



**VIRGINIA DEPARTMENT OF TRANSPORTATION
PUBLIC-PRIVATE PROCUREMENT**

**ISSUES AND ACCOMPLISHMENTS
AND INTERIM REPORT**



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INTRODUCTION

The Virginia Department of Transportation (VDOT) is the lead agency in the Washington Metropolitan Traveler Information Service (WMTIS)-a multi-agency public-private partnership. The public agencies (via VDOT) chose to enter into a partnership with a private sector firm to accomplish the project.

The public sector role in the project includes program support, and providing data, critical information, and funds. The private sector will install the needed communications and information processing infrastructure, and will also contribute to the project funding. It is the intent of the public and private partners that all infrastructure, all operations and maintenance of the systems installed to provide the traveler information service will be the responsibility of the private sector.

This paper documents the contracting and procurement issues and opportunities encountered by VDOT in developing what was their first public-private partnership agreement for an Intelligent Transportation System (ITS). It is based on interviews with staff from VDOT, the Virginia Attorney General's Office, and the WMTIS contractor. In addition, VDOT provided file materials appropriate to documenting the contracting and procurement issues.

In its final version, this report will also include a review of VDOT's procurement guidelines for ITS public-private partnerships, which are currently being developed. This paper is not meant to be a comprehensive nor a legal review, and is focused only on issues related to the WMTIS. Recognizing that each transportation agency faces unique legal and institutional issues, it is intended that this report will serve to assist other United States transportation agencies wishing to pursue public-private partnership projects.

WHAT IS A PUBLIC-PRIVATE PARTNERSHIP?

When thinking of public-private partnerships in the transportation arena, toll roads typically come to mind. In the case of a toll road, the transportation agency may provide right-of-way, technical expertise, funding mechanisms and permitting assistance. The private sector may provide capital, technical, construction, and operating expertise. The public sector is thus able to provide the public with a transportation facility that it could not have done without private capital. In exchange, the private sector is able to generate revenue that it could not have without public resources. Many toll road project contracts include clauses to ensure that the private operating company can remain profitable. For example, if toll revenues do not meet the private firms costs, the public sector might adjust the rate of payment of the financing package, or they might provide public operating resources to defray expenses. It is in both the public and private interests to maintain the road operation.

Based on the example of the toll road, three basic dimensions of public-private partnerships can be defined:

- Pooled Resources
- Shared Risks and Benefits
- Reason to Maintain the Partnership.

Together, these three dimensions define a public-private partnerships.

Resources The pooling of resources is what distinguishes public-private partnerships from fee-for-service contracts. In fee-for-service contracts, public sector money is exchanged for private sector services such as intellectual capital or goods. A partnership *requires* more than an exchange of dissimilar resources. It requires that similar resources be pooled. Pooling similar resources helps produce a total that is greater than the sum of the parts. An example is the pooling of private capital with public investment vehicles. In the WMTIS project, public sector data is being pooled with a knowledge of marketable data formats (provided by the private sector). This synergy is an important incentive to partner.

Risks and Benefits Partnering implies sharing both benefits and risks. Sharing risk is a new concept for most public agencies. Because of the public agency's responsibility to the public, most risk in typical contracts is placed on the private sector. In a public-private partnership, contracts must be developed that spell out the risks and benefits and identifies which risks and benefits are assigned solely to the public or private partner; which are shared, and the extent to which they are shared.

In the toll road example, some of the risks of running a profit-making venture can be shared-some risks cannot. For example, the public sector cannot abdicate its responsibility for public safety. Benefits may also be shared. In the case of the WMTIS, a mechanism was developed to share the project revenue among the public and private partners. One of the risks that is shared by both partners is that of failing. If the project fails, each would suffer damage to their reputations. In the public sector, this damage would be extreme. The agencies may suffer in the long-term and may be unable to garner political support for any future endeavors. The private sector partners also have much to lose if their reputations are damaged. Pursuit of ITS public-private projects in the future would be more difficult.

Reason The reason to maintain the partnership should go beyond the sharing of risks and benefits and pooling of resources. Although often intangible, these reasons can be robust. A strong reason for a private firm to maintain the partnership is to maintain a good reputation with a view to establishing a strong presence in the marketplace. If a firm wishes to continue to provide similar services elsewhere in the United States, they must perform well in the partnership. Public agencies are also concerned about their reputation in the form of public opinion and political clout. Success in all of their ventures, including public-private partnerships helps maintain an agency's political position. Failure of a public-private partnership, such as the WMTIS, would expose the agency to public and political criticism. They may be accused of wasting the public's tax dollars and subsidizing private industry. The potential for this type of criticism is one of the reasons that public agencies have been reluctant to pursue radical new public-private partnership ventures.

WHEN SHOULD PUBLIC-PRIVATE PARTNERSHIPS BE CONSIDERED?

In the United States, the role of government is to provide services that are in the public's interest, but generally not profitable. The private sector's role is to provide services that generate profits (excluding private non-profits). These roles can complement one

another when a service is in the public’s interest and generates a profit.

Professor John D. Donahue of Harvard University’s John F. Kennedy School of Government classifies public-private projects into four categories based on two classifications of the degree of “public interest” and “profit potential” (high or low). Using these classifications, a matrix can be developed as shown below.

		Profit Potential	
		High	Low
Public Interest	High	Public or Private	Public
	Low	Private	Neither

Services that are both high in the public interest and have high profit potential could be provided by either the public or private sector. In fact, these are good candidates for public-private partnerships, since both sectors have a stake in providing them. However, it is currently debatable whether the public sector should partner for any services that are strongly in the public interest. Some believe that services critical to the public should be provided only by the public sector. As the debate and experience continues, it will become more clear if such services can be appropriately met by a public-private partnership.

Some services will fall in between the low and high characterizations of public interest. If these services are potentially profitable, they would be even better candidates for public-private partnerships. This is because the public sector has so many needs that are high in the public interest, that they may be unable to address less critical services. This does not imply that services that might be less critical are not important to the public. However, the public sector incentive to partner so that these services may be provided is great, and the private sector is motivated by the high profit potential. Services that have low public benefit (interest), although potentially profitable, are best taken on by the private sector. The government has little role in providing services that are not high in the public interest.

THE WASHINGTON METROPOLITAN REGION TRAVELER INFORMATION SERVICE

VDOT is the lead public agency in a 26-agency, multi-state consortium that is contracting in a public-private partnership to provide regional traveler information. A Coordinating Committee of the public sector partners will be used as a decision-making forum to guide the program development. The FHWA is an active partner, providing early programmatic and inter-agency coordination assistance. The project is funded 70 percent by the federal government via the FHWA, with the 30 percent match coming from the private sector partners. The goal of the project is to develop a system and infrastructure to be owned and operated on a for-profit basis by the private sector partner (or their assignee). The contract is on a 6-year term. The first 3 years are devoted to:

- Installing the needed communications hardware and software infrastructure
- Integrating traveler information from each of the public sources including transit, Carpool, and traffic information
- Synthesizing and re-packaging that information for resale by private information providers
- Recruiting information providers and assisting them in marketing the service
- Evaluating the service as it relates to adopted regional transportation goals.

A portion of the information system is planned to be operational within 6 months of notice to proceed. The full system is planned to be complete within 1 year. The following 2 years of the contract are intended to allow the project to mature and to build a market base. Also, an evaluation of the WMTIS will be conducted during that time. During the last 3 years, the public share of the project revenues (in the form of expanded traveler information services and coverage) will be shared among the public partners.

After 6 years, the public partners will evaluate the system performance and value to the traveling public. Based on that evaluation, the public partners will determine how best to continue the WMTIS. Their options include renegotiating the revenue sharing terms with the private sector partner and contracting with a new or with additional private sector partners. Other options for the WMTIS may be identified over the next 6 years.

There was no clear, natural, public agency lead for this project based solely on the transportation systems included. VDOT is the lead agency due to the decision of the VDOT Commissioner.

VDOT'S PROCUREMENT OPTIONS

The State of Virginia's Public Procurement Act (Virginia Procurement Act) was enacted in 1983 in response to legal challenges to prior State procurement processes and contracts. As it relates to VDOT, the law states that the Department of General Services (DGS) will oversee most procurements. DGS oversight of VDOT currently takes the form of approximately yearly reviews of procurements to ensure that the State's laws, policies, and procedures have been followed.

The Act defines two types of services-professional and non-professional-and also outlines procurement regulations for goods. Each type of service and goods have different legislated and administrative requirements, which are summarized in the table, below.

	Commonwealth Transportation Board Review Required?	Attorney General's Review Required?	Selection Processes
Professional Services	Yes	Yes	Two-Step Process: Qualifications Based then Fee Negotiated
Non-Professional Services	No	No	Competitive Sealed Bid or Competitive Negotiation or Non-Competitive
Goods	No	No	Competitive Sealed Bid or Competitive Negotiation

Professional services include most work for which a State of Virginia professional license is required, such as engineering and land surveying. The Commonwealth of Virginia Transportation Board, an appointed body, reviews all professional services contracts. In addition, the Attorney General must review professional services contracts before they are signed. This adds extra steps and time to the procurement process. In the selection process, the best qualified professional services firm is selected. Fee negotiations can then begin with that firm. If the State and the firm cannot agree on the contract fee or terms, the State may begin negotiations with the second-best qualified firm.

Non-professional services include work such as landscape and building maintenance; consulting services that are not considered “professional” services in Virginia such as software development; and provision of ITS systems. The Transportation Board and Attorney General are not required to review such contracts, but may request review if they wish.

The “preferred” process for acquiring non-professional services, based on the statute, is competitive sealed bid. However, two other processes are available that are particularly advantageous for ITS procurements. These are competitive negotiations and non-competitive (sole source) procurements. To pursue either of these procurement processes, justification must be developed that indicates how the process is superior financially and practically. The Administrative Services Division at VDOT determines if justification is adequate. The competitive negotiation process allows VDOT to negotiate both cost and terms with several qualified firms at the same time. Non-competitive (sole source) procedures allow VDOT to target a particular, unique, service provider. Non-competitive contracts exceeding \$10,000 must be approved by the Governor’s office.

A third category covered by the Virginia Procurement Act is goods. VDOT can acquire most goods, including ITS goods, independent of DGS. Certain goods, such as office supplies and printing services, are called out in the Act to be acquired through DGS.

Virginia has also passed two other acts that potentially relate to ITS procurement—the Design/Build Act, and the Public Private Transportation Act (PPTA). The Design/Build Act is essentially an amendment to the Virginia Procurement Act, outlining additional requirements for design/build projects. The Design/Build Act was primarily written to address “vertical” construction projects such as buildings. The PPTA was developed to encourage private firms to invest in transportation infrastructure in Virginia. It also allows VDOT to accept and review unsolicited proposals for public-private partnerships. In the past, unsolicited proposals for ITS services were received and rejected because the act was interpreted to not include most ITS services. The language of the act includes systems “needed to operate the transportation facility.” It is the Virginia Attorney General’s opinion that many ITS systems are not strictly “needed” but enhance the function of the infrastructure. VDOT has, as yet, not pursued the PPTA capabilities for ITS.

In addition to the available legislation, two other options were available to VDOT to procure the WMTIS. VDOT could have written new legislation specifically addressing the project, or they could have attached a clause to the Appropriations Act.

In summary, the following procurement options were available to VDOT for the WMTIS project:

- Virginia Public Procurement Act
 - Professional Services
 - Non-Professional Services
 - Goods
 - Design/Build
- Virginia Public/Private Transportation Act
- New Legislation
- Rider on the Appropriations Act.

VDOT EXPLORES THEIR PROCUREMENT OPTIONS

The WMTIS was a unique undertaking for VDOT. It involves extensive ITS systems, it is a public-private partnership, and the project involves revenue sharing. Thus, it was difficult to decide how best to procure a project such as this. The standard contracts created for more typical VDOT projects did not address the sharing of risks and resources that are inherent in public-private partnership.

Defining the WMTIS

It was also difficult to define the project in Virginia Procurement Act terms. Should the work be defined as professional services? There certainly was a requirement for professional engineers to complete the project. Should it be defined as non-professional services? Most of the work did not involve professional engineering services. Besides, VDOT was procuring a service—the provision of traveler information—not engineering plans or an ITS system. Should it be classified as a good? There is a large amount of infrastructure to be put in place to create the system. If the private contractor left the partnership, VDOT would be left with a large amount of “hard” goods.

The classification would dictate the procurement processes available to VDOT. Most ITS deployments require a combination of professional services, non-professional services, and goods. At VDOT, the classification was based on the project outcome and

the extent to which each type of service was involved in the project. At an internal VDOT meeting involving staff from Administrative Services, the ITS Office, and the VDOT Commissioner, it was agreed that the project should be classified as non-professional services. A key point of discussion was that VDOT was not procuring anything-nothing would be owned or operated by VDOT at the end of this contract. VDOT was simply creating the opportunity for a private sector partner to develop a profitable traveler information business. It was ultimately agreed that the primary purpose of the project was to procure traveler information services.

VDOT also had other options available to them, which were explored but rejected early in the process: the PPTA and the Design/Build option of the Virginia Procurement Act.

The PPTA

The potential for soliciting proposals using the PPTA was explored. As described earlier, the PPTA was developed principally to allow for typical highway infrastructure projects such as toll roads. VDOT and the Attorney General's opinion is that it would be difficult to stretch the interpretation of the PPTA to include a traveler information project. In addition, the PPTA requires State ownership of any infrastructure provided at the end of the contract term. This conflicted with the intent of the WMTIS.

Design/Build

The option of pursuing a design/build contract was rejected early. VDOT has not developed the procedures as required by the Design/Build Act that would allow this contracting procedure to be used. In addition, although a design/build structure would be appropriate for a portion of the work, the outcome of the WMTIS project goes beyond the provision of an infrastructure element, which is the intent of a design/build contract.

The Virginia Procurement Act-Issues

The Virginia Procurement Act and the standard contracting vehicles developed to comply with the Act included several perceived and actual barriers to its use for the Traveler Information project. Some of the barriers are directly due to the Virginia Procurement Act. Others are due to the Virginia Procurement Act not exempting procurements from other State laws. VDOT outlined the issues to help justify their request for new legislation that would improve the ability to pursue public-private partnerships:

- Stringent audit rules that might require public agency access to financial material of private sector partners that would not normally be available to other businesses and the public.
- Limitations on government data practices that hinder the public agency's ability to manage and protect the repackaged traveler information.
- Strict restrictions on intellectual property rights that require exclusive public ownership of products developed with public funds.
- Limitations on government liability that give the agency an "upper hand" in all aspect of the agreement when, in fact, the public agency should be sharing the risks and rewards in a public-private partnership.

- Limitations on dispute resolution mechanisms which narrow the available remedies of private sector partners.

Many of these issues were ultimately accommodated.

Legislative Opportunities

Because of these barriers, VDOT pursued two legislative paths for developing a procurement process that would better meet the needs of ITS projects, and the WMTIS project in particular.

VDOT pursued developing new legislation and amending the State

Appropriations Act. Both of these efforts were constrained by timing. Formal legislation was written to allow for the public/private partnership agreement. The process got as far as the sponsor-seeking stage. However, they were too late in the legislative session to build the needed support for this initiative. At the same time, VDOT explored amending the Budget Act. There was little political support at the time for using the Budget Act to change procurement law. In addition, subsequent Budget Acts could easily strike down any legislation passed.

Exemption From the Virginia Procurement Act

While VDOT was pursuing legislation, they also discovered that, because they had identified the WMTIS project as non-professional services, the Public Procurement Act included a potential for administrative relief. The statute offered the ability to request exemption from the existing procurement rules and regulations if approved by the Director of the Division of Purchases and Supply at DGS. Using the same justifications outlined to support new legislation, the exemption request was submitted by the Secretary of Transportation and approved by the Secretary of Administration.

It is important to note that the WMTIS procurement was accomplished without the exemption, using existing guidelines. Thus, the WMTIS public-private partnership contract was constrained by rules and regulations in the Virginia Procurement Act developed for more typical procurements. VDOT did not wish to pursue the WMTIS contract without any guidelines at all since some set of standards is required to guide the process, and there was not enough time to create new guidelines. VDOT plans to clarify and simplify the procurement of ITS public-private partnerships based on the exemption. VDOT is currently developing guidelines for such exempted procurements so that bidders and VDOT staff can have common expectations about the process. These guidelines will be provided in the final version of this report.

ISSUES IN PUBLIC/PRIVATE ITS PARTNERSHIPS

Issues remain that are impediments to procurement of ITS via public/private partnerships. The WMTIS contract dealt with many of the issues, and left others for future resolution. This process provides valuable lessons useful to the development of the new ITS public-private partnership procurement procedures. These issues and their disposition in the WMTIS contract are summarized in the following table.

ISSUE	DESCRIPTION	DISPOSITION IN WMTIS CONTRACT
Intellectual Property Rights	<p>ITS relies on specially designed software to integrate and operate the system. Under Virginia law, contractors developing software on projects that include or State funds retain ownership of the intellectual property, but a license must be provided to the public sector so that they may use the software for their purposes. This language implies that software can be distributed by the public sector to any party if it meets their purposes.</p> <p>Contractors are concerned that, even if only private sector moneys are used to develop software for a public-private partnership, a license must be granted to the public. If the software rights are in the public domain, this might discourage some firms from competing for projects, reducing competition and incentive to partner. However, without such rights, the public sector could be constrained to using a single contractor to operate and maintain specific software products. Licensing agreements can be a good resolution to this issue.</p>	<p>The WMTIS contract was structured so that no public moneys would be used to develop software. Any software will remain the property of the private partner. A license is provided to VDOT to ensure that they have open access to the software.</p>
Limitations on Dispute Resolution Mechanisms	<p>Because Virginia is a "Right to Work State," binding arbitration is not allowed under the Virginia Procurement Act for dispute resolution.</p>	<p>WMTIS complies with Virginia Procurement Act, binding arbitration is not allowed.</p>
Disposition of Surplus Property	<p>State laws require that property purchased using public funds be owned by the State. This can be an issue in ITS partnerships (like the WMTIS) that are meant to create private sector business opportunities. In addition, hardware is often needed for short periods during system development. Many agencies have overcome ownership difficulties by purchasing short-term leases instead of the equipment itself.</p>	<p>The WMTIS project will include the installation of several pieces of equipment. The partners will evaluate the issue of ownership of the WMTIS infrastructure near the end of the contract. One possible outcome that all equipment and the information service itself will be the property of the private partner at the end of the agreement. Specifically the contract states:</p> <p><i>"The disposition of all property shall be determined at the completion of the project by the VDOT Project Manager, and such determination shall be in accordance with the Commonwealth of Virginia surplus property rules and Federal guidelines. The ownership of the Traveler Information Center exclusive of any tangible personal property purchased with public funds will revert to (the Contractor) at the conclusion of the first 36 months of this Contract. No public funds will be used to purchase real property."</i></p>

ISSUE	DESCRIPTION	DISPOSITION IN WMTIS CONTRACT
Sharing Risk (Hold Harmless Clause)	VDOT typically includes a "hold harmless" clause in all of their professional services agreements in which the State is held harmless from all acts, whether negligent or not, performed by the Contractor.	The WMTIS contract includes liability language that holds the State harmless from all negligent, unlawful, or intentional harmful acts of the contractor. However, liability for all other acts of the contractor may be shared by the private contractor and the State, as is outlined in Virginia State law.
Private Partner Audit Records Open to Public	Although not required, a contractor audit may be performed during the life of this contract. To protect confidential records during an audit, the contractor must complete a form requesting exemption from the Virginia Freedom of Information Act (FOIA). Even though the contractor can protect data provided for an audit, the audit reports are public information under the State of Virginia FOIA. Such information may threaten the competitive position of the public partner in the market. Because this is a partnership, both the public and private partner may be damaged. It would be detrimental to both if the private partner's ability to make a profit is damaged.	The contract was not written to remedy the requirements of the Virginia FOIA for this issue. The partners chose to take on this risk.
Need to Protect Repackaged Data	The second Virginia FOIA issue has to do with the traveler information itself. VDOT and the other public partners will provide raw transportation data to the private partner for them to repackage and sell. The raw data is publicly owned and can be requested by anyone. The repackaged data is private because of the repackaging and is only available if purchased. However, VDOT has included a provision in the contract that the repackaged data will be provided to VDOT at no cost. It is not clear if the repackaged data, because it is returned to the public sector, would then become public domain and accessible without cost via the Virginia FOIA. This remains an open question.	As written, the contract describes the parties' intent regarding data handling: <i>"The TIC Contractor reserves all rights to all enhanced data (value added data) as defined in the proposal regardless of its source. These enhanced data may not be distributed in any manner without the written consent of the TIC Contractor except that the participating State Agencies may use the data exclusively within each Agency. Participating State Agencies shall retain ownership to all raw data they generate and supply to the TIC under this Contract."</i> It cannot be said whether this language will remedy the requirements of the FOIA for this issue, because legal challenges of this type have not yet reached the courts.

ISSUE	DESCRIPTION	DISPOSITION IN WMTIS CONTRACT
Difficulties Receiving and Disbursing Revenues to Partners	Unlike many states, Virginia State law allows VDOT to bring in and disburse funds directly via the Transportation Fund (most states require all revenues be deposited into the General Fund). However, the accounting processes to track the public partner's WMTIS revenues would be cumbersome. In addition, developing monetary revenue-sharing formulas that each public partner would agree are equitable may be difficult.	Rather than sharing monetary revenues, the contract calls for the public partner's shared revenues to be reallocated to system upgrades, expansion of the coverage area, and other WMTIS-related services as determined by the Coordinating Committee.
Valuation of Private Match	The private partners are providing matching funds. The match is in the form of services and software. It was difficult to assign value to software, and also difficult to ensure that the services proposed would be provided if the project scope changed over the course of the contract.	The value of the previously developed software was approved by the FHWA. The contractor was enjoined from using software that had been developed using Federal moneys in the past. In addition, the software cannot be again used in the future to provide a Federal match on any other contract. The contract simplified the issue of ensuring that the private partner provided their agreed upon match. It simply states that if <i>"commitments change such that the Federal match requirements cannot be met, VDOT reserves the right to terminate this Contract for convenience."</i>
Need for Detailed Scope of Work	The Virginia Procurement Act requires that the project scope be defined.	The scope of services is not as detailed and specific as those in a typical services contract. Because of the nature of the project, the scope cannot be clearly developed. Nor would it be desirable to do so, because this project was advertised to allow each private respondent to develop their own unique solution. The contract includes a "Task 1" in the scope of services in which project details will be developed. This is a process similar to developing the contract plan details in a road design contract. It was the intent of the contract to allow details to be developed without the need for contract amendments which can be time-consuming processes.
Performance Recourse	Typically, VDOT contracts include strong language to enforce contract completion.	Because the WMTIS project is a partnership, it was understood that all parties had strong incentives to remain working together. If there was no partnership, there would be no project. In addition, VDOT recognized that there were many risks that could threaten the viability of the program. The contract is written in a unique fashion regarding contract termination. It states that if VDOT terminates the contract without the consent of the private partner, then VDOT will not venture to complete the work using any other means. This clause recognizes the unique nature of the partnership and the sharing of risks and benefits. The only reason that VDOT would terminate the contract is if the project has become not viable from VDOT's standpoint, not simply because they are displeased with the particular contractor. This clause protects any investments made by the private contractor if they are dismissed from the project. The contract can also be terminated via mutual agreement.

DEVELOPING AN AGREEMENT THAT RECOGNIZES THE NATURE OF A PARTNERSHIP

The concept of sharing both risks and rewards is an institutional issue that becomes apparent when the State changes from “the client” to a partner in an agreement. When the exemption from current procedures was granted for ITS public-private partnerships, developing procedures was deemed necessary by the current law to protect the State’s interest. But a partnership agreement includes protections for the State by its very nature, because each party has a reason to come to and remain in the partnership.

It was difficult to get the Attorney General’s office and VDOT Administrative Services to agree to several elements of the contract including the clarity of the scope of services and the ability for VDOT to pursue recourse if the private partner fails to live up to the agreement. Since agreement was not required, but desired, VDOT upper management made the final contract process and language decisions considering all input.

The WMTIS contract is unique at VDOT because it was written to recognize the nature of a partnership. For example, the public and private partners share revenues. In addition, the contract does not include clauses describing recourse if one of the partners fails to perform. If one partner does not perform, the contract ends in recognition that the partnership has failed. It is inherent in a partnership that both parties have a reason to be part of the agreement and that reason is adequate to keep both parties at the table. If one of the parties is no longer motivated to remain in the partnership, there is no longer, by definition a true partnership, and the project will cease. In the WMTIS, the private sector has many incentives to remain in the partnership including ensuring that their reputation is maintained, strengthening their position as an experienced, premier provider of traveler information services, and the ability to generate profits. The State also has incentives to remain in the partnership (as long as Federal funding is provided). One, the project can improve traffic conditions in the Washington, DC area. Second, public opinion of VDOT could be changed for the worse if they take no actions to improve traveler perceptions of driving conditions. In addition, both the public and private parties have much to lose in terms of exposing themselves to public criticism if the project fails. This provides both partners with added incentive to succeed.

CONCLUSION

VDOT was able to successfully develop a unique public-private partnership agreement because of the support from the Commissioner’s office, the FHWA, and because of the staff themselves. Staff did not rely solely on interpretations of law that were based on traditional contracts. No case law has yet been

Interpretation and assessment of risk are critical issues. Interpretation of laws (that have not already been interpreted by the courts) and risk assessment are often based on the bias of the individual providing them. That bias is based on an array of factors including past experience, their perception of their job description, the level of support that they believe upper management provides them, and personality traits such as risk aversion.

VDOT found that they had several options available to them to procure ITS public/private services. Each had barriers, and VDOT was able to create a solution that at least minimized, and often overcame, the barriers.

Overall, the ability to develop a procurement process was successful because of individuals at VDOT. First, VDOT staff were convinced that creating a public/private partnership for the WMTIS project was in the public's best interest, and this conviction and enthusiasm helped motivate other State staff. Second, VDOT staff were open-minded when approaching the problem of developing a procurement process for public/private partnerships. They did not let typical methods constrain them, and explored a wide variety of options. Last, VDOT staff truly understand the nature of a public/private partnership—that a partnership means sharing of risks and benefits, resources, and that each party has a reason to enter the agreement as a partner. In fact, VDOT staff were sufficiently open-minded and convinced of the benefits of the program that they considered pursuing the agreement without a contract—illustrating their conviction and that they understood the nature of a partnership.

NEXT STEPS

VDOT is currently developing procurement guidelines for ITS public-private partnerships. The issues encountered in developing these guidelines will be recorded. In addition, several issues identified as barriers to ITS public-private partnership agreements will be addressed by the guidelines. When the guidelines are completed, this interim report will be revised to reflect them, and a final report developed.

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