

# Public-Private Partnerships at MnDOT

## MNDOT'S EXPERIENCE WITH PUBLIC-PRIVATE PARTNERSHIPS

### Early Beginnings (P3 in the 1990s)

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MnDOT's experience with public-private partnerships began over 20 years ago, stemming from legislation that provided broad tolling authorization to the Commissioner of Transportation and other transportation authorities in Minnesota.<sup>1</sup> As a result, MnDOT and its partners had greater flexibility to develop partnerships commonly referred to as PPPs or P3s with private entities. The legislation also provided county or municipal governments that are located on a proposed toll road project the authority to veto toll road construction within 30 days of the approval by the commissioner.<sup>2</sup>

In response to the authorization provided by the State Legislature, MnDOT created "TranSmart," the brand-name for a statewide P3 tolling initiative.<sup>3</sup> As part of this program MnDOT facilitated a solicitation program for potential P3 projects in 1995. The solicitation allowed a wide variety of proposals to be submitted, and did not include prescriptive requirements – leaving more flexibility for proposers.<sup>4</sup> The initial TranSmart Request for Proposals yielded five responses, one of which was selected to move forward with the formation of a development agreement; US Highway 212.<sup>5</sup>

The law authorizing P3s in Minnesota set specific requirements for the development of a project agreement. Additionally, the law gives veto authority to communities impacted by the project, with no provision for appeal. Communities are not required to approve a project, but they can exercise their right to veto the project. Under the interpretation of the P3 authority at the time, MnDOT and its partner were required to negotiate a full development agreement to be considered by local communities. This process was extremely expensive for both the state and private sector partner.<sup>6</sup> In the end, an agreement in which MnDOT and the private investor would share in the \$200 million development was brought to local communities for consideration. Citing opposition from her constituents, Eden Prairie's mayor cast the deciding vote to veto the TranSmart project on US 212, rejecting the agreement and effectively killing the project and any other future projects under the TranSmart mantle.<sup>7</sup>

### Recent History

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MnDOT has continued to explore potential opportunities for partnership establishment through other programs since the end of the TranSmart program.

#### TRANSPORTATION & ECONOMIC DEVELOPMENT (TED) PROGRAM

MnDOT and the Minnesota Department of Employment & Economic Development (DEED) jointly manage the TED solicitation to leverage partnerships with public and private sector actors to advance transportation projects that also have economic development objectives. Between the years 2011 and 2013, the TED program funded 28 proposals totaling just over \$77 million in state contributions, and leveraged nearly \$120 million in local government and private sector investments.<sup>8</sup> TED projects often fall into the category of public-public partnerships, given that local government bodies contribute funding to those funds delivered by MnDOT and DEED through the program. Never-the-less, this kind of partnership provides higher levels of investment than would be possible through the state alone. Additionally, TED solicitations advance transportation investments that otherwise may not have been executed as quickly.

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<sup>1</sup> [Minn. Stat. 160.84-160.92](#)

<sup>2</sup> Ibid.

<sup>3</sup> Buckeye, 2008

<sup>4</sup> Ibid.

<sup>5</sup> Interview with Ken Buckeye, 2015

<sup>6</sup> Ibid.

<sup>7</sup> Buckeye, 2008

<sup>8</sup> [Minnesota Department of Employment & Economic Development](#)

## UNSOLICITED PROPOSALS

Occasionally, MnDOT works with private entities on projects that serve a mutual interest. One recent example of a one-off public-private-public partnership in Minnesota was the reconstruction of the interchange at US 169 and Bren Road. Proposed development in an adjacent business park and projected growth from the eventual construction of a light rail station on the Green Line extension made upgrading the at-capacity interchange a pressing concern.<sup>9</sup> The project used a variety of funding sources to achieve completion. Minnetonka, the local partner in the project secured a \$1 million grant from DEED and a \$7.3 million grant from MnDOT; the remaining \$10 million needed to fully fund the project was to be collected through a "trip fee" structure to be levied on new development in the adjacent business park.<sup>10</sup> This method for leveraging private investment won an award for excellence from the Government Finance Officers Association in 2012.<sup>11</sup> Continuing to pursue these types of opportunities is important as a way to build confidence and trust between MnDOT and private-sector partners for future projects.

## DESIGN-BUILD & DESIGN-BID-BUILD

MnDOT has used design-build and design-bid-build contracting to maximize financial efficiency and minimize traffic disruptions.<sup>12</sup> Design-build allows for more in-project flexibility by requiring designers and contractors to team up and work together as opposed to working consecutively. MnDOT has awarded 24 projects since the process was authorized by the state legislature in 2001. In design-bid-build contracts MnDOT acts as an intermediary between the designer and builder. This results in less flexibility for the builder than in design-build contracts, but allows for more significant quality control for the agency.<sup>13</sup>

## INDEFINITE DELIVERY / INDEFINITE QUANTITY (IDIQ) CONTRACTING

Indefinite delivery / indefinite quantity contracts allow for an arrangement in which a contracted firm provides an indefinite quantity of services during a fixed period of time. Some IDIQ contracts set minimum or maximum values for services that can be provided as part of the contract. This type of contracting mechanism allows for flexibility when MnDOT is unable to determine the precise quantities of services that may be required over the course of a contract term.<sup>14</sup> MnDOT has made extensive use of IDIQ contracting since 2013. In total, 41 IDIQ contracts have been executed, with a maximum value of \$165 million for work mostly related to road repairs and maintenance of transportation-related items on the side of the road.<sup>15</sup>

## CONTRACT MANAGER / GENERAL CONTRACTOR (CMGC)

MnDOT's contract manager / general contractor contracting process integrates planning, designing, and constructing a project. Through this process, owners, designers, and contractors work collaboratively to develop the project, optimize design, improve overall quality, and manage costs. MnDOT has used the CMGC process on two projects, the Winona Bridge replacement (scheduled completion in 2019) and the US 53 relocation project in Virginia, MN (scheduled completion in 2017).<sup>16</sup>

## OTHER PRIVATE INVESTMENTS

Minnesota's airports offer a prime example of how investments of both public and private funds can help to maintain transportation infrastructure in the state. Depending on the individual airport, infrastructure improvements and operations are funded by federal, state, local, and private funding partners.<sup>17</sup>

Other private investment offers benefits to the greater transportation system. Recent investments in railroad improvements by BNSF have improved on-time performance and reliability for not only freight trains, but also passenger trains that share the same track.<sup>18</sup>

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<sup>9</sup> [WSB Engineering](#)

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> [MnDOT Design-Build](#)

<sup>13</sup> [Association of Minnesota Counties](#)

<sup>14</sup> Ibid.

<sup>15</sup> [MnDOT Office of Construction & Innovative Contracting](#)

<sup>16</sup> [MnDOT CMGC](#)

<sup>17</sup> [MnDOT State Aviation System Plan, 2012](#)

<sup>18</sup> [DePass, 2015](#)

# PROGNOSIS FOR THE FUTURE

## Use of P3s at MnDOT

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MnDOT's past pursuit of flexible funding solutions like the US 169/Bren Road interchange project is likely to continue as opportunities present themselves. Other funding solutions that are similar to P3s, like bonding, will also likely continue into the future. However, the long-term prognosis for large-scale P3 projects like the TranSmart initiative is questionable given current enabling authority and restrictions. Given the risks and resources required to develop a full development agreement, and the potential of a veto from local jurisdictions, it is unlikely that private interests will be willing to take on the risk required to advocate for similar projects in the current environment. Additionally, since the passage of the P3 authority, the legislature has put additional restrictions on the use of tolling and photo enforcement, which severely limits the ability to finance and operate projects as toll facilities. The state lacks candidate projects that meet the threshold for P3 tolling opportunities in terms of project size, cost, geography and traffic volumes, and there are no political champions for tolling in Minnesota.

Changes to the legislation authorizing MnDOT to pursue P3s would likely need to occur if large scale projects were to be pursued in the future; the current legislative requirements for P3s create a high-risk environment for both MnDOT and private investors.<sup>19</sup> Given the vast amount of need in terms of infrastructure improvements in Minnesota and the current legal framework in place that governs P3 agreements, the development of public-private partnerships is unlikely to solve Minnesota's current transportation funding shortfall.<sup>20</sup>

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<sup>19</sup> Interview with Ken Buckeye, 2015

<sup>20</sup> See Aging Infrastructure white paper