revenue risk is still an option for discussion.

Not sure of the meaning of the last sentence. It seems whether the HOT lanes are done as APs or concession, all toll revenue is captured from revenue service date.</td><td>No</td><td>Yes</td><td>Yes</td></tr>
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6	Responsibility/Authority for HOT Lane Enforcement and Toll collection	While collection can be handled by either party, concessionaires most often look to public sector to manage enforcement beyond basic administrative tasks as the concessionaire does not have government rights and remedies. It is also important, that the public sector steps into bi-state enforcement agreements, in order to ensure coverage of out-of-state enforcement (this is relevant if there is a significant number of out of state vehicles). The transfer of toll collection services as part of a P3 should be based on efficiency criteria (i.e. if the project is part of a larger network where tolls are already collected by somebody else for adjacent roads, the transfer does not make sense).	At this time we anticipate violation processing and toll collection by the existing Metro contracted private operator similar to operations in other counties. The contract will identify the role to be played by Metro with respect to collection efforts requiring interface with the California DMV or with other states. Metro will coordinate the HOT lane enforcement with CHP.	No	Preliminary	Yes
7	Protection against future capacity improvements	In order to make the project financially viable and investment grade, a concessionaire must be able to have a reasonable degree of certainty as to the revenue potential of project. Any future improvements (that takes traffic away from concessionaire's investment) should be treated as compensation event.	Metro anticipates using an availability payment model, in which case this should not be a matter of concern to the concessionaire. This would not be a commercial issue unless there is some sharing of revenue risk. If there is revenue risk sharing then unplanned future improvements could be considered a compensation event. Note that Caltrans will not entertain "non-compete" clauses for projects on the State Highway System.	No	Preliminary	Yes

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8	Process/Criteria for acceptance of work	Should be no different than a DB job. Contractor should provide for majority of QA/QC, while Concessionaire will be providing another layer of audit on top of this. In the long run, this is the private sector's risk in that they have to operate and have a quality product if they want to get paid for 30 years. And since Owner is not paying for work at time of completion (private sector is), it should be even less of a concern by Owner. We would recommend an additional audit process carried out by Owner on the QA/QC program	Agree in part. P3s include reviews to confirm adherence to required standards, but the P3 process is largely self-policing with regard to QA/QC because of the long term O&M responsibility of the concessionaire. This item will require continuous dialog with Caltrans.	NA	NA	NA
9	Process for approving design and recourse for late approval • Can Metro provide more comment on Caltrans involvement? • "private sector should make sure progress is being made in the review process" ??	Similar to DB Metro (contracting agency) needs to drive and be accountable for the design review process. Metro needs to coordinate the other stakeholders (Caltrans, City, County, FHWA, etc.) and keep their reviews within the contractual review period by "Owner". Late review and resulting delays need to be considered a Relief Event.	This will be an ongoing discussion item with Caltrans and others as necessary. While the overall responsibility for approval of design review phase rests with Metro, the private sector should make sure progress is being made in the review process. For the ARTI Project, Caltrans rules will apply.	NA	NA	NA

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10	Process/criteria for approving progress payments and authority to direct work of contractor	Public Owner shouldn't "approve" progress payments as long as those payments are coming from within the private side and private financing. Owner should only be involved with approving progress payments when/if they are tied to milestone payments from Owner (ie. Substantial completion milestone payments, etc.)	Agree. But this doesn't eliminate the need for reporting payments to subcontractors, to enable Metro to comply with, for example, FHWA DBE prompt payment requirements.	No	Yes	Yes
11	Allocation of risk for cost of delays due to litigation, hazardous waste, subsurface cultural findings, or other environmental issues	Should be similar to DB contracts in industry. Contactor should be able to get Relief for events such as these that are: • Outside of its control (litigation on NEPA, TRO's, other agency approval, force majeure, seismic, etc.) • Beyond it's reasonable knowledge at bid time (unknown haz mat, cultural, This would go for differing site conditions as well. • Owner caused (ROW, approvals, etc.) This general concept should cover utilities as well: • Unreasonable delays by utilities • Unknown utilities • Inaccurate utility information	Risk allocation will be considered by Metro and Caltrans prior to issuance of the RFP, with reference to concerns specific to the project as well as the approach adopted for other projects. Generally agree that pre-existing environmental contamination will be the responsibility of LACMTA. We may, however, require the contactor to purchase insurance to cover the LACMTA's responsibilities for toxic torts and for remediation of unknown pre-existing environmental contaminants, but LACMTA would retain the uninsured risk, including risk of delay. Conceptually, LACMTA is comfortable with relieving contractor of typical *force majeure* risks and third-party coordination delay risks absent the contractor's actions as a material factor in the delay.	N/A	Preliminary Only	Yes

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12	Contractor's ability and cost to close adjacent travel lanes	Owner should set the guidelines for ability to close lanes (i.e. How many and for what hours). Private sector will then innovate and compete within those guidelines. In addition, if Owner wants to continue to have contractor innovate to shorten those periods of taking lanes, they can charge additional "lane rental fees" that roughly calculate out to the cost to the public for that particular lane at that particular hour. This should go for the O&M phase as well. (i.e. deducts to the availability payments for taking a lane or closing a ramp, etc.)	The procurement document would presumably include a lane closure chart outlining the permitted times and durations to close lanes and the number of lanes that can be closed during those times, and may also include "lane rental" provisions. In the alternative, a simplified approach in which the concessionaire is given "windows of opportunity" within which they must propose to and subsequently accomplish their work.	No	Yes	Yes

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13	Performance bond and insurance requirements • The surety bond comes down to a legal question – will it be mandate? • Will Metro allow surety bond to be co-obligee (i.e. lender first) to get some credit rating benefit out of it?)	Insurance – Typically an OCIP or CCIP is the way to go for a P3, in terms of bundling the purchase power of the project, including both construction and O&M. Whether it is an OCIP or CCIP can be evaluated based on what other such OCIP insurance programs the Owner already has (i.e. purchasing power of Owner vs. purchasing power of the private sector). In principle the insurance requirements should be reasonable and the owner should let lenders and equity determine what the best insurance profile under either of the programs is. Performance bond – By nature of the P3 structure (non-performance risk has been transferred to the private sector – both debt and equity), the lenders drive the structure required for performance securities. They mandate 2 things as the direct beneficiary (not Metro) – LOC's (letters of credit), and PCG's (parent company guarantees). These two items WILL be required no matter whether a bond is required by Owner or not. While realizing a performance bond is typically required for "Little Miller Act" reasons by the Owner, they provide little additional security and are passed through as a cost. The lenders give very little benefit to such in that they are not "immediate instruments" of relief, so they do not benefit the cost effectiveness of financing (i.e. a better rating). Some states (FL, CO, MO) have limited face values of bonds required on P3s, and this does nothing more than limiting the bonding companies exposure (they still charge the same amount and assign the same backlog amount to the Contractor). The only way around this is too change the law and not require such performance bonds if possible.	We agree that a wrap-up makes sense for P3 projects and Metro will certainly consider these points in determining the insurance requirements. LACMTA has a strong preference for CCIPs given preferential insurance pricing relative to OCIPs. The LACMTA does not have any current project with an OCIP. The LACMTA will dictate minimum coverages and limits on the project that are consistent with industry practice and LACMTA's risk appetite. Generally, deductibles selection is the responsibility of the contractor. LACMTA is willing to discuss alternatives to a 100% performance bond on the project, agreeing that the costs of this type of surety are very high. Non-bond performance guarantees for example letters of credit may be acceptable and are certainly worth discussion. Generally, though, the surety question is more frequently driven by regulatory/legal requirements on a project. Note also that Caltrans requirements also apply when the State procures the project.	No	Yes	Yes

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14	Penalties for late completion • If an AP deal, Metro will not be paying if the project is not open. Are there are other LD's? Can Caltrans elaborate on other damages?	By nature of a P3, the majority of compensation to the private sector via the P3 contract is via payments (milestones, tolls, availability payments, etc.) after completion, and only if completed. Therefore, the normal way method of penalizing the private sector is for them to get milestone payments late as well, and potentially miss toll/availability payments for the period they are late. For example, if a deal is structured as a 100% availability payment P3 and the payments are to be for 30 years after completion, if the contractor finishes one year late the Owner would only pay 29 years of availability payments. These impacts are then calculated out and "flowed down" to the DB contractor in the form of Liquidated Damages (LD's/day) to cover the financial impacts of lost availability payments so the Concessionaire is kept "whole" if the reason for the late completion is solely the Contractor. On most P3's due to the substantial amount of private finance in the deal, these LDs passed to a Contractor are typically very large, bigger than most DB projects. A related subject is LDs vs. Bonus for the Contractor. Just as the LD's stem from the Owner's payment mechanism, a potential bonus (financial model benefit) from an early completion flows from the payment mechanism. Availability payment mechanisms (or tolling payment mechanisms) can be structured differently to have a true bonus or not (i.e a LD comes into play when a contractor finishes late. If a contractor finishes early, does the Owner "move up" the term of payments, or do they pay more payments?) Of note and critical interest to the contractor is the question of the balance of these two numbers (LDs vs. Bonus). If, based on the payment mechanism, there is only opportunity for LDs and no real bonus, the risk/reward is severely unbalanced and the contingencies will be priced accordingly for this substantial risk. If the LDs and bonus potential are closely aligned numerically, this schedule risk is priced much less, bring better pricing to the Owner.	These issues will be considered in drafting the RFP. We agree that a strong incentive to complete on time (or ahead of time) is provided by the start of availability payments when the facilities are placed in service. However, the public sector will also incur damages if the project is delayed, and the contract may therefore include LDs.	No	Yes	Yes

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15	Flexibility to work at all locations at any time and work notices required	As above, the Owner should decide what rules they truly feel are critical to them, and put them in the contract. The contractor will live up to those requirements, but should be allowed as flexibility as possible to innovate and bring pricing efficiency to the Owner at bid time.	Agree. Subject to availability of the site access or lane access.	No	Yes	Yes
16	ROW risk allocation & acquisition responsibility • Not sure I follow their response – Metro elaborate? • Condemnation schedule risk? • "deductible" ?	Private sector is OK and has taken on ROW scope of work and actions, but needs some proper protections for things that are beyond their control: • Private sector does not have right of condemnation, so must rely on the Owner's right of such. Owner cannot hold up or refuse to timely condemn the property, or unreasonably extend valuation negotiations, and delay gaining access for the Contractor. • If a landowner brings a lawsuit over the right to condemn, this should be a Relief Event for the Contractor • Valuation risk (appraisal value), settlement risk (raised value in order to get Owner to settle), or Court risk (court ordered valuation higher) is beyond the control of the Contractor, and all such valuation (payout to landowner) risk should stay with the Owner.	Our current thinking is that control of the right-of-way process as well as schedule risk, be assigned to the private partner. Condemnation schedule risk stay with the owner, but only condemnation schedule risk. Typically, these are defined as critical path impacts with a deductible period, provided the private partner has completed work to that point in accordance with FAR, and an acceptable eminent domain package has been received by the owner. We agree that acquisition cost risk should stay with the owner.	Yes	Yes	Yes

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17	Contractor Performance Criteria for availability payments	The Owner needs to contemplate and define the performance requirements that allow for availability payments to be made.... Open to traffic, smoothness limit, rutting limit, etc. All O&M required should be left up to Concessionaire as to how/when to do maintenance in order to meet these performance specs. O&M scope and responsibilities must be clearly defined and owner must recognize operations effect on maintenance (and vice versa). In addition, a concessionaire will be unlikely to take on operations and/or maintenance risk for assets not designed or constructed by concessionaire without due protections.	Agree. Milestone payments follow the same considerations.	No	Yes	Yes

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<tr><td>18</td><td>Agency's ability to reduce availability payments due to non-performance, force majeure or other reasons.</td><td>Yes. Availability payment P3s typically have "performance deductions" for scenarios where the performance specs are not being met.
Some examples include:
Deductions for lane closures.
Failing to meet surface smoothness requirements.
Failing to respond to an incident along the roadway in a timely manner. There are different timing requirements depending on the nature of the incident.
Deduction for failing to maintain the infrastructure to the standard set forth in the project documents (i.e. changing light bulbs, ensuring signage reflectivity, clearing debris)
Performance deductions should not reduce availability payments below the amount necessary to keep payments current on debt, other than extreme or continued non-performance occurrences.
Force Major is dealt with specifically, but usually provides relief for the concessionaire.</td><td>Performance deductions should reflect costs to owner. Reasonableness is a key factor. Owner would not like to see the concessionaire fail to make debt service...but suitable protections to the owner for private partner failure is a reasonable approach.

Force Majeure is often more tightly defined (less relief opportunity) in P3 agreements, but this statement about them being specific to the agreement is correct.</td><td>No</td><td>Preliminary</td><td>Yes</td></tr>
<tr><td>19</td><td>Requirements for condition of facilities for turnover at end of lease</td><td>Essentially all P3 deals have requirement to meet well defined standards for turnover of the facility. This includes testing regiments, or design standards for a certain design life (i.e. 25 years) remaining in a pavement at handover. Many examples of this exist.</td><td>Agree</td><td>No</td><td>Yes</td><td>Yes</td></tr>
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<tr><td>20</td><td>Allocation of tort liability risk

• Equity will need to comment on long-term tort liability matters.</td><td>Why would this be any different than in a DB contract?

If Contractor is building the project per the contract and within the specifications of the contract (i.e. closure hours allowed for roads, etc), Contractor should not be responsible for tort liability. In other words, the Owner has hired us to build a project on their property – if that contracting process raises tort liability, it should stay with the Owner.

This does not mean Concessionaire/Contractor are trying to get out of any Builder's risk or other GL insurance matter that is within their control</td><td>A DBFOM availability payment agreement is different from a DB contract in that the private partner will have ongoing responsibility for the project during the O&M phase and the concessionaire may have tort liability as a matter of law.

Tort liability risk in the CCIP context will be the responsibility of the contractor as identified in #13. This approach is consistent with the Crenshaw Project, Foothill Extension and Expo II. LACMTA believes that the total project costs of risk are lower when the possibility of tort claim disputes between the contractor and LACMTA are eliminated by risk transfer. The LACMTA is committed to compensating contractors for the costs of this risk transfer by clearly articulating the scope of the risk transfer (e.g., indemnity, warranties, etc.) and allowing a competitive procurement process to take place.</td><td>No</td><td>Yes</td><td>Yes</td></tr>
<tr><td>21</td><td>Relief = Relief</td><td>Relief events, and the method they are considered in the contract, are much different in a P3 than in a DB. In a DB, the contractor is looking for time (relief from the Owner's associated LDs) and costs (typically overheads). In a P3, the Contractor is looking for similar relief, especially as it relates to schedule and LDs. Since the LDs flow from the private side (private financing) and the payment mechanism, if the Owner simply "gives time" for a Relief Event, they haven't addressed the LDs to the Contractor. Other availability payment P3's in the industry have had contract language that pays availability payments even though the project is not complete, to the extent the delay has been caused by a Relief Event. Therefore, in this example, Relief Event means Relief Event as it relates to time AND LD's to the Contractor.</td><td>We agree that consideration for costs incurred due to a relief event have to be clearly defined in the P3 agreement.</td><td>No</td><td>Preliminary</td><td>Yes</td></tr>
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22	Reliance on Factual Data • Many more recent DB/P3 projects are leaning towards the Owner taking "factual information" responsibility only, as compared to interpretive (i.e. GBR's, etc.)	The Owner typically spends tremendous time and dollars obtaining the factual data behind the project – geotechnical, utility info, haz mat, etc. Since bid periods are short, and it would cost substantial dollars even if the bidders had enough time to review and confirm all factual data, , the most efficient approach is to allow the contractors to rely on this factual information (note: not the interpretive reports, only the factual information). This can either be done via statements in the contract allowing the bidders to rely on the factual information, or clearly spelling out Relief Events where a site condition (utility, geotechnical, cultural, etc.) is different than the factual information provided.	The approach recommended by AGC is the same approach contractors have advocated for in numerous other projects. In most cases, the project sponsor is not willing to assume this liability. The private industry is accustomed to these types of risks and reference materials. It is typically not in the best interest of the owner to allow the private partner to rely upon preliminary information, incomplete information or information that relates to risks that have been assigned to the private partner. Contracts are structured to ensure that management of risks is clearly in the purview of the party to which those risks are assigned.	No	Yes	Yes
23	Options to pay for Change Orders as directed by Owner • Metro did not comment, we will have to get their read.	Documents sent to Metro previously – the issue is Metro can't force Equity to finance additional changes as it has various impacts to their modeling/ratio's, etc., and they may not be able to finance additional debt.	Process for payment for Owner's change orders will be defined in the P3 Agreement.	No	Yes	Yes

#	Key Issue	AGC response	Metro Comments on General P3 (PDA) Procurements	Planned to Be Available By		
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PDA -1	Selection Criteria & Process for Winning PDA	1 – Most importantly, the private sector desires reasonable, detailed, and clear scoring/selection criteria that Metro will use to pick a "winner" to enter into a PDA contract. This is true for any procurement, but especially a true for a PDA where price is typically not involved in selection – but is more of a qualifications based selection. For same reasons, transparency and a non-biased process are very critical, as well as a very detailed criteria and evaluation process, are all key. Metro to proceed as they would for a technical proposal, for a D/B project or a quals based PE selection. They should provide guidance to proposers that is backed up by internal scoring metrics or anchors. 2 – As stated above, price should not be a factor in PDA selection due to the nature of the process. Not only is any price not binding and therefore inherently not a factor, but the process is too early for pricing by definition. Any pricing given or pricing evaluation invites "gaming" and are potentially only telling Metro "what they want to hear" Metro should provide a narrative explanation of the compensation structure, including any reduced fee sharing arrangement prior to final contract award.				

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PDA-2	Private sector development costs during PDA phase	During the PDA contract phase of a project, the private sector will likely be expending substantial dollars on many different items (geotechnical investigations, preliminary design, environmental studies and permitting, funding status, legality issues, T&R studies, financial feasibility studies, etc.), all while the project may not proceed for any of the above reasons and others. The reality of this PDA cost situation is analyzed by the private sector against other high cost (DB's, P3's, etc.) pursuit opportunities, with a much higher chance of project reality. Therefore, Metro needs to research other PDA's and their ability to pay for the majority of PDA work by the private sector, while the private sector needs to be willing to give up the work product to Metro if needed. Metro should outline its expectations clearly; delays to agency controlled scope should not delay compensation to developer; and comp on term should protect developer. In addition, the percentage of costs paid by Metro vs. the private sector during the PDA phase (or offered/requested during the pre-PDA phase) should not be a factor in the PDA selection phase criteria (discussed above in PDA-1) as different proponents may propose different percentages of reimbursement (and lower amount of PDA work accordingly) in order to game the system, and these PDA costs are nowhere near the eventual costs of the completed project. Metro should provide at-cost compensation for any "high-value" deliverables that can reasonably be used by Metro regardless of ultimate outcome procurement.				

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PDA-3	Pricing negotiations at end of PDA phase	The one-on-one pricing negotiations at the end of the PDA phase are critical for both parties, and are under the cloud of not having “competitive tension”. The private sector needs to be sensitive to Metro needing good value in this pricing, while Metro needs to be sensitive to the private sector not wanting to expose detailed (and usually confidential and proprietary) estimates and procedures. The process requires Metro to be very clear of their expectations *prior* to PDA competition for (1) what they will require in terms level of detail in a final estimate for costs at the end of the PDA phase, (2) the level of review and by who as to validating this pricing, and (3) expected contract structure (LS, CMGC, cost-plus, etc.) and dealing with risk/contingency approach. A common approach to developing the estimate is essential and the format should be agreed upon up front. Good faith negotiations should be a right for the private sector and an obligation for Metro, provided the developer has satisfied its obligations. Metro should be prepared to discuss price proposal in same level of detail as Developer/CJV.				
PDA-4	Selection of Consultants and Management of Output	It should be noted that while Metro will have visibility to all team members, including consultants, via the selection process, the day-to-day management of those team members and their output will be the responsibility of team management.				
PDA-5	NEPA/CEQA	While the developer may contribute technical information, Metro should be responsible for planning and environmental review processes.				

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PDA-6	Limitations of Liability/Insurance	Limitations of Liability / Insurance requirements should reflect the value of the advisory services under the PDA – not the value of the future construction contract.				