

PURPOSES OF PUBLIC-PRIVATE PARTNERSHIP POLICY

Amendment to Procurement Code

Senate Bill 204, sponsored by Senator Ralph Okerlund, passed the Legislature and was signed by Governor Herbert on March 24, 2017. S.B. 204 is a great step in the right direction because it expressly authorizes public-private partnerships in Utah. However its scope is limited. It simply authorizes P3s under the same assumptions and procedures for a contract for cleaning a public building or constructing it. It does not address how a public body can receive unsolicited private proposals and benefit from innovation in the private sector. Also S.B. 204 provides no guidance for analyzing the benefits of a P3 arrangement. Most importantly, the procurement code, by its terms, does not apply to any interlocal entities, like the Coalition. We have interacted with the SL Chamber of Commerce and they agree that a fuller P3 authorization should be pursued. Accordingly, we propose that the Coalition adopt its own policy to address matters untouched in S.B. 204.

Key Components and Advantages of the Comprehensive Policy

- Clear authorization and procedures for accepting unsolicited proposals, to protect propriety information and minimize criticisms that the public body did not implement adequate procedural protections.
- P3-specific RFQ/RFP process, which includes more exacting requirements for information from private entities and higher standards of public notice to affected entities
- Rigorous evaluation of proposals to ensure that the P3 project is in the public interest and the public is receiving the best value over the lifetime of the P3 project
- Guidelines and restrictions on the terms that may be included in P3 contracts, which help protect against unanticipated risks or being taken advantage of by private entities
- Clarification of the rights of private entities in P3 projects, including tax liabilities or the allocation of revenues and risks.

Recommended Next Steps

- Enact a Coalition-specific policy that guides the Coalition on how to engage in P3s along the lines of the previously proposed comprehensive legislation. This policy will:
 - ensure that the Coalition acts in the public interest;
 - provide an open and competitive proposal process for accepting bids; and
 - provide clear guidance to future potential private partners.
- Prepare to advance a more comprehensive bill for the 2018 legislative session by:
 - gathering support for a comprehensive bill from like-minded groups;
 - meeting with the Office of Legislative Research and General Counsel to resolve concerns prior to the legislative session; and
 - continuing to get feedback to refine the legislation so that it better meets Utah's needs.