



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**MAYOR MURIEL BOWSER**  
**OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS**  
John A. Wilson Building  
1350 Pennsylvania Ave, NW, Suite 533  
Washington, DC 20004



**Committee of the Whole**

**Public Roundtable**

**on**

**PR21-822, the Office of Public-Private Partnership Rules Approval  
Resolution of 2016**

**Testimony of Seth Miller Gabriel**  
**Director, The Office of Public-Private Partnerships (OP3)**

**John A. Wilson Building**  
**1350 Pennsylvania Ave, NW**  
**Room 412**  
**Washington, DC 20004**

**Thursday, September 29, 2016**



**[Slide 1]**

**Introduction**

Good Morning! My name is Seth Miller Gabriel, and I am Director of the District of Columbia Office of Public-Private Partnerships, or as we like to call it, DC OP3. I am joined today by my Deputy Director, Judah Gluckman. I am pleased to testify today in support of Proposed Resolution 21-822, the Office of Public-Private Partnership Rules Approval Resolution of 2016. As you know, PR21-822, would approve DC OP3's rules, which outline the procurement process by which public-private partnerships ("P3s") will be procured to deliver critical infrastructure to the District while maximizing our value-for-money. Before discussing those rules and how they were developed, I would like to provide some brief background on why the Office was created and our activities to date.

**Background on DC OP3**

DC OP3 was established by the Public-Private Partnerships Act of 2014 ("P3 Act"), which was introduced by then Councilmember Muriel Bowser in December 2013. It was motivated by a desire to develop innovative solutions that would help close our infrastructure gap. With an increasingly constrained capital budget and unreliable federal funding, we're following in the footsteps of 39 states and 33 countries who have turned to P3s to help solve their infrastructure challenges.

We greatly appreciate your stewardship throughout the legislative process, Mr. Chairman, and helping to ensure that the Act passed unanimously in December 2014. Mayor Bowser has since stood up the Office, and we have been hard at work since November 2015.

**What are P3s?**

There's a good reason why jurisdictions like the District are looking to P3s as a solution, but it's critical to first understand how they work. Let's start with what P3s are **not**.



**[Slide 2]**

- P3s are **not** free money – They are a financing tool that the government and residents are ultimately paying for.
- P3s are **not** privatization – No District assets will be sold or public jobs outsourced.
- P3s are **not** philanthropy – It's great if a non-profit or billionaire wants to give the District money, but that kind of grant is not enough to finance a project. There must be a reliable revenue source or savings that underwrites any project we do.

**[Slide 3]**

As the P3 Act defines them, P3s **are**

- Long-term, performance-based agreements between public and private entities
- Appropriate risks and benefits are allocated, in a cost-effective manner, between the public and private entities
- A private entity performs some functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public functions
- The District retains ownership of the asset, but the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle

**[Slide 4]**

The benefits of this procurement model are several. And in discussing how P3s can help the District, I'll describe how this could work for a specific project we are working on, the Henry J. Daly Building, which houses the Metropolitan Police Department's headquarters.

- **Incentivizes Innovation:** By specifying the outcomes that the public entity desires through very clear key performance metrics, P3s spur the private sector to compete on developing the most innovative solutions to achieve those metrics.
  - For the Daly Building, that could mean specifying that energy efficiency should be maximized while providing well-lit and comfortable work spaces rather than prescribing the type of lights and HVAC system. This could allow

a private partner to build a more effective and cost efficient renewable energy-based system we hadn't thought of.

- **Incorporates a “Cost of Ownership” Financial Plan:** Because P3 agreements typically cover the entire life-time of an asset, P3s force public entities to conduct a comprehensive and accurate financial analysis for the design, construction, financing, operation and, most importantly, maintenance of a facility.
  - This would ensure that we budget for proper maintenance of the renovated Daly Building in payments to the concessionaire to avoid premature failure.
- **Manages Risk:** P3s transfers risk to the entity best able to minimize such risk.
  - So if the Daily Building costs more or takes longer to renovate than expected, the concessionaire pays the difference or compensates the District for delays.
- **Holds The Private Sector Accountable:** P3s incentivize long-term life-cycle efficiencies. This occurs because if our private partner doesn't meet the requirements of the P3 agreement, that concessionaire will be responsible for any additional costs or pay penalties.
  - If a modernized Daly Building is not meeting performance levels as promised due to poor maintenance, the concessionaire must fix the problem and possibly pay penalties.
- **Debt Capacity:** Finally, because the private sector takes on more risk and manages the life-cycle of assets in P3s, they are willing to use private financing in lieu of tax exempt bonds. This not only frees up public debt for projects that aren't suited to P3s, but private investors can be our greatest allies to ensure that a project is built on time and maintained to the level of quality we demand.
  - This means we may not have to reduce the capital budget for roads or schools to pay for a new Daly Building. And before we hear complaints that the building is not meeting performance targets, investors have caught issues and had the concessionaire solve the problem to avoid penalties.

#### [Slide 5]

This slide shows how private entities take on more risk in a P3 compared to a traditional procurement and can save the District money by more efficiently mitigating that risk.



**[Slide 6]**

The next slide shows the typical structure of a P3 agreement. As you can see, it is complex. But, the District government only deals with one private partner, who we call the concessionaire. That concessionaire is usually a partnership among several different companies. These are major national and international firms that are extremely experienced in P3s. They work very smart and have the financial backing to ensure projects are successful over their full life cycle. While these P3 companies have not always done business in the District, we've gotten a lot of positive feedback about partnering with our office. There will also be many opportunities for small and local businesses to get involved, perhaps even more so than in traditional procurements, because the long-term contracts guarantee revenue streams to help fledgling firms get financing and justify apprenticeships for new employees from the District.

**[Slide 7]**

Notice here that the concessionaire usually includes operations and maintenance firms in their team at the beginning of a project to think strategically about life cycle investments.

**[Slide 8]**

The next slide highlights the value of equity investors, who take on risk, and therefore have the same interest we do in ensuring that the concessionaire performs. These investors can be large banks and investment funds, but they can also be major institutional investors including government and labor employee pensions funds and university endowments.

**[Slide 9]**

Here are a few examples of P3s in the U.S. You'll see that they can run the gamut of infrastructure types across sectors, from bridges to courthouses and broadband networks.

**[Slide 10]**

**OP3's Activities to Date**

With that understanding of P3s, I want to describe what OP3 has accomplished to date.



- **Education and Technical Capacity Building**

We've met with all of the Deputy Mayor's Offices, the CFO, OAG and virtually every agency with capital needs. This was done to educate the agencies that are less familiar with the P3 concept and to determine if any of their needs are viable P3s.

- **Developing a Project Pipeline**

Based on our internal meetings with agencies and conversations with industry stakeholders, we've also developed a pipeline of projects. We have at least 30 or more projects that could be viable P3s. In fact, we encourage anyone with project ideas, to email them to us at [op3@dc.gov](mailto:op3@dc.gov). Once we fully consider these project ideas, OP3 will publish the draft pipeline and hold public meetings to get stakeholder feedback.

- **Marketing the District**

With this strong pipeline of projects being developed, the Office has also been very active in marketing the District and the activities of our office. This will attract more bidders to future procurements, lowering the District's costs and improving the level of innovation and overall outcomes of projects. Having attended several P3 conferences, there is real excitement for what we're doing. We could become the leading state for P3s in the U.S.

- **Launching Projects**

As I mentioned, of the 30 or so projects in our pipeline, there are a handful that have shown themselves to be leading candidates.

**[Slide 11]**

- **Street Lighting Modernization**

The first project is a modernization of more than 70,000 streetlights. Working with DDOT, we intend to hire a private partner that will convert the bulbs to more energy efficient and sustainable LED technology. That same partner will likely be responsible for the maintenance of the lighting system and poles to improve the level of performance. We're also working closely with OCTO to explore smart city technology that will leverage the light poles and the District's fiber network to better serve residents.



**[Slide 12]**

▪ **Corrections Center**

The second project is the replacement of our current jail. We have two existing facilities in the Hill East community that serve approximately 1,800 individuals who are incarcerated for relatively low-level crimes or are awaiting trial. Our partners at DOC and DGS have achieved amazing results in these aging facilities, which unfortunately are the victims of underinvestment over several decades. They are simultaneously too large, and therefore expensive to operate, and too small, because they lack proper programmatic space for critical functions like job training, education and drug treatment. A modern facility will greatly improve the outcomes for returning citizens and put them on pathways to success. It will also be a better neighbor to the surrounding community.

**[Slide 13]**

▪ **Henry J. Daly Building**

The third and final project is our police headquarters located at the Henry J. Daly Building. It is critical that we have a modern, state-of-the-art facility for MPD to operate in. The current 80-year old, 500,000 square foot facility located at Judiciary Square is in extremely poor condition. The goal for this project would be to team with a partner to design, build, finance, operate and maintain a newly renovated Daly Building to serve MPD and other government agencies. This has the potential to consolidate several government agencies into a single modern building, reducing the need for other leased or District-owned space. This project will also help preserve one of the District's most historic buildings that includes Depression-era murals and Art Deco design.

We look forward to engaging the public, the Council, and other key stakeholders as we proceed with these projects once our procurement rules have been finalized.

**[Slide 14]**

**The Rulemaking Process**

For these and all of our other projects, OP3 will be following the procurement process laid out in the P3 Act as implemented through our rules. OP3 conducted an unprecedented



level of outreach and research to develop the rules, which are before you today. We spoke to P3 offices in Maryland, Virginia, Pennsylvania, Michigan, Arizona and several other jurisdictions, in addition to consulting internationally recognized experts. From those conversations and reviewing best practices, our guiding principles were to balance speed, certainty and fairness that would bolster competition with transparency and oversight that would ensure trust in our process and public support for projects.

The rules generally reflect what's in the P3 Act. This includes allowing for a wide range of project types, the handling of both solicited and unsolicited procurements, and the terms that must be addressed in a P3 agreement. We will also ensure broad public understanding and support for every project we do by reaching out early and often to effected communities, holding public hearings, and seeking Council approval before we even issue a Request for Proposals ("RFP").

While our procurement process is exempt from much of the Procurement Practices Reform Act ("PPRA"), P3s must meet the same public benefit requirements as other District procurements. For example, 35% of the work must go to small and local businesses, fair wages must be paid to employees, and District residents must be the "First Source" for new employees hired for these projects.

#### **[Slide 15]**

OP3 was very transparent and collaborative in revising the draft document through the public comment process. For example, we not only published the rules in the D.C. Register and on our website, [op3.dc.gov](http://op3.dc.gov), but we also allowed for interactive discussions about the rules on the open source platform, [drafts.dc.gov](http://drafts.dc.gov).

We held workshops and one-on-one meetings with stakeholders that resulted in more than 160 helpful suggestions. All of those written comments and a log of the meetings we held is available on our website. In general, there was broad support for the process we laid out in the rules. But, there were also helpful suggestions that we adopted in the revised rules to promote simplicity, competition and transparency.





**[Slide 16]**

This chart shows the procurement process for both solicited and unsolicited procurements. There are a couple of important points to highlight. First, a public hearing is required for all solicited procurements before an RFP can even be issued. In most cases, we'll likely have more than one hearing to ensure that all voices are heard.

In recognition of the important role that Council oversight plays in building understanding and support for P3 projects, both the RFP and final P3 agreement must be approved by Council. To aid in that process, we will provide in-depth documentation and analysis for each project, including a full financial accounting of the estimated costs and benefits ("value-for-money") as well as a public cost comparator to quantitatively demonstrate that a P3 will achieve a better outcome than a traditional procurement. It's very critical that this stakeholder support be there for a project in the early phases, because once the private sector starts incurring significant costs to develop bids, we do not want to drastically change or worse yet, cancel, a procurement. It will be the last procurement those bidders participate in with the District and make future projects much more challenging. We also hope that after such a transparent and open process, approval of the final P3 agreement by Council will be streamlined, though OP3 will stand ready to address questions or concerns as needed.

The unsolicited procurement process is also worth discussing in more detail. First, OP3 will be open to accept unsolicited proposals for two months each year, generally in the spring and fall. This will help marshal our limited resources and ensure timely responses to such bids, which must be within 90 days under the P3 Act.

For unsolicited proposals, we'll conduct an initial feasibility analysis with effected agencies and other stakeholders. If we deem the proposal "favorable", OP3 will issue a public notice with an executive summary of that proposal and our timeline to accept alternative proposals. This injects much needed competition. At the same time, we will protect an unsolicited proposer's proprietary information so that they have incentive to give us good ideas that won't be shared with their competitors. In an unsolicited procurement, only the

final P3 agreement will go to Council, though we have every intent to brief the Council and other key stakeholders early and often throughout the process.

In addition, the Office of the Attorney General and the Chief Financial Officer are required to make certifications about the legal and financial viability of an unsolicited proposal. Although not expressly required to do so under the P3 Act for solicited proposals, the standard financial and legal certifications of all District contracts will apply to P3 agreements. We worked closely with OAG and OCFO on the rules and they are supportive of the current draft as submitted to Council.

**[Slide 17]**

**Conclusion**

Mr. Chairman and members of the Committee of the Whole, thank you once again for affording me the opportunity to speak to you and the public today. We are eager to start these critical infrastructure projects I mentioned. We truly believe the District can be the P3 capital of the United States, and allow us to sustain and expand our prosperity to all parts of the District.

We would be happy to answer any questions you may have and appreciate your support for our efforts. We hope PR21-822 will receive the Council's approval so that we can get to work on these critical infrastructure projects.





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## What a P3 is NOT

- Not – Free money
- Not – Privatization or Outsourcing
- Not – Philanthropy

## What is a P3?

- Long-term, performance-based agreement between public and private entities
- Appropriate risks and benefits allocated, in a cost-effective manner, between the public and private entities
- Private entity performs some functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public functions
- The District retains ownership of the asset, but the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle - *D.C. Code § 2-271.01*

## Benefits of P3s

- **Incentivizes Innovation**  
Spurs innovative, outcome-based solutions to address infrastructure challenges
- **Incorporates a “Cost of Ownership” Financial Plan**  
Forces a comprehensive and accurate financial analysis for the design, build, financing, operation and maintenance of a facility and a comparison of the traditional public sector procurement versus a P3 option
- **Manages Risk**  
Transfers risk, including cost overruns and schedule delays, to entity best able to value and mitigate it and aligns public and private interests
- **Greater Accountability**  
Incentivizes long-term life-cycle efficiencies, including more efficient operation and maintenance of facilities; agreement holds both the private and public partners accountable
- **Debt Capacity**  
Facilitates new sources of private financing, potentially reducing need for public debt



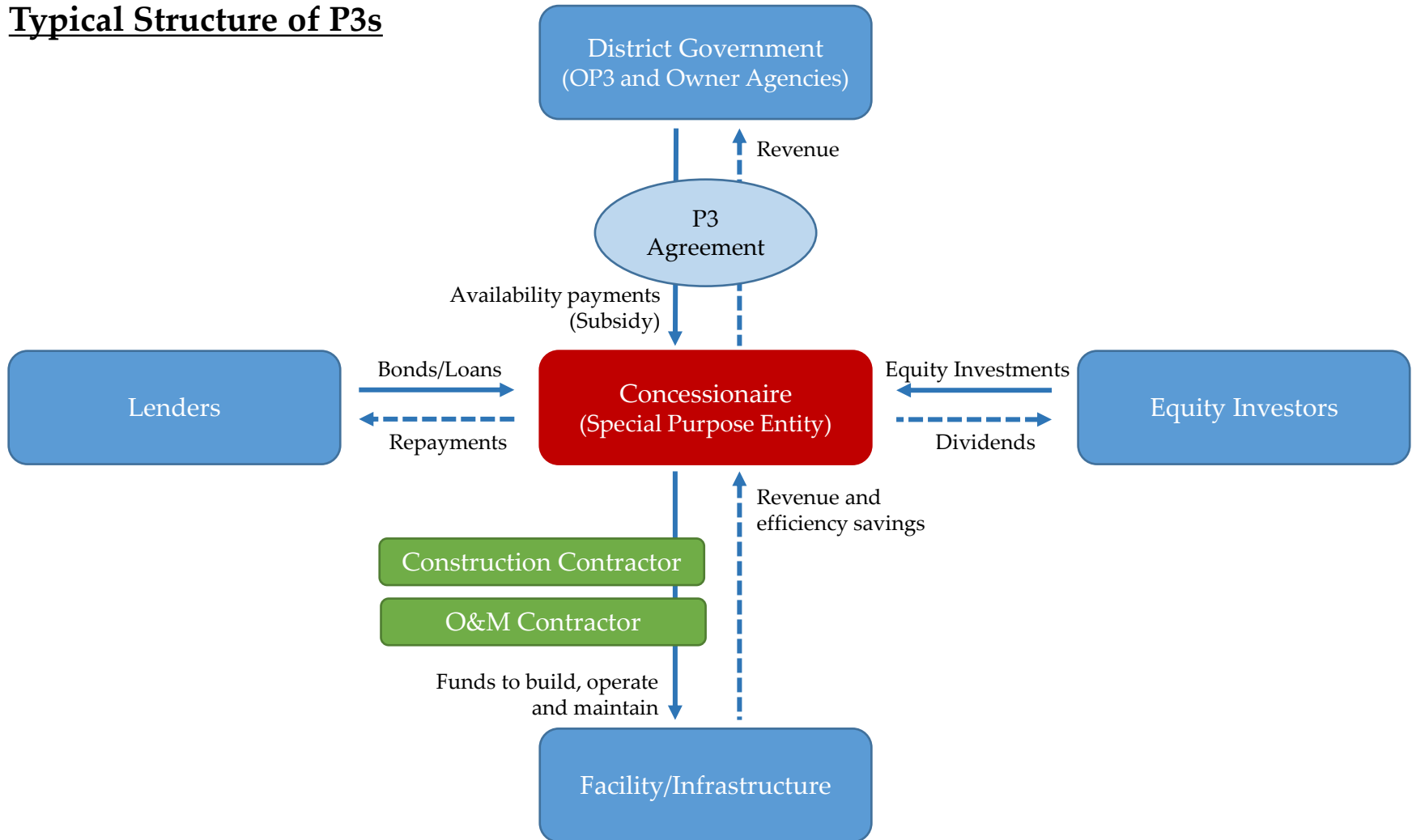
Daly Building

## What are P3s? – Transferring Risk from the District to the Private Sector

| Traditional Procurement |              |
|-------------------------|--------------|
| District                | Contractor   |
| Financing               |              |
| Permits                 |              |
| Program                 |              |
| Force Majeure           |              |
| Organization            |              |
| Design                  |              |
|                         | Construction |
| O & M                   |              |
| Availability            |              |

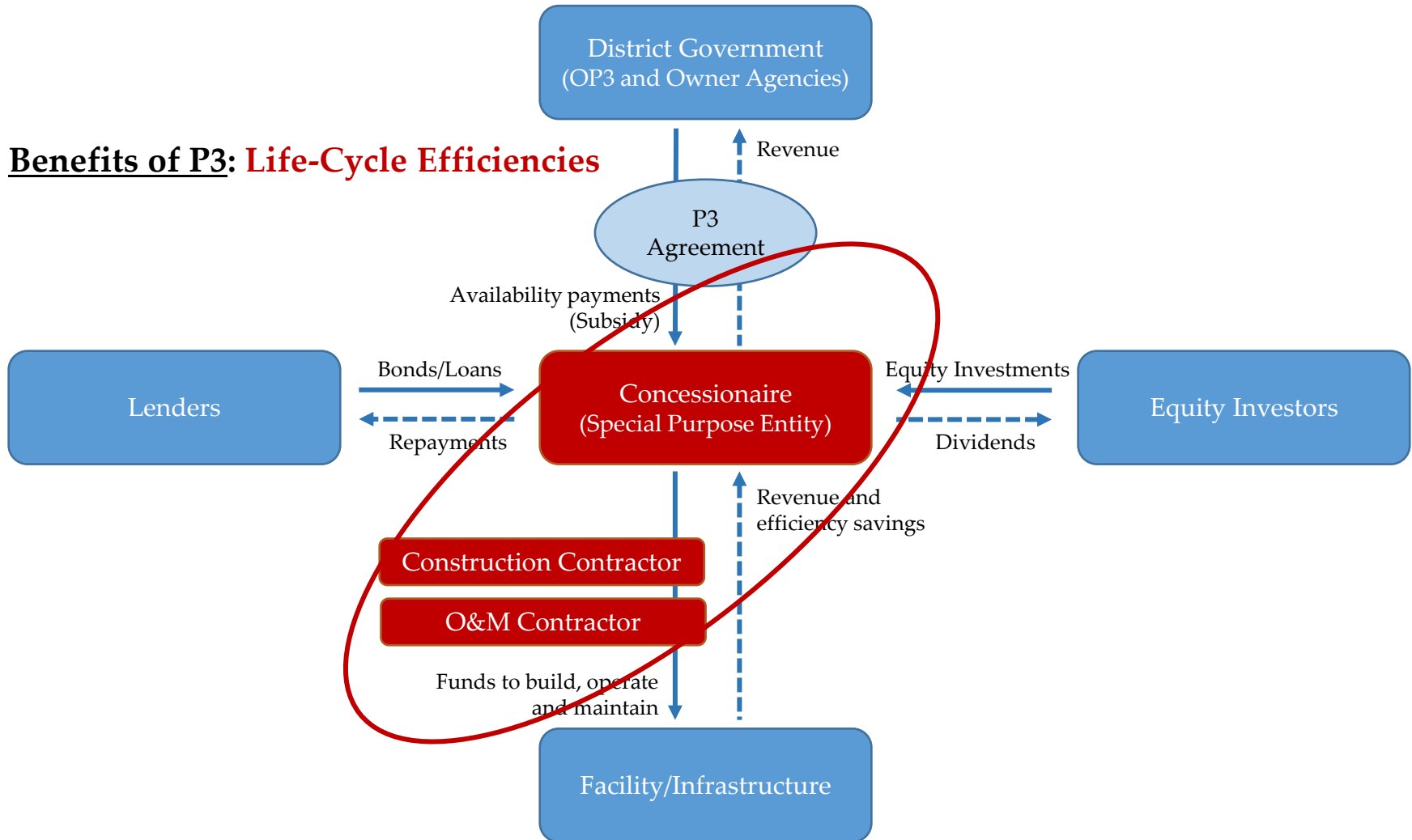
| P3            |              |
|---------------|--------------|
| District      | Contractor   |
|               | Financing    |
| Permits       |              |
| Program       |              |
| Force Majeure |              |
|               | Organization |
|               | Design       |
|               | Construction |
|               | O & M        |
|               | Availability |

## Typical Structure of P3s

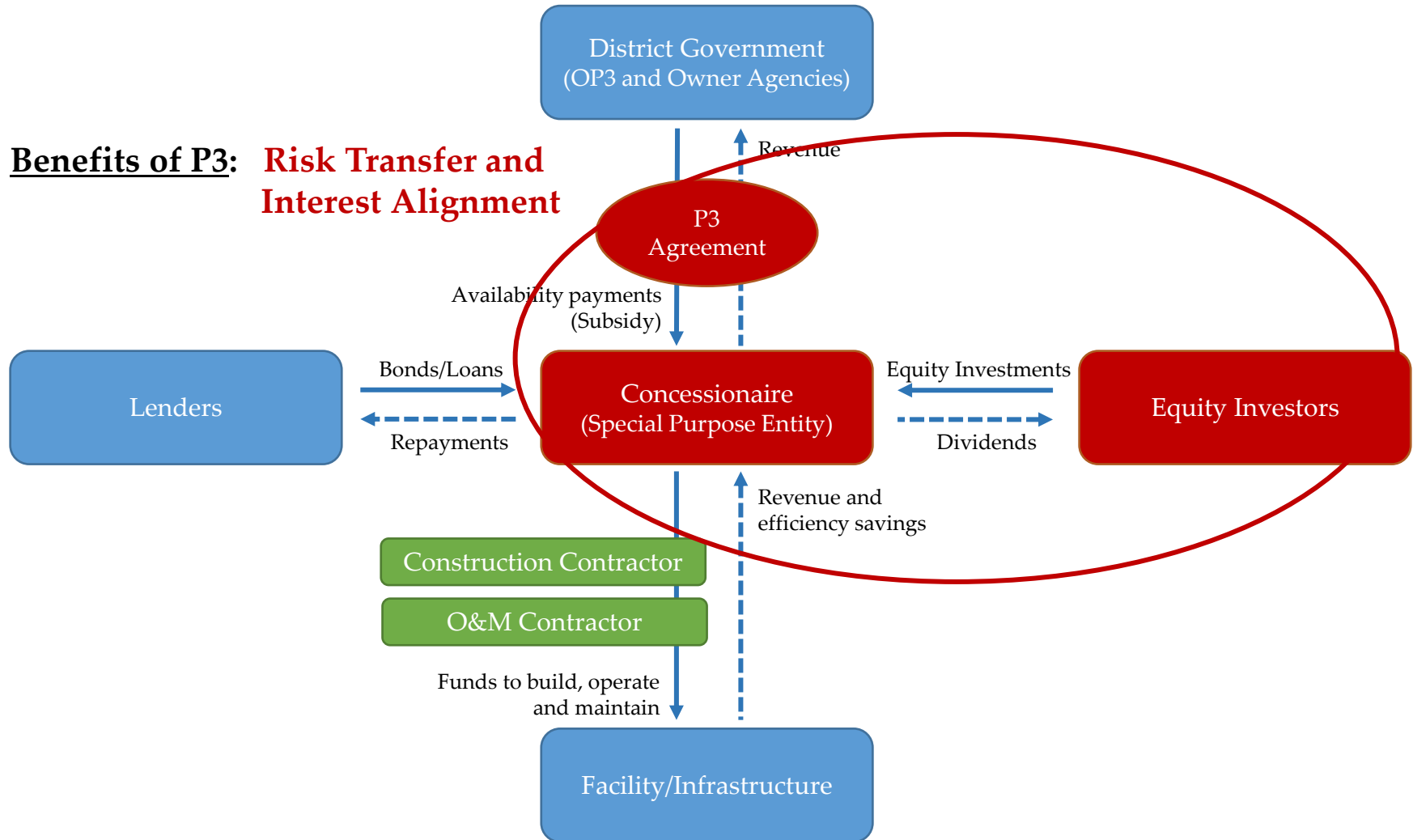




## Benefits of P3: Life-Cycle Efficiencies



**Benefits of P3: Risk Transfer and Interest Alignment**



## Examples of P3s

- **Beltway I-495 HOT Lanes (Virginia):** 14 miles of demand-based pricing toll lanes, 75 years, \$1.9B. Private entity assumes revenue risk so Virginia doesn't pay more if usage lower than expected.
- **KentuckyWired:** 30-year, \$324M; Construction and maintenance of 3,000-mile broadband network for state agencies and last-mile providers; Privately financed and will generate revenue to offset public cost.
- **Long Beach Courthouse (California):** 530,000 sq. ft., 35 years, \$492M; delivered faster, cheaper and higher quality than comparable court houses delivered through traditional design-build model.
- **Rapid Bridge Replacement (Pennsylvania):** Replaced 558 bridges in 3 years with 20% savings versus traditional contract. State only pays availability payments if contractor maintains bridges at certain level for 25 years. Funded through gas tax increase, but uses \$1.2B in tax-exempt private activity bonds.
- **Detroit Streetlights (Michigan):** 15-year, \$145M; install and maintain 15,000 energy-efficient LED lights on highways. Private financing, increase performance from 70% to 95% and save \$13M.
- **Okanagan Correctional Centre (British Columbia):** 30-year, \$200M; design, build, finance, operate and maintain new 300,000 sq. ft. facility to serve 750 inmates; created 250 construction and 240 permanent jobs; saved \$39M (14%) compared to traditional design-build contract.



## OP3 Activities to Date

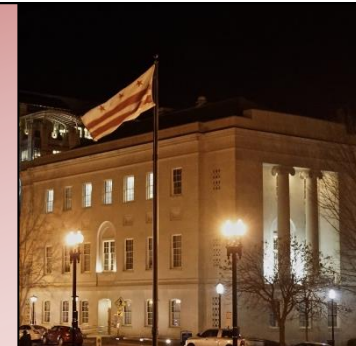
- **Education and Technical Capacity Building**
  - Met with all Deputy Mayors, cluster meetings, 30 agencies with capital needs
  - Awarded Eno Center and Living Cities Grants
- **Developing a Pipeline – Elements of a Good P3 Project**
  - Scale – Project value over \$50 million
  - Funding – Capital funding, efficiency savings, or asset value
  - Complexity and opportunity for innovation
  - Private sector/investor interest
- **Marketing the District**
  - Over 300 meetings with potential private sector partners
  - Dozens of P3 conferences and trade association meetings

## OP3's Project Pipeline



### PROJECT PROFILE:

### STREET LIGHT MODERNIZATION



## OP3's Project Pipeline


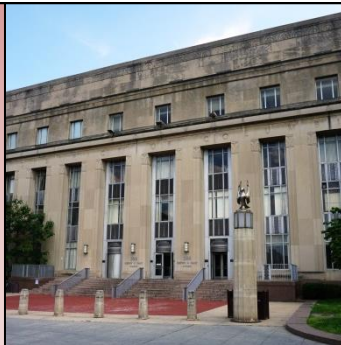


**PROJECT PROFILE:**

**CORRECTIONS CENTER**

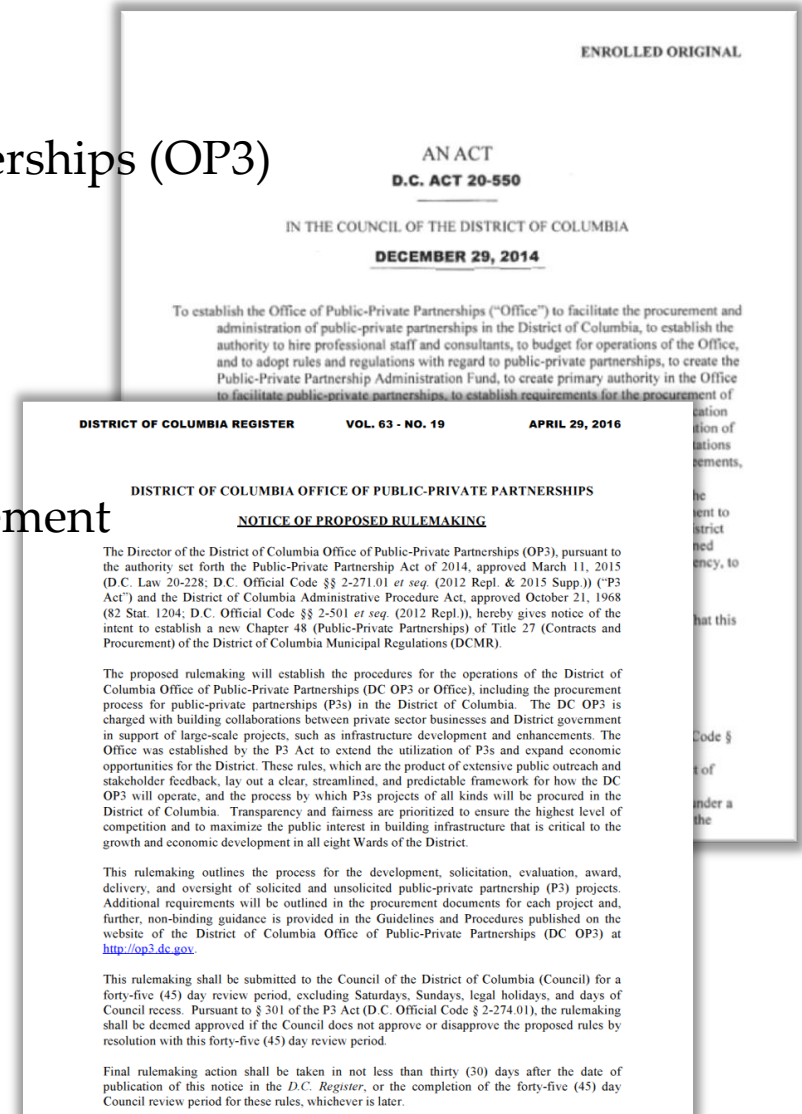


## OP3's Project Pipeline

|   |   |   |
|---|---|---|
|  The logo for the Office of Public-Private Partnerships (OP3) features a stylized map of Washington, D.C. in dark blue. Inside the map are three white gears of different sizes. To the left of the map are three red stars and the text "OP3" in large, bold, black letters. Below "OP3" is the text "OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS" in smaller, black, all-caps letters. | <p><b>PROJECT PROFILE:</b></p> <p><b>HENRY J. DALY BUILDING</b></p> |  A photograph of the Henry J. Daly Building, a large, classical-style stone building with many windows and a prominent entrance. |
|---|---|---|

## Summary of P3 Act, Rules and Guidelines

- Creates new Office of Public-Private Partnerships (OP3)
- Standardizes P3 Procurement Process
  - Types of projects
  - Handling of unsolicited proposals
  - Terms that must be addressed in agreement
  - Transparency and public input
  - Council review/clear timelines
- Must still comply with CBE, Fair Wage, and environmental laws



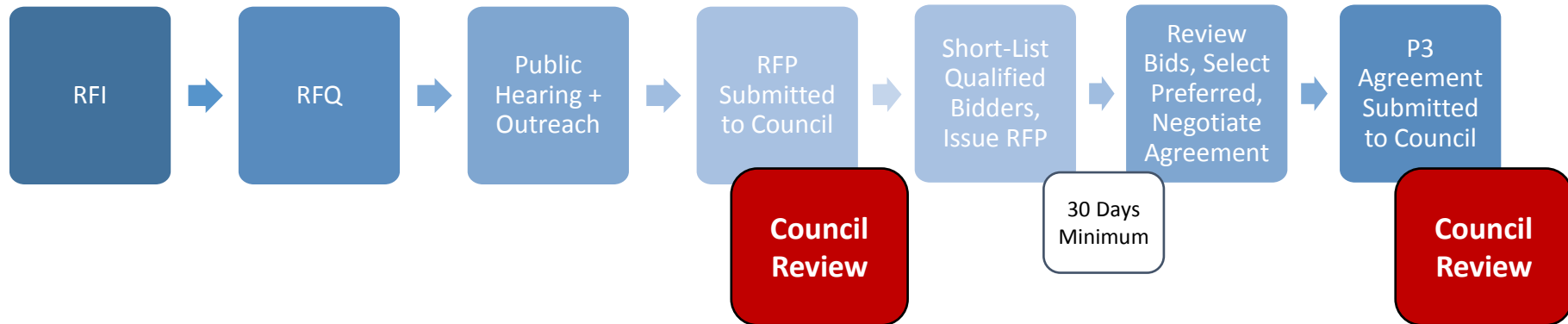


## P3 Rules and Guidelines

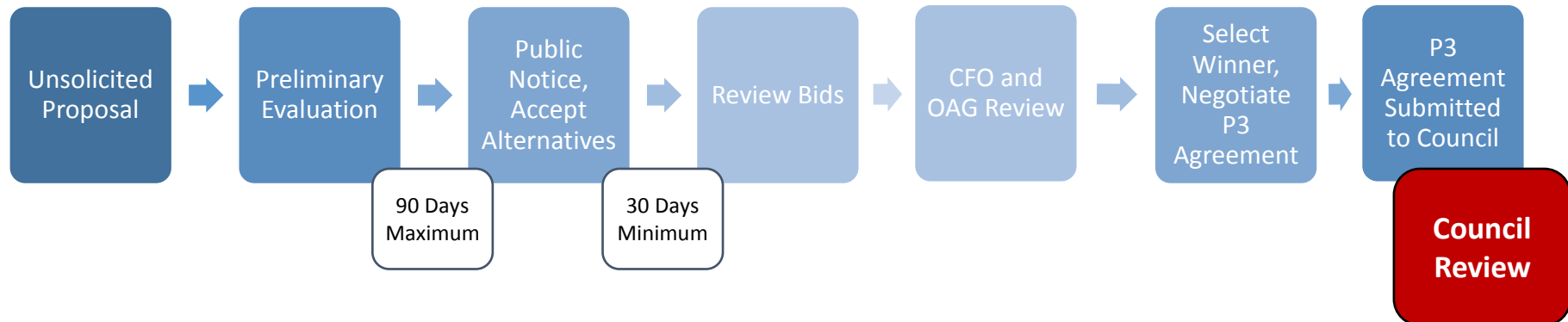
- Rules implement P3 Act and outline the process for the development, solicitation, evaluation, award, delivery, and oversight of solicited and unsolicited P3 projects.
- Guidelines are a more user-friendly version of the Rules, with additional non-binding guidance.
- Unprecedented transparency and inclusiveness in rulemaking process, including draft.dc.gov, work sessions and one-on-ones – 15 commenters, with over 160 suggestions – Available at <http://op3.dc.gov/page/laws-regs>
- Broad support for the process; helpful suggestions adopted to promote simplicity, competition and transparency

## P3 Procurement Process

### Solicited Proposal



### Unsolicited Proposal



## Fun Facts about P3s

- Every dollar spent on infrastructure, generates \$3.54 in GDP growth
- \$1 billion invested in infrastructure creates 21,671 jobs
- P3's are on average 17% less expensive and 3 times as likely to be delivered ahead of schedule
- 39 states and 33 countries have laws in place to procure P3s
- Canada procured 36% of its infrastructure with the P3 model in 2015, while the U.S. was just 1%

# Thank You!

### **D.C. Office of Public-Private Partnerships**

John A. Wilson Building  
1350 Pennsylvania Ave, NW | Suite 533  
Washington, DC | 20004

**Seth Miller Gabriel, Director**

[Seth.MillerGabriel@dc.gov](mailto:Seth.MillerGabriel@dc.gov)

Direct: 202.724.6683

**Judah Gluckman, Deputy Director**

[Judah.Gluckman@dc.gov](mailto:Judah.Gluckman@dc.gov)

Direct: 202.724.2128