

“Progressive” Public-Private Partnerships: Are They Reformative or Regressive!?

Public Works Management & Policy
2022, Vol. 27(4) 342–346
© The Author(s) 2022



Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/1087724X221106164
journals.sagepub.com/home/pwm



Carter B. Casady^{1,2}  and Michael J. Garvin³

Abstract

In North America, public-private partnerships (P3s) are increasingly using pre-development agreements to enhance collaboration between the public and private sectors. Known colloquially as “progressive P3s”, these agreements allow the private sector to help scope and shape the structure of projects at the front end. However, concerns about their efficacy persist. Our Commentary contextualizes this ongoing debate by outlining the potential benefits and pitfalls of this new approach to P3s. We conclude that both practitioners and academics have a crucial role to play in our experience with and understanding of the progressive P3 experiment.

Keywords

public-private partnerships, pre-development agreements, progressive, collaborative governance, infrastructure

Commentary

In the United States and around the world, public-private partnership (P3) procurements have continued to evolve, creating an expanded toolkit for both procurement authorities and developers alike (Casady et al., 2018, 2020; Garvin, 2019). In many

¹Bartlett School of Sustainable Construction, University College London, London, UK

²Schar School of Policy and Government, George Mason University, Fairfax, VA, USA

³Department of Civil and Environmental Engineering, Virginia Tech, Blacksburg, VA, USA

Corresponding Author:

Carter B. Casady, Bartlett School of Sustainable Construction, University College London, 1-19 Torrington Place, London WC1E 7HB, UK.

Email: c.casady@ucl.ac.uk

markets, P3 procurements traditionally begin with a “two-step” Request for Qualifications (RFQ)/Request for Proposals (RFP) process (Casady et al., 2019). In these processes, a competitive RFP produces committed bids and risk allocations. However, as markets have developed, a growing trend towards more collaborative project development practices has emerged. This trend places emphasis on incorporating more collaborative elements in traditional, two-stage procurements as well as the use of pre-development agreements (PDAs), also known as “progressive P3s.” In progressive P3s, the authority allows the private sector to help scope and shape the structure of a project after a short RFQ stage (P3 Bulletin, 2021). After the public agency selects a partner based on qualifications (or possibly their fee structure) for the “collaborative” stage of the project, the developer is usually given “first rights” if the project advances sufficiently. Subsequently, project design, risk allocation, and pricing are developed jointly between the public and private sector for the purpose of creating an asset that is, ideally, more “fit-for-purpose,” after which parties enter into a comprehensive agreement.

Although the term “progressive P3” has been applied widely to describe a variety of slightly different approaches, they all have one common goal: risk mitigation at the front-end of the project development process (P3 Bulletin, 2022a). For some industry experts, the advent of a more progressive model represents “a new pathway forward for hard to procure projects” and adoption is being driven by market forces as well as current response rates to traditional P3 procurements. By “solv[ing] ‘the challenge of finding a procurement method that balances the need of the public sector . . . with the desire to get the best of the private sector into projects[,]’” the progressive P3 model is expected to significantly disrupt the North American market (P3 Bulletin, 2021).

Already, such an approach has seen growing popularity, especially in some of America’s flagship projects—e.g., Op Lanes Maryland and California’s Sepulveda Transit Corridor—as well as across various Canadian provinces (P3 Bulletin, 2022a). For example, Transport Canada recently issued a request for expressions of interest (REOI) for their massive high-frequency rail P3, a project which would connect Quebec City and Windsor, Ontario with 1000 km of track along new passenger rail corridors. Over a 30- to 50-year concession, the project aims to increase maximum train speeds from 160 km/h to 200 km/h, separate passenger rail traffic from private freight traffic, and expand ridership from just under 5 million to at least 17 million passenger trips. A “final investment decision” is expected from the government about three years after the start of the co-development phase (Inframation, 2022a). Additionally, Infrastructure Ontario, recently prequalified three teams—PCL Northern Health Care, Pomerleau Healthcare Partners, and The Bird Team—for the RFP stage of the Weeneebayko Area Health Authority (WAHA) Redevelopment P3, a project intended to deliver remote healthcare provision in Artic conditions (P3 Bulletin, 2022b; Inframation, 2022b). Los Angeles Metro also recently authorized two private sector teams, Sepulveda Transit Corridor Partners – Bechtel and L.A. SkyRail Express, to begin pre-development work on the Sepulveda Transit Corridor Project, “a new, high-capacity transit line that will connect the San Fernando Valley with the Westside and eventually LAX” (Sotero, 2021). Funded by Measure M as well as other local, state,

and federal sources, this progressive P3 is expected to cost upwards of \$9.5 billion and will feature either a heavy rail transit concept or monorail concept. Finally, news of LA Metro's notice to proceed came just ahead of a decision by Maryland's Board of Public Works to award Accelerate Maryland Partners (i.e., Transurban and Macquarie) the right of first refusal to build and operate \$6 billion worth of toll lanes on Interstate 270 and part of the Capital Beltway over a 50-year period (Shaver, 2021).

This growing momentum behind the progressive P3 model appears to be the product of a more market-driven approach by the private sector to identify and scope feasible P3 projects—i.e., the private sector has a considerable commercial imperative to select projects that will become economically viable. In this light, building more collaboration into procurements may offer certain advantages in terms of delivering a better project, such as lowering transaction costs and limiting downside exposure to overruns and delays (Inframation, 2022a). Pre-development agreements also make practical sense for public agencies looking to form long-term partnerships that will assist their efforts in identifying and advancing P3s. In this way, the progressive approach puts P3s back in hands of project owners, designers, and operators.

However, not all market players are ready to buy into progressive P3s. For instance, many pure equity investors remain uncertain of this model because it takes away their element of control. The benefits of bundling various phases of the project lifecycle—i.e., design, construction, financing, operations, and maintenance—may also be lost in the progressive P3 model because facilities management knowledge and other expertise necessary to assemble a proposal may not be engaged until it is too late for meaningful input. Additionally, “the usual multi-advisor team that is needed to form a bid for a traditional P3 proposal is no longer necessary” because contractors are brought in to help scope and define projects at an early stage (P3 Bulletin, 2022c). While this removes a large proportion of advisers from the process (and the large fees they would typically charge for their services), it also threatens competitive procurement. Traditional P3s have already received ample criticism for their inability to attract sufficient competition, especially when firms are putting off pursuing such projects due to high bid costs (KPMG, 2010; National Audit Office, 2007). Progressive P3s may only exacerbate these anti-competitive critiques, especially since PDAs create conditions for sole source negotiation and other perceived conflict of interests (e.g., privately led analysis of project alternatives in the NEPA process).

Thus, trade-offs between competitive tension and best pricing will be an ongoing point of contention in progressive P3s. Unfortunately, such considerations are expected to come with heightened legal scrutiny (P3 Bulletin, 2021). In fact, a Montgomery County Circuit Court judge already ordered Maryland's Department of Transportation to reconsider its decision to award a PDA to Accelerate Maryland Partners after Capital Express Mobility Partners—the losing private consortium led by Cintra and Ferrovial—appealed two failed bid protests, claiming the winning proposal was based on unrealistically low construction cost assumptions. This legal dispute is expected to significantly affect the cost and timing of the Op Lanes Maryland project (Shaver, 2022; DePuyt, 2022), and may foreshadow challenges that lie ahead for the progressive P3

model. While it is too early to determine whether this new approach to P3s will flourish or fail, one thing is clear: many governments in North America remain committed to the P3 concept.

Ultimately, practitioners and academics will shape our experience with and understanding of the progressive P3 experiment. The private sector has a specific obligation to support performance evaluations of these projects with accessible data. Such transparency is critical for assessing the efficacy of this new approach to P3s. However, only time will tell if this latest wave of P3 projects is truly “progressive” and beneficial or “regressive” and harmful to the industry.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Carter B. Casady  <https://orcid.org/0000-0001-9215-7168>

References

- Casady, C. B., Flannery, D., Geddes, R. R., Palcic, D., & Reeves, E. (2019). Understanding PPP tendering periods in Canada: A duration analysis. *Public Performance & Management Review*, 42(6), 1259–1278. <https://doi.org/10.1080/15309576.2019.1597739>
- Casady, C. B., Eriksson, K., Levitt, R. E., & Scott, W. R. (2018). Examining the state of public-private partnership (PPP) institutionalization in the United States. *Engineering Project Organization Journal*, 8(1), 177–198. <https://doi.org/10.25219/epoj.2018.00109>
- Casady, C. B., Eriksson, K., Levitt, R. E., & Scott, W. R. (2020). (Re)Defining public-private partnerships (PPPs) in the new public governance (NPG) paradigm: An institutional maturity perspective. *Public Management Review*, 22(2), 161–183. <https://doi.org/10.1080/14719037.2019.1577909>
- DePuyt, B. (2022). *Montgomery County judge rules against MDOT in toll lanes lawsuit*. WTOP News.
- Garvin, M. J. (2019). Transportation public-private partnership market in the United States: Moving beyond its current state. In R. E. Levitt, W. R. Scott, & M. J. Garvin (Eds.), *Public-private partnerships for infrastructure development: Finance, stakeholder alignment, governance* (pp. 205–223). Edward Elgar Publishing.
- Inframation. (2022a). *Canada to use collaborative P3 for passenger rail project*. Acuris Group.
- Inframation. (2022b). *Ontario shortlists teams for healthcare complex P3*. Acuris Group.

- KPMG. (2010). *PPP procurement: Review of barriers to competition and efficiency in the procurement of PPP projects*. KPMG Corporate Finance.
- National Audit Office. (2007). *Improving the PFI tendering process. Report by the comptroller and auditor general; HC 149 session 2006–2007*. HMSO.
- P3 Bulletin. (2021). *Progressive P3s 'present alternate route'*. Partnerships Bulletin.
- P3 Bulletin. (2022a). *Progressive P3s and protective IPs*. Partnerships Bulletin.
- P3 Bulletin. (2022b). *IO's debut progressive P3 RFP released*. Partnerships Bulletin.
- P3 Bulletin. (2022c). *Progressive P3s 'could result in industry powershift'*. Partnerships Bulletin.
- Shaver, K. (2021). Maryland board approves first contract to design toll lanes for Beltway, I-270. *The Washington Post*.
- Shaver, K. (2022). Montgomery judge considers timing of bid protest on Maryland toll lanes contract. *The Washington Post*.
- Sotero, D. (2021). Metro issues go-ahead to two private firms developing transit concepts for Sepulveda Corridor. *The Source*.