

5/16/2018

Hon. Sheila Kuehl, Chair, Los Angeles County Board of Supervisors
Hon. Janice Hahn, Chair Pro Tem, Los Angeles County Board of Supervisors
Hon. Hilda L. Solis, Supervisor, First District, Los Angeles County
Hon. Mark Ridley-Thomas, Supervisor, Second District, Los Angeles County
Hon. Kathryn Barger, Supervisor, Fifth District, Los Angeles County
Mark Pestrella, Director of Public Works, Los Angeles County

RE: Safe, Clean Water Program

Dear Honorable Board of Supervisors and Director Pestrella,

In the Public Interest is a national research and policy center and we have a great deal of expertise in financing and development of infrastructure projects including those structured as public private partnerships (P3).

Your efforts to increase water supply, improve water quality, and invest in communities in Los Angeles has the potential to be a model for the nation.

As you deliberate on the final language of the proposed Safe, Clean Water (SCW) Program we believe we have insights that will be useful to help avoid issues we've seen develop with public private partnerships that fail to consider a number of factors. The most important of which are the objective and inevitable unknowns for any long-term project of this type.

Below I mention a few of these issues that need to be considered and would be happy to follow up if you have questions about specific options for language that could be included in the measure. There are a number of possible alternatives but each of these issues impact any type of structure.

Transparency

Many P3's and long-term contracts of this type often result in significant loss of access to public information that limit the public's input and evaluation as well as the ability of the governing body to make fully informed decisions about important public issues and needs.

Flexibility

The nature of long term contracts inherently limits the flexibility of the public to respond to changing circumstances or policy directions. Surprisingly, short term contracts have similar issues. Very strong protections need to be written into contracts and it is essential for public agencies to retain significant internal staffing with expertise and ability to respond to changing situations and emergencies.

Future contingencies

Many P3s around the country have had problems because of failure to adequately plan for scenarios and possibilities long into the future. There are many examples. This is an issue of particular importance for storm water in Los Angeles (and across the country.) There is great uncertainty about the impacts of climate change, the need for increased and constantly evolving resiliency measures. The level of uncertainty for this initiative is very high.

Management control

We have found that management of subcontracted services like this becomes more difficult as the number of bureaucratic levels increase, flexibility is reduced, and system integration becomes more complex.

Public Control

The details of P3's, long term contracts and concession agreement almost always contain clauses that constraint the actions of public decision makers. We have seen different kinds - revenue guarantees, compensation clauses, non-compete clauses and perverse incentives and others - that create significant obstacles to public decision making. In fact, they give the private operators and contractors de facto and de jure authority over fundamental public decisions.

Cost

Many proponents of P3s claim that they save taxpayer funds. Without getting into the weeds of financial analysis, these claims need to be carefully scrutinized. Lower costs are the product of reduced spending on specific things - quality and quantity of supplies, service levels, wage and benefit levels of employees, productivity enhancements - especially since there are additional expenditures for return on investments and other business-related costs. Some of the cost reductions would be in the public's interest and others are decidedly not. Each of the reductions that come from increased productivity are equally possible under public operation. In fact, P3s or sub-contracts are often more costly than public operation.

These are all issues that need to be addressed regardless of how you proceed. We would, however, urge you, given our experience evaluating these types of projects, that you maintain this as an entirely public project, under public control, with public employees. Please feel free to contact me if you have further questions or we can be helpful in any way.

Sincerely,



Donald Cohen

Executive Director, In the Public Interest

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