

The Canadian Council for Public-Private Partnerships
The Evolution of Canada's Model
Discussion Paper
Fall 2023



INTRODUCTION

Since its introduction to the Canadian market more than three decades ago, the public-private partnership (P3) model has evolved and adapted, expanding into new asset classes, refining methodologies, bringing on new governments and companies as partners, and embracing technological and design innovations. Along the way, our way of doing P3s, the 'made in Canada' approach has become globally recognized as best in class.

However, there has been a market shift in the project pipeline in recent years in risk transfer. As a result, the third 'p' –partnership – has started to fray, sometimes quite publicly, leading to concerns over P3s and an exit of participants from the market. The pandemic, inflation and rising labour and material costs are contributing to these stressors.

Canada is not alone in confronting these issues and fortunately we have a determined, vibrant sector of public and private entities that are committed to working through these issues – together – via The Canadian Council for Public-Private Partnerships.

Collectively, we recognize the value of the P3s in building key infrastructure and delivering essential services to Canadians by:

- Allocating the appropriate risk transfer to the party best suited to manage it;
- Considering the whole life cycle of the asset;
- Driving innovation and efficiencies; and
- Leveraging private capital and expertise.

Over the past eighteen months, the Council has engaged with public and private members to deepen understanding of the key issues with which partners are struggling and the opportunities they see to move forward and develop a more robust and innovative market. While there is a demonstrated commitment to finding solutions, it is quite evident that we need to clearly and concisely articulate the major issues to ensure a common understanding and path forward.

This discussion paper aims to highlight key themes and comments from members on the status of the market, to highlight key pressure points amongst the industry, and to encourage further discussion. These themes include:

1. The need for competition and robust participation from the private sector to drive innovation in Canadian infrastructure
2. The need for more importance to be placed on whole-of-life cycle integration to drive better performance and cost savings, as well as to develop more resilient infrastructure to meet changing environmental conditions and new government policy
3. Performance incentives remaining as a key driver of success
4. Prioritizing price certainty for both public and private sector partners
5. The right behaviours and competencies being necessary on both side of the project

Building on these discussions, the Council is using P3 2023, its annual conference, to bring members together in a **series of small workshops on Tuesday, November 14th** to more broadly explore issues, confirm concerns and propose solutions. This exercise will help the Council develop policy and



advocacy priorities, harness lessons learned, and develop leading practices. Specifically, these workshops will **seek to pinpoint what is working in the model, what needs to adapt, and what solutions will drive change, advance the model and grow the project pipeline.**

This discussion paper outlines key themes and discussion areas for these workshops:

- Workshop Session 5A: Public Sector Decision-Making
- Workshop Session 5B: Evolving the Availability-Based Model
- Workshop Session 5C: Defining Progressive P3s

As well, we'll dig down into ways to improve on how we educate and advocate on behalf of the model:

- Workshop Session 5D: Workshop: The Importance of Advocacy in the P3 space
- Workshop Session 5E: Measuring Outcomes on How P3s Deliver on Their Promises

PUBLIC SECTOR DECISION-MAKING

How government decision-making responds to changing market conditions, political and policy changes, budget constraints and public crises is often unclear to the private sector. This lack of perceived transparency can lead to market confusion and sometimes significantly impact procurements.

While recognizing the confidential nature of government processes, it is important that public sector decision-making is clear and well understood to ensure a project's success. Over the years, P3 Screens, Business Cases, and procurement processes have been well documented and understood, particularly in Canada's more mature markets. However, with the introduction of new models and challenges with established forms of P3s, there can lack clarity over how the public sector determines the optimal procurement model and how Value-for-Money (VfM) is applied.

In discussions with Council members, some have highlighted the need for a refresh of VfM methodologies and the Public Sector Comparator in light of changes in the market. While both public and private sector industry participants recognized that qualitative and quantitative analyses can be relevant, there is no consensus on whether this should be a singular or combined exercise. However, for some, the issue is about understanding what role VfM has had in P3s and what its role should be, if any, going forward.

Despite Canada's 30-year history and portfolio of successful P3 projects, some public authorities still need to answer "Why P3s?" in the decision-making process, especially in the face of common political assumptions that a Design-Bid-Build is better from the start.

As a result, some believe VfM should be demonstrated when considering any delivery model, recognizing P3 models with private capital provide a more demonstrable risk transfer. In Canada's business case model, qualitative factors, such as project risk, scheduling, budget, market realities and capacity, can supplement a purely quantitative VfM analysis when comparing risk-adjusted costs to traditional procurement.



However, many raised the issue that data and research across project model types in Canada is scarce and there needs to be a greater focus on building a research function to support the industry and ensure comparable data between conventional and P3 procurement models and projects, including VfM reports. Some suggested this research will help modernize P3 approaches to reflect the current market challenges, particularly for construction, many of which are borne equally in both conventional and P3 models.

As Canada's market has shifted, some raised concerns that alignment, to some degree, is necessary across different government procurement processes and methodologies. Without a clear and consistent process vision across the country, private sector entities are bidding less in the Canadian market, turning instead to the United States and other jurisdictions where commercial expectations are better known or viewed as more flexible. Some suggested this lack of clarity in P3 process outcomes is behind the push for progressive models and a key contributor to decreasing competitiveness in Canada.

Two additional areas of concern have been around the evaluation criteria in procurement processes – specifically that public owners should consider revisiting the established criteria to better enable new players to enter the market and on cost estimates.

With respect to the first, it has been noted that contractors and developers are increasingly reluctant to engage in procurement that are a “race to the bottom” and suggest that owners adapt their scoring methodologies to incorporate technical evaluations. It has also been noted that transparency (of projects, contracts, plans, etc.) is a driver for private partners, particularly with the current limited workforce capacity. Additionally, private sector partners noted that owners who listen to private partners during the initial phase and signal some flexibility will get more bids.

Cost estimates used during the procurement process, it was noted, often can be years old by the time procurement starts. And that regardless of the model used, the procurement invariably gets off on the wrong foot – introducing an element of distrust right from the start.

Discussion Questions:

1. How does the public sector determine the best model for a project and is their internal capacity to deliver, a consideration?
2. Do VfM methodologies need to be refreshed? And can qualitative factors such as project risks, scheduling, budget, the market reality, and capacity be supplemented by purely quantitative VfM analysis when comparing risk-adjusted costs to traditional procurement?
3. How can we ensure we have the comparable data necessary to support sound decision-making?
4. How can we ensure transparent pricing, model pickup, procurement competitiveness, commercial flexibility and clear risk transfer expectations to increase market appetite for a project?
5. What revisions to evaluation methodologies are necessary to promote increased competition?



EVOLVING THE AVAILABILITY-BASED MODEL

Canada has become globally recognized for its approach to availability-based P3s. Approximately 300 projects have been procured using this approach. However, recent market experiences have caused some Canadian market participants to question whether this approach is still valid.

In many discussions with Council members, private sector participants pointed squarely at risk as driving challenges with the model. Specifically, in the absence of having concrete discussions on how to rebalance risk, the private sector is instead pushing for new progressive models that would allow for earlier intervention and discussion on risks. However, some expressed that revised P3 processes with earlier and more candid discussion of project risks would be a reasonable alternative to revised P3 models.

Now is the time for candid discussions on risk transfer, recognizing that properly balancing risks is a demanding part of the P3 process, as the higher degree of due diligence within partnerships is crucial to the advancement of the model. This includes ongoing, transparent and often niche conversations of risk during all project phases – from procurement to build and working directly with all levels of public partners at each step of the project to create flexibility for any needs outside of cost certainty.

It has been made clear by many, that current market risks cannot efficiently be borne by the private sector, regardless of the chosen contracting model and that an efficient P3 market needs to adjust for this. With the current lack of appetite for risk transfer discussions within a template-driven P3 negotiation, it is believed that a focus on a progressive P3 environment would increase negotiation and flexibility in contracts rather than just deal with template protocols. However, arguably, a P3 could deliver the same benefits by adding the same degree of flexibility. Process changes may be the answer rather than introducing a new model – the “throwing the baby out with the bathwater” conundrum. Further, there is not yet enough experience or data set with these models to know if this is the case.

Additional concerns have been raised related to project size. Specifically, current market conditions make it challenging for single member consortiums to bid on projects valued at over \$1 billion. Almost unanimously amongst the members, clarity and transparency have been highlighted as crucial values for the next wave of projects. This is particularly important for a larger or unusually risky project. For both parties, a guarantee of transparent pricing, realistic affordability targets, model selection, procurement competitiveness, commercial flexibility and clear risk transfer expectations can drastically improve the market’s appetite to engage in a project.

Discussion Questions:

1. Where has the RFQ/RFP-based hard bid model worked? Are there specific size thresholds or asset classes where the model has seen significant success?
2. Do we have risk transfer rights in these areas? And how can we improve risk identification, assessment and mitigation without entirely eliminating the model?
3. How can we increase competition in the bid process? Are changes required to the evaluation criteria to better allow new players to enter the market?
4. Is there a lack of consistency across different provincial procurement processes? And is this contributing to the smaller number of bidders in Canada?



5. Have we become too litigious? How do Project Agreements need to adjust to emphasize and encourage the partnership aspect of P3s?
6. Are there different considerations for civil and social infrastructure assets?

DEFINING PROGRESSIVE P3S

With the introduction of progressive models in a number of Canadian jurisdictions, there are many discussions about what exactly they are and the mechanics of how they could work. There is no consistent definition of a “progressive,” beyond the understanding that it invites earlier contractor involvement.

In discussions with members, it is clear progressive terminology is considered nebulous. Across the industry, different words are used to describe the same or similar approaches. For example, Infrastructure Ontario’s website differentiates between a Progressive P3 (fixed-price contract) and a Progressive Design-Build (target price contract). At the same time, the Government of Canada has referred to the VIA High Frequency rail projects as a “collaborative P3”.

Some have stated a Progressive P3 is a **procurement strategy rather than a new model**. However, questions remain about how the process changes and in particular, how it impacts the budgeting process, project financing, competition, risk transfer and performance incentives and how the public sector overcomes barriers related to the lack of competitive tension in the bidding for construction and decades of operations and maintenance.

Discussion Questions:

1. How should the Council and the industry define Progressive P3s? Are there different variants and if so, what is the rationale for the distinction?
2. What is the impact of progressive models on public owners in terms of maintaining price competition and ensuring appropriate risk transfer? Is the push for progressive models from private sector partners due to a lack of clarity in P3 process outcomes from the owners?
3. How do these differ from hard bid-based procurements, and how are they the same?
4. What are the circumstances in which this would be the right model? Is it the project characteristics that drive the model, or external factors such as market conditions?
5. Are owners effectively paying more to contractors, in the form of decreased price competition and less risk transfer, to attract them to bid on their projects?
6. What results have these models achieved so far and have they realized their intended outcomes?

MEASURING SUCCESS

Canada’s approach to VfM has been a key characteristic that has set us apart from our global counterparts. The upfront analysis in a P3 business case on the project and the value it will bring to taxpayers has been a cornerstone of our process across all jurisdictions.



While methodologies behind business cases can differ slightly across procuring authorities, the principles remain the same and are predicated on an evaluation of the qualitative and quantitative aspects of a project to determine the procurement option that best meets the objectives of the proposed investment. However, the quantitative analysis of the P3 model versus the Public Sector Comparator, or estimated VfM, have generally been the key output that is pointed to as the reason for pursuing the certain P3 models. In fact, it has been a key highlight of news release after news release announcing new projects over more than a decade – that procuring using the P3 project would save taxpayers a significant amount of money over the life of the asset.

But as our portfolio matures and we learn and experience more about the delivery of infrastructure over the life cycle, we have come to understand that qualitative benefits have perhaps been undervalued.

A recently published comparative study of P3 schools in Ireland noted that while P3 schools cost more because of the higher capital costs of better materials and O&M costs, the model still drove significant value to the education of students, as school administrators were able to focus on curriculum delivery rather than facilities management.

As our portfolio across the country matures and we prepare for hand back, we will need to evaluate the success of the projects for Canadians as well as to adapt for future projects.

Discussion Questions:

1. Given the public's interest in P3 projects, and the emphasis placed on dollar savings as a selling feature, how should we evolve our messaging to communicate the positive end results of a project effectively?
2. How are public sector authorities evaluating qualitative and quantitative benefits and risks of projects, and has the pendulum swung one way or another?
3. If we reevaluate the benefits of P3 at ex-post, how should this impact the project development phase?

ADVOCACY IN THE P3 SPACE

This is a critical time for Canada's P3 infrastructure market. Each of the themes explored above is proof of the urgent need for the industry to come together to advocate for the relevancy and evolution of the P3s to ensure the development of a competitive project pipeline for years to come.

Against the backdrop of crushing household debt and affordability concerns, a housing shortage, deteriorating schools, bridges and other critical infrastructure, there is an opportunity for the Council to be a proactive and assertive, non-partisan voice to:

- Champion the deployment of P3s – in the right context – by promoting strong proof points of international and domestic success.



- Fight misconceptions with facts and humanize the debate by focusing on the social and economic benefits the model brings to the everyday lives of Canadians.
- Work closely with government decision-makers to inform policies and regulations that support urgently needed infrastructure development.

As the only infrastructure industry association representing virtually all major leaders across the infrastructure sector, the Council has already done the hard work – it has brought public and private sector players together, creating a forum for policy thought leadership and open dialogue. Over the last 18 months, the Council has started to strategically engage in government affairs activities, most notably, efforts to influence the federal government’s draft rules relating to the proposed *Excessive Interest and Financing Expenses Limitation (EIFEL)* and more broadly, advancing connections with governments at all levels across the country to educate them on the opportunities to integrate the P3s into their infrastructure planning toolbox.

Building on these efforts, the Council’s leadership is spearheading foundational functions that will bring credibility to our advocacy voice, including the launch of a newly formed **Municipal Engagement Advisory Group** to nurture a renewed P3 project pipeline, a **Data and Research Committee** to develop objective and fact-based research and intelligence on key challenges and opportunities with the model; and most recently, a new **Policy and Public Affairs** service line to bring all of these elements together under a formalized annual Advocacy Strategy and execution plan. This new service line will enable the Council to leverage its network of skilled experts to inform key positions on issues impacting the long-term sustainability of Canada’s P3 project pipeline.

Our initial ideation of this new service line includes two streams of execution:

Stream 1: Proactive public affairs: Strategic activities that promote, protect and strengthen the P3s and its socio-economic benefits to Canadians. (E.g., digital advocacy campaigns, media positioning, data and research, case studies, public opinion polling, Advocacy Days, etc.,)

Stream 2: Influence policy and regulation: Government relations activities, as required, to influence enabling policy and regulation formulation that protects investment in P3s, de-politicizes procurement process, balances risk and accountability, boosts competition and ensures competition and transparency. (E.g., EIFEL)

For this new service line to be effective, the Council must execute a clear and focused advocacy plan that focuses on the right set of priorities and objectives for our diverse membership. That work starts with defining the pain points we are trying to fix (the themes explored in this discussion paper among others) and engaging the entire Council membership to hear their perspectives on how this business line can advance the industry’s interests and establish clear outcome benchmarks for success.



Discussion Questions:

1. Which specific policy areas do we think are most critical on which the Council should focus? Why?
2. How do we balance the priorities and interests of public sector members vs. private sector members?
3. What other policy areas (beyond the themes in this paper) are currently underrepresented or overlooked?
4. What challenges or barriers do we foresee in advancing our advocacy efforts? How can these be mitigated?