

“Bringing P3s to the World,” P3 Bulletin

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Public/private partnerships (“P3s”) have proliferated around the world, gaining momentum and acceptance while development projects in numerous sectors have been successfully delivered on time, on budget and with appropriate transfer of risk from public agencies to their private partners. Although governments with established infrastructure procurement mechanisms have taken note, the U.S. Government is helping allied countries prepare themselves to benefit from P3s, with the hope that American businesses can partner to improve the infrastructures and economic independence of countries very much in need of the help, but which are already well on the path to being able to administer P3s. We are at the dawn of a new day for P3 opportunities in these markets.

The Commercial Law Development Program (“CLDP”), a division of the U.S. Department of Commerce Office of General Counsel, seeks to improve the legal environment for businesses worldwide and to elevate the independence and stability of U.S. allied countries in developing their own infrastructures. The goal is to create an environment where private enterprise, including U.S. companies, can do their part to help.

CLDP conducts regular training sessions for governments in countries throughout South and Southeast Asia and other locations to achieve these goals. In September 2019, I was invited to attend CLDP’s series of P3 training workshops in Nepal and Singapore, at which we collectively trained governments of eight South and Southeast Asian countries, all of which are U.S. allies or countries supported in some form by the United States.

In January 2020, I took a second trip abroad with CLDP, this time to meet with the President of the Maldives, his cabinet, and other government officers to train them on how to process and evaluate hundreds of unsolicited proposals they have received, covering everything from infrastructure development to privatizing services. The goal of these meetings was to teach officials how to develop policies and legal frameworks to increase their countries’ independence and improve the reliability of their procurement programs, as

necessary to attract investors' interest in their P3 infrastructure markets.

Benefits to Attending Countries

The work of CLDP immeasurably benefitted the attending countries. Public/private partnerships are hard to grasp and manage in the best of circumstances, but here were countries facing tremendous challenges of their own independent of P3s. Their infrastructure needs were vast, their understanding of the various facets of P3s was mixed or varied, the commitment of their leadership to the P3 process was either emerging or not strong, and their ability to woo international private partners to engage in these projects was uncertain. They needed the assistance of experts familiar with the process who could walk them through the intricacies of a P3 procurement with the confidence that comes with the backing of the United States government. CLDP accomplished this with intimate and personalized training, arranged through the relevant American Embassies and presented by P3 experts assembled from around the world. I am humbled to have been one of those experts and what I saw during those training sessions was eye-opening and encouraging.

In these training sessions, we discussed how the countries with whom we met could improve their infrastructures and, in doing so, improve their independence and stability, through P3s. We trained them in ways to increase economic opportunities for partnering with international businesses by making meaningful changes to their legal and political environments. Demonstrative case studies seemed to be of particular interest to the attendees and the substantive responses we received demonstrated great progress from the training we provided.

The Asian Markets Are Open: What U.S. Businesses Can Bring

U.S. businesses are well-regarded pillars of support that can lend credibility to P3s due to their expertise and the quality of their products or services. Although countries from around the world, and even foreign governments themselves, have tried to influence the emerging Asian nations into partnering with them, there are excellent opportunities for American businesses to participate. The countries we trained could benefit from the experience and sophistication U.S. businesses can bring to the relationship, although a healthy dose of patience and understanding will be critical given the inexperience of the prospective public agency partners.

As in any successful P3, creativity and an ability to innovate are crucial to maximizing these countries' resources. Plenty of opportunities exist for effective partnering to achieve the fullest potential offered by these opportunities, but technological advances, improved forecasting and modeling systems and efficiencies in construction and operations will maximize the benefits to the countries involved, as well as returns for the private partner. Of course, local consultants to assist with the unique politics involved will greatly

assist the predictability of the process.

U.S. companies entering these markets must prepare for political challenges, including a lack of transparency, competition from foreign state-owned enterprises, and the need to comply with the U.S. Foreign Corrupt Practices Act. They would also have to navigate an unintegrated eco-system that makes bidding more difficult. These challenges can be managed with foresight and preparation and the rewards can be robust for both the public and private partners, provided the procurement process is well planned and organized. The need for local consultants is paramount.

How Our Training of Foreign Governments Helped

The countries we trained were at different stages of P3 readiness and sophistication. CLDP, having prepared closely in advance with the respective U.S. Embassies, tailored each training workshop to the particular needs of the countries being trained, with an eye towards advancing foreign governments' understanding about the next steps towards realization of an established P3 procurement program. In Nepal, for example, the government has enacted P3 enabling legislation empowering agency officials to procure public/private partnerships. We met with the affected agency and Nepal's parliament separately to discuss creating implementing guidelines, best practices in procurement, and how to maximize transparency and minimize corruption. We also met with members of the country's media to explain the P3 concept and encourage productive messaging amongst the citizenry and politicians.

In another event, we spent two days in Singapore, training eight countries from throughout South and Southeast Asia specifically on unsolicited proposals. We discussed how to evaluate them and avoid pitfalls, intellectual property/confidentiality issues, and how to transition from the receipt of unsolicited proposals to competitive bidding. We presented case studies and conducted interactive exercises during which attendees had to evaluate unsolicited proposals on their own. I was impressed with the level of understanding and sophistication in their analyses.

What I Learned

The worldwide interest in P3s is alive and well throughout the countries of South and Southeast Asia. Although the level of understanding of, and sophistication in, the process vary depending upon the country, most governments are working hard to familiarize themselves with the delivery model and, with CLDP's assistance, great opportunities for partnering already exist. Although some of these countries face challenges in transparency and an undeveloped ability to evaluate P3 opportunities in the absence of consultants, the groundwork has been laid for establishing public/private partnerships in this region. The eagerness of the governments to engage cannot be questioned.

These emerging countries all have spectacular resources that can be maximized

through partnering. Many international companies have started to take note. United States businesses should do the same.

Conclusion

The U.S. government has many resources for American businesses looking to expand abroad, including the U.S. Commercial Service, which is part of the U.S. Department of Commerce's International Trade Administration ("ITA"). The U.S. government also developed a new tool kit specifically for infrastructure, available at <https://2016.export.gov/indopacific/itan/index.asp>, that identifies federal government tools to support American companies as they compete for infrastructure projects abroad. CLDP has worked tirelessly to help our allies become more self-sufficient and independent and can be an invaluable resource for American businesses seeking to help. The Commercial Service, the foreign service arm of ITA, can identify opportunities ripe for mutual benefits between American enterprise and our allied governments, letting you play a key role in the development of these relationships.

If the CLDP programs in which I participated are any indication, the future of P3 projects in South and Southeast Asia is, truly, quite bright.

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