

PUBLIC-PRIVATE PARTNERSHIPS

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Canadian governments utilize Public Private Partnerships (PPP's or P3's) between governments and public entities on one side and private sector investors and contractors on the other side to deliver infrastructure projects and services that address public service commitments. In addition, large infrastructure projects, which are commonly procured as PPP's, are a key component of Canada's and every province's economic stimulus packages.

Canada now enjoys a mature and robust PPP market with Canadian PPP projects in various industry sectors, including hospitals and health care, justice and corrections, light rail and other mass transit, roads, bridges, schools, recreation and culture, water and wastewater, airports and civil aviation, ports, energy, universities, government services, property management, data centres, defence and communications. Over the course of the last twenty years the experience, expertise and capabilities related to PPP projects in Canada have grown dramatically, both in the public infrastructure procurement authorities, and also in the major investor entities, construction companies and service providers who constitute the participants in PPP projects.

The result of the experience gained with the large number of recent projects has been a project procurement process that allocates risk reasonably between the parties and achieves value for money for the public. The recent projects have been procured under a clear and competitive process and that process has been steadily refined by the development of common "best practices" across Canada.

The Canadian PPP market is highly competitive, and includes both domestic and international constructors, service providers, equity providers and lenders. In most Canadian projects there is no "local source" requirement, and international companies are encouraged to participate. However, project teams must pre qualify in order to participate in the RFP process and usually only three teams are qualified, so that smaller international

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participants often initially enter the market as part of a consortium.

International banks were major participants in PPP infrastructure financing prior to 2008, but their high level of participation has declined and they have been replaced by a combination of primarily Canadian banks with a smaller number of international banks (providing debt financing primarily during construction) together with an active private placement and broadly marketed bond market in Canada and the U.S (providing primarily longer term debt).

Government support for PPP projects in Canada is strong (although it varies somewhat by province) as this method of procurement has proven to address the infrastructure backlog and the need for projects to be delivered “on time and on budget” because it efficiently transfers significant risks of delivery and performance to the private sector.

Many federal, provincial and municipal governments in Canada have established dedicated agencies, which manage the process of using PPP’s to achieve the completion of infrastructure projects. These agencies include Infrastructure Ontario, Partnerships BC, PPP Canada, Infrastructure Québec, SaskBuilds and Partnerships New Brunswick. In addition to the public sponsors of projects, there is a growing trend among large pension funds and private equity firms to identify large infrastructure projects that could be procured using PPP’s, and then actively promote these opportunities within government. An example in this regard is CDPQ Infra, a subsidiary of Caisse de dépôt et placement du Québec, which recently proposed a new integrated light rail transit system for the Greater Montréal area.

There are several different models of PPP in Canada including build finance, design-build-finance, design-build-finance-maintain (DBFM) and concession, in all of which the project entity is compensated by milestone payments (often paid upon achievement of substantial completion of construction), availability payments, project revenue or a combination of them. In a typical DBFM PPP:

- a private entity (usually a consortium of one or more equity providers with one or both of a construction contractor and a service provider) (Project Co) and the government/public sector entity enter into a single contract under which Project Co accepts responsibility to design, build, finance and maintain the infrastructure asset;

- the project is delivered by Project Co which contracts with a construction contractor to design and build the infrastructure, and with a service provider to operate and maintain the infrastructure asset;
- the operation and maintenance obligation extends over a long period (usually 25 to 35 years) with pre-defined hand-back conditions;
- operating and maintenance requirements are performance based;
- payment from government or the public sector entity begins upon completion of construction and extends over the operation and maintenance term (with interim payments during construction in many cases); and
- payments from government or public sector entities are subject to deduction for failures in service delivery.

Every province in Canada has its own regulatory and legislative requirements, but there are significant similarities in the procurement process and documentation. The Canadian jurisdictions utilizing PPP's share a desire to utilize a crisp PPP procurement process followed by a fast closing. The process is administered by well-staffed and experienced procurement agencies which routinely publish RFP documents and project agreements as well as value for money reports. The procurement is intended to be transparent and may be subject to the supervision of a "fairness monitor," and all elements of the procurement process have become increasingly standardized.

Each procurement authority tends to utilize its own standard RFP process and bid requirements over all or most types of projects utilizing common bid submission documents, the same project documents negotiation process and established closing protocols. Bid submissions are required to be for a fixed price and to include committed or underwritten financing. There are varying but always short periods from bid to closing, based on the settled documents and committed financing at bid.

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to remain active in the coming years as all levels of government have witnessed the benefits of using PPP's to deliver infrastructure projects and related public services.

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