# Settling Questions about Payment Allocations Is A Key to Success in Public-Private Partnerships

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**As infrastructure needs across** the nation continue to grow and public entity financial resources continue to decline, federal, state and local governments are increasingly looking for alternative means of financing their infrastructure projects. Public-private partnerships, P3s or PPPs, are increasingly being viewed as a viable alternative to traditional public-financed infrastructure projects.

A PPP project is one where a public project is financed using private funds. The public agency enters into a contract with a private entity to provide the financial, technical and operational resources for a public project or service. The "private" partner is typically made up of a team that includes a financial institution and design and construction companies. Frequently the "private" partner forms a "special purpose vehicle" or SPV, often referred to as the concessionaire, to develop, build, maintain and operate the project.

Popular for many years in countries such as the UK, Australia and Canada, PPPs are slowly becoming more common in the U.S. where this form of procurement has already been utilized on rail, road and water projects.

Public-private partnership deals are complex and document heavy. Key contracts include (1) the contract between the SPV and the public owner (the "Concession Agreement"), (2) the construction/design contract between the concessionaire and the builder, or the design builder (the "Design/Build Contract") and (3) the operations and maintenance agreement between the concessionaire and the operations and maintenance provider (the "O&M Contract"). In addition, there are frequently teaming or joint venture agreements among the individual members of the "private" entity governing the rights and obligations the team members owe to each other. Setting aside the obvious question of risk allocation among the individual members of the "private" team, the main allocation of risk between the public and private entity often focuses on the length of the deal, how payments to the "private" entity will be calculated and perhaps most critically, how such payments are to be financed by the "public" entity.

While PPPs offer great opportunities, the risks should be closely evaluated before signing a contract.