COLLABORATIVE PROJECT DELIVERY SYSTEMS
Collaborative *(relational)*

- This category is used when two or more organisations work together to improve performance through agreeing mutual objectives, devising a way for resolving disputes, measuring progress and sharing gains and pains.
- Used to describe delivery methods that concentrate on relationships between the parties to a construction contract as well as the project’s requirements.
- Encourages parties to move from confrontation and encourages them to work together to achieve outstanding results.
Understanding the collaborative approach

• Collaborative forms of procurement require the development of relationships between the various parties. According to Davis, (2004) this is an iterative and evolutionary learning process with three important characteristics being, **commitment, trust** and **cooperation**.

• Relationship contracting is the identification, establishment and maintenance of particular relationships with project stakeholders, commercialised and governed so that the objectives of all parties involved are met.

• This is done through trust building/ maintenance, whole life project commitment, and generation/ evaluation of mutual goals (Davis 2005).

• Davis and Walker (2009) suggest that relationship based procurement leads to mutual benefit in construction business-to-business dealings and provides benefits over traditional forms of procurement with fragmented supply chains.
Difference in approach

Relationship-based procurement requires an approach that differs from traditional systems and requires a managed approach that includes:

• Having longer joint planning and monitoring horizons;
• Corporate philosophies that must be compatible with key relationships - in other words actors share essentially the same strategic vision;
• Risks and rewards are shared over a long term;
• A rationalised supplier base allows increased coordination and reduced transaction costs;
• A propensity for information sharing; and,
• A focus on total costs and a desire to leverage technology.
The main variations of Collaborative are:

Partnering (Short and Strategic long term)
Alliance
Public Private Partnerships
Partnering

• An overlay of normal procurement methods that seeks to create a culture of collaboration within the project team.

Strategic long term relationships

• Creation of relationships that allow the parties to learn and improve their performance from one project to the next.

Alliance

• Seeks to align the objectives of the parties through the structure of the contract.
PARTNERING

Project partnering
Strategic partnering (long term relationships)
Overview of partnering

- Partnering involves two or more organisations working together to improve performance through agreeing mutual objectives, devising a way for resolving any disputes, and committing themselves to continuous improvement, measuring progress and sharing gains and pains.
  - Examples include framework agreements and joint ventures.

- Construction partnering is a commitment between the owner, consulting engineer and/or architect, and the contractor(s) to improve communications and avoid disputes by working together towards shared and common goals and objectives on a project specific basis.

Partnering builds goodwill and trust, encourages open communication, and helps the parties eliminate surprises and adversarial relationships. It enables the parties to anticipate and resolve problems, and avoid or minimize disputes through informal conflict management procedures.
- Is an overlay that sits on top of the contractual relationships

- Partnering establishes the working relationship among the parties through a mutually developed, formal strategy of commitment and communication.

- Provides sets of actions which help construction project organizations adopt cooperative ways of working which deliver improved efficiency

- As initial actions are effective, further sets of actions build ever greater cooperation and efficiency
Basic concept of partnering ...

- ... is relatively simple and is not intended to give rise to a change in the legal structures.
- ... is best described as a management philosophy or tool.
  - improved methods of communication;
  - the escalation of disputes quickly from the site to senior management; and
  - the encouragement of lateral thinking to overcome problems which arise during the construction phase, without necessarily reverting to the contract as a matter of first resort.

- A moral relationship
- Not a formal contract
- Non-binding
- Charters based on trust, co-operation and shared objectives
What Partnering is NOT!

- It is not a cure-all

- It is NOT a procurement route!!!

- Partnering is not a contract!
  - Not mandatory.
  - Parties must agree to cooperate in a partnering relationship.
  - It has no legal effect
  - Cannot be used to alter the terms of contract, nor does it effect the legal responsibilities of the parties.
    - However, yes, it will facilitate additional communication and understanding of the requirements!!
The Process

- A formal process
  - As partnering is voluntary, the specific methods will be agreed to by the parties.
  - To melt away years of adversarial tendencies, a formal process is anticipated, typically consisting of an initial workshop with all key players participating, and follow-up workshops to evaluate and reinforce performance.

- One party invites the other to enter into a partnering agreement
  - Pre or post contract
  - Either client or contractor can extend the invitation

- Secure top management commitment
  - If the head isn't willing to cooperate, the body won't follow.
  - Experience has shown that top management commitment is essential. Workers act in accordance with how the bosses act, not just in accordance with what they say.
Invitation and workshops

- **Invitation to partner**
  - Education
  - Commitment

- **Initial workshop**
  - Charter
  - Partnering champions
  - Evaluation process
  - Dispute escalation process

- **Ongoing evaluation**

- **Review workshops**
When the parties work at making it work it can make a significant difference.

Partnering is an overlay to the traditional procurement method.

Partnering often considered a tactical decision and as a strategy to increase repeat business.
Invitation to partner

**Education**

- Parties entering into the Partnership Process need to understand:
  - What it is
  - How it works
- Both at Senior Management and Project Team levels.

**Commitment**

- Partnering requires the commitment of senior management as well as the project team
  - Invitation and response needs to be at CEO level
  - Attendance by CEO’s at workshop
  - Partnering evaluation reported to Senior management
  - Partnering success part of performance management criteria for Project Managers
  - CEO’s willing to meet as part of the issue resolution process
Workshop and Project Charter

- Conduct a joint client – contractor workshop
  - Establish communication and team building skills
  - Craft a joint mission statement
  - Identify potential problem, strengths and weaknesses, and clarify contract requirements
  - Establish dispute avoidance processes
  - Set up methods of measuring the relationship

- Workshop is facilitated by an independent facilitator – clear structure and agenda

- Introductions
  - Team members as people
    - Interest in the project
    - Interests outside of work
  - Preferred workstyles
    - Issues of team imbalance

- Issues and concerns
  - Listed and parked up
Workshop and Project Charter cont.

- Check all issues and concerns have been addressed and parties are genuinely willing to commit.

- Select champions – one at top level, one at working level
  - this person carries the partnering philosophy throughout the organization and helps the key participants change their actions to support the partnering relationship

- Development of goals and objectives
  - Each party develops list of own goals and objectives
  - Reports back to whole workshop
  - Mutual goals and objectives identified and agreed upon
  - Goals and objectives of each party that the other party is prepared to support agreed (eg profit goals)

- Small working party develops a draft charter for reporting back to the meeting.

- Charter agreed.
Workshop and Project Charter cont.

- Development of an Issue Resolution Process
  - Resolve the problem at the lowest level
  - Unresolved problems to be escalated upwards - quickly
  - No jumping of levels of authority allowed
  - Ignoring the problem or no decision is not acceptable

- Development of a joint evaluation process
  - Agree process
  - Agree timing of process
  - Delegate to working group development of an evaluation tool
Implementation and Continual Evaluation

- Parties should be working cooperatively.
- Evaluation process should be measuring whether agreed goals and objectives are being achieved – requires openness and honesty.
- Corrective action is often necessary particularly in the early stages (or when the going gets tough).
- Follow up workshops are normally necessary.
Project Partnering Contract 2000

- Team based multi-party approach
- Integrated design /supply/ construction process
- Supply chain partnering
- Incentives for achieved shared savings and shared added value incentives
- Risk management system for reducing, managing and sharing risks
- Non adversarial problem resolution
- Partnering advisor who can document and guide the partnering process
Charter example #1

DEPARTMENT OF FOREIGN
AFFAIRS & TRADE OFFICES
YORK PARK, ACT

PARTNERING
AGREEMENT

MISSION
“We, the facade team, are committed to cooperating in a spirit of trust to achieve a high quality facade that satisfies all the stakeholders.”

OBJECTIVES
• To perform to the agreed program at every phase of the project.
• To ensure responses are timely, clear and adequate.
• To ensure the Scope of Work and the roles of individual stakeholders remain clear and compatible.
• To ensure the quality of all documentation is the same as the quality of the final facade.
• To produce a high quality, reliable facade with nil defects.
• To demonstrate genuine concern and attention to the productivity of all stakeholders.
• To ensure a reasonable profit for all the stakeholders.
• To ensure value for money to the Commonwealth of Australia.
• To produce an architectural product of excellence.
• To maintain a spirit of cooperation and trust in all team communications and relationships.
• Nil contractual claims.
Example #2

We are a team dedicated to providing a quality, cost effective .......... for the purpose of
.................................

We are committed to a total quality management approach to ensure success of this program
and to attempt to resolve any conflicts within the terms of the contract without litigation.
What it IS

• Working **TOGETHER** instead of against each other
• A **PROCESS** for relationship building
• A **PHILOSOPHY** of teamwork and understanding the other parties' needs

• A **COMMITMENT** to cooperate and communicate
• An **ATTITUDE** of goodwill and trust
• **SHARING RISKS** with a "win-win-win" attitude
What it is NOT

• Relaxing contract terms
• Circumventing the processes
• Expecting extra work for free
• An excuse for poor performance
• A cure-all
• Easy!
# Key elements of partnering

<table>
<thead>
<tr>
<th>Commitment</th>
<th>Partnering does not work unless senior management on both sides are committed to making it work and maintain that commitment throughout the project.</th>
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<tbody>
<tr>
<td></td>
<td>Each party needs a “Partnering Champion” who maintains the day to day focus.</td>
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<tr>
<td>Equity</td>
<td>Recognition of the need to satisfy each parties requirements for a successful project.</td>
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<td></td>
<td>Recognition that many goals are in fact MUTUAL GOALS.</td>
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<tr>
<td>Trust</td>
<td>Partnering relies on conducting business in an open and trusting way.</td>
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<td>Trust is earned by mutual endeavour</td>
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<td>Requires a major shift in attitude</td>
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<tr>
<td>Mutual Goals / Objectives</td>
<td>As part of the partnering workshop parties identify where their interests overlap:</td>
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<td>---------------------------</td>
<td>----------------------------------------------------------------------------------</td>
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<td></td>
<td>Completion on time</td>
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<td></td>
<td>Avoid cost overruns</td>
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<td>No lost time injuries</td>
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<td></td>
<td>Minimise paperwork</td>
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<td>No litigation</td>
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<tr>
<td>Helpful Systems and Procedures</td>
<td>Value management</td>
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<td></td>
<td>Communication and problem solving</td>
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<td></td>
<td>Continuous evaluation of Partnering Process</td>
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<tr>
<td>Continuous Joint Evaluation</td>
<td>How is evaluation done – what needs to be measured when?</td>
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<td></td>
<td>What action should unsatisfactory evaluation trigger?</td>
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<td>Should there be follow up workshops?</td>
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<tr>
<td>Timely Responsiveness</td>
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The Partnering Workshop
First Partnering Workshop

- Agrees mutual objectives
- Agrees decision making system
- Agrees a specific, measurable performance improvement
- Occurs at key stages in project
- Review of progress (continuous feedback loop)
- Ensure mutual objectives and performance improvement are achieved
- Consider adopting more challenging objectives and improvements
- Solve all persistent problems
Partnering Workshop

Mutual Objectives

Decision-Making

PARTNERING

Performance Improvement
Development of Effective Teams

1. Cautious exploration
2. Listening and understanding
3. Mutual objectives & agreed decision making
4. Cooperative teamwork
Decision Making System
Seven Pillars of Partnering

- Strategy
- Integration
- Project processes
- Performance improvement
- Membership
- Equity
- Feedback
Success and problems

**Success factors:**
- Trust
- Equity
- Commitment
- Improved attitudes
- Shared understanding
- Improved communication
- Mutual goals
- Joint evaluation
- Joint problem-solving
- Training and maintenance
- Incentives
- Performance measurement

**Likely problems:**
- Lack of commitment
- Uncomfortable in trusting
- Lip-service
- Win-lose mentality
- Lack of perseverance
- Commercial pressures
- Not all parties are included
- Lack of empowerment
- Inefficient problem solving process

*Soft aspects*

*Hard aspects*

Procurement (CONS6817)  Lara Tookey
Project Partnering

The most basic form of partnering.
Provides a set of actions designed to be applied to an individual project.
Suitable for people new to partnering.
Strategic Partnering

A group of companies partnering on a series of projects.
To achieve greater benefits than those delivered by project partnering.
Alliances

- Alliances are a particular kind of relational procurement system that relies on virtual organisations generating new knowledge enabling teams to solve interrelated problems in complex environments.

- Recognising the merits and limitations of alliancing and the potential of such a procurement strategy is essential - alliance based methods should only be considered in the delivery of complex and high-risk projects, where risks are unpredictable and best managed collectively (Victorian State Government, 2006).

- A typical definition of an alliance: —An alliance is an agreement between two or more entities, which undertake to work cooperatively, on the basis of a sharing of project risk and reward, for achieving agreed outcomes based on principles of good faith and trust and an open-book approach towards costs (Cullen et al. 2005).
• Alliances are collaborative arrangements where parties jointly work together to deliver the outcomes of a project. They are characterised by risk sharing and a no-disputes/no-blame regime. This suggests that since alliances are typically used for high risk projects with high levels of uncertainty.

• Formed under traditional forms of contract, responsibilities and risk are allocated to different parties with commercial and/or legal consequences for the individual parties where they fail to manage their risks or properly discharge their contractual/legal obligations.
- Alliance contracts create shared risk and reward – shared contingency and shared incentive pool.
- Liability waivers mean no ability to sue.
- Entire team on board before design starts – requires Qualifications Based Selection and Full Pricing Transparency.
- Invested involvement of key subcontractors and suppliers in design process.
- Goal is to reduce duplication of design efforts – shop drawings serve design development.
- Utilisation of BIM and other forward-thinking technologies to enable collaboration among team members.
According to Ross, 2001

- Under a “pure” alliance, the alliance participants:
  - Assume collective responsibility for delivering the project;
  - Take collective ownership of all risks associated with the delivery of the project;
    - Under an alliance, risks are allocated in quite a precise manner
      - Done through the operation of risk/reward arrangements, not through legal liability.
  - Share in the pain or gain, depending on how actual project outcomes compare with the pre-agreed targets that they have jointly committed to achieve.

The common features of an alliance are:

- Risk is shared between customer and supplier,
- The alliance contract typically contains a ‘no-disputes clause’ with no liability between participants (except for wilful default),
- The customer and supplier share common goals for project success,
- All transactions are of an open book format’, (Cullen et al. 2005) and
- All participants win, or all participants lose, depending on the outcomes actually achieved (incentivised cost reimbursement).
Differentiated from traditional delivery methods in the following ways...

- Contractual Framework.
  - The contractual framework is the fundamental difference.
  - Without a contract that supports the philosophy of a pure alliance, you are left with something like partnering, which has the track record of sometimes working and sometimes not.

- Some of the key differences in an alliance contract include:
  - No litigation or arbitration permitted between the alliance participants.
  - No or few variations.
  - Required alliance behaviours are written into the contract.
  - Insurance is sought for the project.
  - There is a full sharing of the risk and reward.
Key features

- Key performance indicators (KPIs) are used to measure the contractor's performance;
- A set of alliance principles guide the parties interaction;
- A cost reimbursable approach, backed by open-book auditing of all costs, overheads and margin;
- An alliance management team at the interface level and an alliance board for "top level" decisions
  - (usually, all decisions to be unanimous); and
- Comprehensive dispute resolution provisions which have very limited recourse to the courts and termination ability, for breach of the contract.
Highlights

• No blame culture
• What is best for the project (& innovation)
• Ethical communications
• Supportive of interpersonal relationships
• Project challenges still occur!!!

Differences

• No litigation or arbitration permitted between the alliance participants.
• No or few variations.
• Required alliance behaviours are written into the contract.
• Insurance is sought for the project.
• There is a full sharing of the risk and reward.
Key Performance Indicators.

- The real reward for contractors lies in their performance
  - KPIs set to monitor and assess the contractor's performance and the "at risk" margin then being allocated accordingly.
  - Putting an element of the contractor's reward at risk depending on its performance ensures that both parties' goals are aligned i.e. achievement of the best results for the best price.

- Some examples of KPIs includes:
  - meeting the target cost set for each relevant period;
  - meeting the scheduled time for completion;
  - safety performance; and
  - customer satisfaction levels (measured by customer (i.e. owner/operator) satisfaction surveys).
Principles include concepts such as:

- Decisions made on the basis of "best for project";
- Responsibilities clearly defined within a "no blame" culture;
- Innovation is to be encouraged and provide a key driver to the success of the project;
- The parties to provide reasonable access to all personnel, materials and other resources needed for a successful project; and
- All communications to be open and based on a relationship of trust and honesty.
Best suited to....

- Large and complex projects or services provision where:
  - the scope of the tasks to be undertaken can not always be defined in specific detail (i.e. there are difficult to define, or changing, work scopes);
  - there is a need for innovation and step-change development in elements like technologies, methodologies and processes; and
  - the project's budget may require change over a period of time and it would be uneconomic to rely on a fixed price lump sum spread out over the term of the contract that prices in a large number of contingencies.
  - numerous complex and/or unpredictable risks with complex interfaces
    - Design/technology/construction/operations
    - Stakeholders – regulators/community/environment
    - Political – governments/community opposition/need
Best suited to…. cont.

- Complex interactive approval and consent issues;
- Complex external threats or opportunities that can only be effectively managed collectively and collaboratively;
- Very tight timeframes driven by – project risks, organisational capacity, policy directives, political need;
- Output specifications which cannot be clearly defined and/or a high likelihood of scope changes during design and construction; and
Benefits for Owner

- Deliberate alignment of owner’s objectives and participants commercial interests
  - (performance = value = reward)
- Greater opportunity to manage risks through sharing and collaboration;
- Broader allocation – through collective assumption – of all risks;
- Integration of teams reduces resources burden
  - “More for Less”
- Earlier participation of expertise can lead to improved decision making and project outcomes;
- Genuine focus on enabling high performance and innovation;
- Transparency of all governance and commercial issues;
- No disputation – but healthy creative conflict.
Benefits for Participants

- Opportunity for greater returns for delivering improved value;
- Greater opportunity to more effectively influence and manage the “whole” rather than “parts”;
- Whilst broader exposure to risks – including risks with no ability to influence or control – liability is capped;
- Improved staff engagement through opportunities for genuine career/skills enhancement;
- Reputation benefits – selection relying upon capability not tender and recognition for success.
Typical commercial arrangements

- Direct costs
  - Reimbursed by sponsor
- Corporate overheads
  - Reimbursed by sponsor
- Normal profit
  - Reimbursed by sponsor

- Gains above target cost shared amongst sponsor and commercial parties as per agreed formula
  - Often incentives to exceed non-monetary benchmarks

- Painshare normally limited for commercial parties to loss of profit and overheads
Dispute Resolution

- Alliance contracting recognises that disputes will occur, but provides for most disputes to be resolved using an informal dispute resolution procedure.
- This usually consists of
  - first, resolution at the operational level then,
  - if need be, senior management level,
  - followed by the alliance board and then,
  - possibly, mediation.
- Resolving disputes at the lower "operational" end of the management spectrum helps to avoid delays and unnecessary cost if at all possible.
- Arbitration is generally avoided because it is too similar to the court process and can be long and expensive and is, by its nature, adversarial.
- Recourse to the courts is often limited to the greatest extent possible.
- Some alliance contracts provide that recourse to the courts and or termination is only allowed for breaches such as wilful default or insolvency.
Selection process

- Submission of capabilities
- Workshop with short listed candidates
  - Capability, approaches and systems
  - Enthusiasm, commitment, chemistry with sponsor team
- Negotiation of commercial arrangements
  - Definition of direct cost, overhead and normal profit
  - Negotiation of project budget
    - Involvement of third party estimator
- Strategic Fit
  - committed senior leadership and support from within all organisations.
- First Principles
  - consistency in all elements e.g. objectives; principles relationship; value proposition; no dispute; commercial framework; legal framework; liability; termination.
- Governance
  - responsible but not restrictive
- Accountability
  - clear accountability and responsibilities with a focus on efficient and effective delivery.
- Value
  - must be able to identify, ensure and deliver value.
- Commercial Appetite
  - performance = value = reward
- Behavioural Context
  - recognise and establish the “shift” in behaviour that will be necessary for success.
Figure 6 - Alliance approaches (Furneaux et al 2009)

Legend

- **C** Client
- **D** Designer (architect / engineers)
- **MC** Managing Contractor
- **QS** Quantity Surveyor
- **SC** Sub-Contractor
PUBLIC PRIVATE PARTNERSHIPS
Take note!

Before a PPP Arrangement is considered, it must result in:

Better value for money to Government.

Optimal allocation of risk between public and private sectors.

It must relate to the provision of public services or public infrastructure.
Public Private Partnership is a delivery method whereby a public entity partners with a private entity for the purpose of delivering public infrastructure. The National Council for Public-Private Partnerships identifies 18 variations of P3s. In the most typical of these variations, the private entity will be comprised of a design-build team, a maintenance firm, and a lending firm. This entity will design, build, finance, maintain and/or operate the facility for a set number of years, agreeing to meet specified performance criteria in exchange for lease payments or some other compensation. At the end of the specified period, the facility is returned to the public entity.

Various forms of P3 compensation include a fee contract, in which the P3 firm receives its compensation through a fee charged to the owner, and a concession contract, in which the P3 firm receives its compensation directly from the consumers rather than the owner.
Definition of PPPs

• The following is offered by Duffield (2008):

• Public-Private Partnerships’ (PPPs) are defined as a contracting arrangement in which a private party, normally a consortium structured around a Special Purpose Vehicle (SPV), that takes responsibility for financing and long term maintenance or operation of a facility to provide long term service outcomes. This may involve the private entity taking responsibility for the design and construction of a component of new infrastructure; and/or taking over a long-term lease or concession over existing assets; and/or the development of a new long term contract to operate and manage the infrastructure.
What are PPPs?

- ‘A contractual arrangement between public and private sectors with clear agreement on shared objectives for the delivery of public infrastructure and/or public services by the private sector that would have otherwise been provided through traditional public sector procurement’
  - Extracted from Russell Kenley notes quoting Akintoye 2003

- Narrow definition: “Instead of the public sector procuring a capital asset by paying for it in full up front, the effect of a typical PPP structure is usually to create a single stand alone business, financed and operated by the private sector. The purpose is to create the asset and then deliver a service to the public sector client, in return for payment commensurate with the service levels provided.”
  - International Financial Services, June 2001
Why are governments turning to PPP’s?

- Larocca (2004) suggests that governments are turning to PPP’s for the following reasons:
  - Incentivise whole-life cost approach
  - Result in optimal risk allocation
  - Incentivise early completion
  - Offer certainty of budget
  - Realisation of Government equity
• P3 can **benefit** public projects in the following ways:
  – Targets alternative revenue and funding sources to close a funding gap
  – Allows use of low cost tax-exempt or taxable financing
  – Transfers risk to the private sector
  – Not subject to capital budget allocations or voter referendums
  – Accelerates construction starts
  – Reduces construction cost and interest rate risks
  – Takes advantage of private-sector efficiencies and innovations in construction, scheduling, and financing
  – Provides efficiencies in long-term operations and maintenance
  – Presents an opportunity to combine public and private uses in mixed-use developments to leverage economic development
Disadvantages / limitations of P3 include:

- The owner may experience higher total life cycle costs.
- The proposal process can be very expensive for all involved.
- A high level of expertise is required to execute a P3 project.
- Lack of flexibility in the agreement
- Complexity and cost
- Limited competition
- Operational risk
- Political risk
Underlying Philosophy

- Government does not have funds to do all projects required to support the public, whereas the private sector has (generally) a surplus of investment money.

- The private sector executes projects and delivers services more efficiently and manages the risks better.
  - If the private sector bears both the initial capital and operating costs it will make better “whole of life” cost judgements.
PPP Procurement

- Public Authority
- Concession Company
- Concession Agreement
- Shareholders Agreement
- Investors
- Consultancy Agreement
- Engineer / Architect
- Construction Contract
- Contractor
- Loan
- Bank / Financier
- Operators
- Employment / O&M Contract
- Tax/Rates/Tolls/Leases
- Users
- Agreement
- Consultancy Agreement
- Construction Contract
- Loan
- Employment / O&M Contract
- Tax/Rates/Tolls/Leases
Typical motivations for Public sector

- **Obtaining:**
  - services or infrastructure without deployment of public funds;
    - Thus reduction in the size of the public agency

- **Transfer of:**
  - maintenance cost risks to private sector;
  - operating cost risks to private sector;
    - Thus drawing on expertise & private sector financial resources

- **Avoidance of:**
  - activities which are not the core business of the public sector
Special Purpose Vehicle (SPV) / Concession company

- A company incorporated solely for the implementation / management of the project.
- Enters into contracts with the Government and sub-contractors.
- Finances, develops, builds, maintains and operates the project.
- Guarantee and secure cash flows.
Concession Agreements

- P3 contracts are generally long-term contracts

- Contractor’s obligations
  - D,B,F, O,O, T

- 15 – 25 year concessions
  - duration increases relative to the level of financial involvement of the private sector in the provision of investments.

- Authority provides a concession (in return for performance of obligations) allowing Contractor to:
  - Generate revenue from Project (e.g. toll); and
  - Do things normally precluded by law (e.g. toll) or reserved to Public Authority (e.g. control roads, operate prisons).
**Procurement (CONS6817)**

Lara Tookey
P3 Contracts

- Emphasis on ‘outputs’ not ‘inputs’
  - IE output specification approach
    - public-sector party defines the basic standards of service
    - private-sector party chooses how to meet and possibly improve upon these basic standards.

- This approach incentivises innovative solutions,
  - allowing for private sector's skills and knowledge to feed into public service provision,
  - but comes at the cost of greater risk of contract misspecifications for the public sector.
Risk issues

Contracting with Governments

- Private sector views government as having special powers which unbalance the commercial relationship.
- General perception that the private sector partner is ‘contracting with the umpire’.
- Govt’s role in law making is perceived as giving it the opportunity to ‘change the rules’
- Risk transfer should be fair and offer the private sector incentives to perform.
  - This may be achieved through ‘optimum’ risk transfer

Private Partner Perspective

- Would take on risks if appropriately priced, managed, and mitigated.
  - Would be unwilling to take on a particular risk, when the risk is not within its control.
- Accepts the financial consequences of the risk, provided a premium is there for taking on that risk.
- Generally, private sector (and lenders) view the project as a whole - willing to accept higher risks in certain areas if balanced by lesser risks in others.
Transparency

Public Procurement

• For Public Procurement in general, where governance, and in particular corruption problems are still widespread, stringent disclosure requirements are seen as a potentially powerful remedy...
  – Rose-Ackerman, 1999
  – Kaufmann, 2005

Public Private Procurement

• In comparison, PPPs are likely to be even more problematic from a governance point of view,
  – as PPP procurements tend to be infrequent for the particular public buyer, much larger, more complex, and often specific to particular assets.
  – These features make benchmarking and other standard forms of outside control more complex.
  – At the same time, stakes are higher than in standard procurement, so bad governance can be much more costly.
Variations of DB and/or P3 systems

- **Operations and Maintenance (O&M)** – A public entity contracts with a private entity to provide operations and maintenance of a public asset.

- **Operations, Maintenance, Management (OMM)** - A public entity contracts with a private entity to operate, maintain and manage a public asset.

- **Design-Build-Maintain (DBM)** – Similar to a design–build contract on a public project, but the private entity is also contracted to maintain the public asset for some defined period.

- **Design-Build-Operate (DBO)** - A public entity contracts with a private entity to design, build and operate a public asset.
Variations of DB and/or P3 systems

• **Design-Build-Operate-Maintain (DBOM)** - A public entity contracts with a private entity to design, build, operate, and maintain a public asset.

• **Design-Build-Finance-Operate-Maintain (DBFOM)** - A public entity contracts with a private entity to design, build, operate, and maintain a public asset. Additionally, the private entity will also finance the project in exchange for either user fees, lease payments or some other revenue stream.
BOOT (an example)

• This structure was developed specifically as a way of involving the private sector in the provision of new infrastructure.
• A private consortium undertakes to finance and construct infrastructure required by the government.
• The consortium owns, operates and carries end-user risk.
• The consortium then operates for facility for a period under a concession awarded by the government, and in this way derives revenue from the operation of the facility.
• Ownership is transferred to the governments at the end of the concession period, which will be of such length to allow the builders and financiers to recover their outlays with a return.
• To guard against consortia keeping maintenance and capital replacement costs to a minimum, particularly as the date for handover draws near, predetermined performance criteria must be established for the operation of the facility and at handover at the completion of the project.
Just for noting and understanding of the differences

JOINT VENTURES
Joint Ventures

- Can occur in private projects or public-private projects.
  - Consortium of designers create a joint company for the provision of design services.
  - Public-sector party and the private-sector party create a joint company for the provision of public services.

- A separate legal identity with shares and representatives on a board of directors.

- In a JV each party brings its own expertise on a particular area of the project and risks are shared among the contracting parties.
  - For example, the public-sector party may have more expertise in dealing with planning issues, while the private-sector party may have a technical advantage in designing issues.
The public-sector party in a JV shares not only risks but also rewards, i.e. profits.

However,
- conflicts of interest and corporate governance problems may arise as long as the public sector is not only a JV shareholder but also the regulator of the sector in which the company develops.

It may then happen that the public-sector party faces a trade-off between increasing the project’s profits and safeguarding the public needs.

- For example, a representative of the public-sector party serving on the board of directors may find inconsistencies between their fiduciary duties to the JV and their responsibilities as public Servant.