BEST PRACTICES
for Public Private Partnerships
STIPENDS

When assessing the complexity and scale of public infrastructure projects, the authors of an effective Public Private Partnership (P3) program may consider the cost commitments incurred by private respondents during the procurement process. A proposed P3 bill can allow for stipends, which are often viewed as indicative of relative commitment of the procuring authority.

The Fairness Stipend section of the "AIAI Best Practices Guide" details provisions for terms and conditions under which a stipend would be authorized.

AIAI BEST PRACTICES RECOMMENDATION

The responsible public entity should be authorized to pay a stipend to an unsuccessful bidder or proposer that has reached the pre-qualified bidder stage.

SUMMARY

There are high costs and risks for private sector participants when they respond to a public sector request for qualifications (RFQ) or requests for proposals (RFP) to deliver a capital project using a P3 structure. Stipends are a means to offset some of these costs, essentially one-time payments for work that are often referred to as Payment for Work Products (PFWP). Offering a stipend is a method for the public entity to acquire documents and materials—the intellectual property—that was prepared by respondents to an RFP.

PROCESS

During the RFQ|RFP process to select a development partner to deliver a capital project using a P3, a public entity will typically receive one-half dozen proposals that respond to the initial qualifications request, the RFQ. After evaluating responses to the RFQ, it is normally the case that three (3), but no more than four (4), prospective development partners will be selected to respond to the follow-on phase of the procurement, the RFP.

In the RFP, the public sector entity will be looking for qualified development partners that are innovative and creative in their approach to the project. Responding to an RFP requires the respondents to invest additional time and resources to address, in varying degrees of detail, their ideas on the engineering, design, construction, financing, operations and maintenance of the proposed capital project. The public sector entity would use information provided to evaluate and select their development partner.

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Being selected to respond to an RFP is a significant accomplishment and milestone for private sector participants in the procurement process. It is also an invitation to expend significant time, resources and money pursuing business that has a high degree of risk associated with it if they are not the team selected to deliver the project.

Private companies who are committed to working with the public sector through these partnership contracts understand the costs and risks associated with P3s. They incorporate an amount used to pursue this business into operating budgets.

Prior to responding to an RFQ|RFP to deliver a capital project using the P3 structure, the private sector teams will perform analyses that evaluate the risks, the likelihood of success, the costs associated with achieving success and if it is worth that investment.

In an initial solicitation, it should be stated that a stipend or one-time payment from the public sector entity may be paid to each of the unsuccessful teams that respond to and completes the requirements of the RFP. The initial solicitation should also indicate the amount of the payment and the requirements for eligibility.

Intellectual Property

In order for the respondents to receive the stipend, it is suggested that the documents and materials prepared by respondents in response to the RFP become the property of the public entity. Intellectual property, including technical studies that are specific to a proposed project or work product that is unique to a site, is a key component of stipends and helps avoid issues and questions that may arise regarding the selective use of public funds.

Therefore, the public entity must understand what information it needs to assess submittals, and how the responses submitted for consideration to the RFP will be evaluated, judged and scored. The public entity will want to understand how and at what cost the information they require is generated and what documents and materials each team will need to produce to provide them with that information.

It is important that the public entity not ask for more information than is necessary to evaluate and score proposals. Understanding the necessary costs to prepare documents and materials will assist in the determination of evaluation and scoring criteria and inform the amount of any stipend offered. Keeping costs of preparing documents and materials to a reasonable amount and offering what the public entity can afford, will also keep the highest quality and most creative respondents engaged.

For the timing of the payment and the delivery of the work product, the public entity should allow selected respondents the opportunity to incorporate Alternative Technical Concepts or good ideas prior to financial close. In most cases, the respondents' submittals provide that their cost of responding to the RFP phase be included as part of their total project compensation, should they be selected to deliver the project.

Should a project not go forward for any reason, or if the project goes partially forward and is then terminated or suspended, the successful bidder should be compensated for costs on the same basis as the unsuccessful competitors, as well as for documented third-party costs for work completed up to the notice of termination or suspension.

Amount

So how much of the pursuit costs should the stipend cover? There is really no standard or formula established for determining stipend amounts. Expressed as a dollar value amount, a stipend for larger or more complex projects have typically been more than for smaller, less complex projects.

On average, the amounts allocated for stipends and paid out (expressed as a percentage of the contract value) range from:

- 0.10 - 0.15% for projects in excess of $1 billion
- 0.25% for projects above $500 million (but smaller than $1 billion)
- 0.4% for projects larger than $250 million; and
- approximately 0.5% for projects larger than $100 million (but less than $250 million in contract size).

If a procurement is canceled after selection, but prior to financial close, the selected bidder should receive a payment for work product too. Consideration should be given to make this PFWP higher than the PFWP given to the losing bidders to compensate them for their winning position and costs expended to reach commercial and financial close. It is important to be clear on what a compliant bid entails that would entitle someone to the PFWP--details that should be clearly detailed in the PFWP agreement.

Larger projects may also require only a partial or interim submission in response to a tiered RFP. The public entity|owner may use the responses to select the preferred team followed by a more detailed submittal by that team. This phased procurement approach can limit the amount of the stipend paid to the teams that are not selected. The risk is limited to a stipend for the cost of the work the team that is selected expends on the more detailed submittals.

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CONCLUSION

The P3 structure is an effective means of delivering capital projects for the public sector, with the private sector partner, and to the benefit of taxpayers. This structure provides opportunities for the public entity to engage highly qualified, creative and innovative teams to deliver their project. There are costs and risks for the private sector associated with the pursuit of this business. Stipends, or one-time payments for work product, are an accepted means of off-setting some of these costs and risks and keeping these teams engaged in the procurement process.