THE VIRGINIA STATE DEPARTMENT OF TRANSPORTATION'S APPROACH TO PUBLIC-PRIVATE PARTNERSHIPS FOR ITS

Authors:

Erin A. Bard, P.E.
Apogee/Hagler Bailly
4350 East-West Highway Ste 600
Bethesda, MD 20814
Telephone: (301) 657-7522
Fax: (301) 654-9355
E-mail: bard@apogee-us.com

Kevin Barron
Virginia Department of Transportation
ITS Office
1401 East Broad
Richmond, VA 23219
Telephone: (804) 786-1278
Fax: (804) 225-4978
E-mail: kbarron.vdot@state.va.us
Abstract

This paper describes the Virginia Department of Transportation’s approach to public-private partnerships, how they differ from privatizations, and applied experience in procuring a public-private Advanced Traveler Information System project for the Washington DC region called Partners In Motion. It covers specific contractual provision as well as institutional concepts.
INTRODUCTION

This report outlines the Virginia Department of Transportation’s (VDOT) view of the private and public sector roles in Intelligent Transportation Systems (ITS), and outlines VDOT’s accomplishments to date in facilitating public-private partnerships. VDOT has identified, via a business planning process, an ITS program targeted towards meeting the State’s most important transportation needs. The plan also identifies specific services to be provided by the private sector, the public sector and in partnership. VDOT’s approach is illustrated based on the experience to date on the Partners in Motion project, to their telecommunications resource sharing initiative, and on the upcoming Statewide Advanced Traveler Information System (ATIS) projects.

VDOT’S CORE VALUES AND HOW THE AFFECT PUBLIC-PRIVATE PARTNERSHIPS

VDOT’s approach to public-private partnerships is grounded in policies adopted in the state’s 1994 strategic plan for transportation, *Virginia Connections*. This document formalized VDOT’s emphasis on customer service, on supporting business, and on approaching transportation based on the market needs of the Virginia economy. Some of the goals adopted in that plan include:
- Encourage investments in emerging transportation technologies that can create new centers of economic development activity.
- Establish a framework that provides greater opportunities for private sector financing and development of transportation projects.
- Identify and pursue opportunities to contract services with the private sector.
- The Commonwealth will direct resources to technologies that reduce congestion, provide improved traveler information, and reduce the cost of moving travelers from point of origin point of final destination.

The *Virginia Connections* plan was developed, adopted and implemented with the full support of the Secretary of Transportation and the VDOT Commissioner. This support motivated organizational, legal and institutional change throughout VDOT to facilitate public-private partnerships. These changes include enacting the Public Private Transportation Act (which applies to traditional transportation infrastructure projects – not ITS projects), and establishing the ITS Group in the central office with staff dedicated to developing and pursuing public-private partnerships for ITS. These efforts highlight VDOT’s values of customer service and support of the State’s economy.

In addition, VDOT has focused its ITS program on an essential “core” set that are key to their basic mission – that of providing safe and efficient movement of people and goods. By concentrating on these core services, VDOT can provide them to the best of their ability, providing a high level of service to their customers. The core ITS services VDOT provides are: Traffic Control and Management, Incident Detection and Response, Commercial Vehicle Operations and Personal Traveler Services.
VDOT’s View Of Public-Private Partnerships

In the United States, the role of government is to provide services that are in the public’s interest, but generally are not profitable. The private sector’s role is to provide services that generate profits (excluding non-profit enterprises). In VDOT’s view, these roles can complement one another when a service is in the public’s interest and generates profits. Professor John D. Donohue of Harvard University’s John F. Kennedy School of Government developed a classification matrix for public and private sector projects that reflects VDOT’s view. Services can be classified based on the degree of “public interest” that is served, and on the “profit potential” (high or low). Based on these classifications, a matrix can be developed, as shown below. Either the public or the private sector could provide services that are both high in the public interest and have high profit potential. In fact, these are good candidates for public-private partnerships, since both sectors have a stake in providing them. VDOT has specifically identified ATIS as a service that meets these criteria for public-private partnerships. ITS user services are also shown in the matrix, based on VDOT’s evaluation of them.

Public-Private Partnerships Contrasted With Privatization

VDOT makes a clear distinction between public-private partnerships and privatizations. To understand the distinction, VDOT’s definition of public-private partnerships needs to be described.

What is a public-private partnership? When thinking of public-private partnerships in the transportation arena, toll roads typically come to mind. Toll roads are often constructed when the public sector is unable to fund a needed road facility. The public transportation agency typically provides non-cash resources including 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 provided with a needed facility. In exchange, the private sector is able to generate revenue that it could not have done 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 firm’s 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 sector interests to maintain the road operation.

The toll road example illustrates three basic dimensions of public-private partnerships that VDOT has identified:

Pooled Resources

Shared Risks and Benefits

Reason to Maintain the Partnership

Together, these three dimensions define public-private partnerships at VDOT.

**Pooled Resources.** The fact that resources are pooled distinguishes public-private partnerships from fee-for-service or privatization 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 VDOT-led Partners In Motion 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.

**Shared Risks and Benefits.** Partnering implies sharing not just benefits but risks. Sharing risk is a new concept for many public agencies. Because of a transportation 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 identify 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 Partners in Motion project, a mechanism was developed to share the project revenue among the public and private partners.

One of the risks that is shared by both the public and private sector in the Partners In Motion project is that of failure. If the project fails, each partner would suffer not only monetary but political damage in terms of their public image and reputation. In the public sector, this damage would be extreme. The agency 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 public-private projects in the future would be more difficult for them if they have a damaged reputation.

**Reason to Maintain the Partnership.** The reason to maintain the partnership should go beyond sharing risks and benefits, and pooling resources. These reasons can be as simple as the desire to make a profit, or the public agency’s desire to provide a
service. Although often intangible, many reasons to maintain the partnership can be robust. As discussed above, 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 service 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 Partners In Motion Project, would expose the agency to public and political criticism. The agency 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.

Privitazation. In contrast, a privatization is similar to a fee for services agreement. For example, VDOT contracts with a private firm to operate the Smart Traffic Center at Hampton Roads. Rather than hiring staff, VDOT has elected to contract out for staff.

VDOT’s FIRST ITS PARTNERSHIP – THE PARTNERS IN MOTION PROJECT

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. The FHWA is an active partner, providing programmatic and inter-agency coordination assistance. The project is funded 70 percent by federal funds via 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 has a 6-year term. The first three years are devoted to developing the complete operational system, with portions of the system, including a telephone advisory system, coming on line as soon as they are available, and developing a mature market. The private sector partner will also be recruiting various information providers and assisting them in marketing the service. During the last three years of the contract term, the public share of the project revenues will be shared among the public partners in the form of expanded traveler information services and coverage.

After six 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 Partners In Motion project. Their options include renegotiating with the current partner, or contracting with a new or with additional private sector partners. Other options may be identified over the life of the contract.

HOW VDOT TACKLED PROCUREMENT – THE PARTNERS IN MOTION EXPERIENCE

Like most DOT’s, VDOT faced the challenge of choosing a procurement process that was suitable to the Partners In Motion public-private partnership.
challenge because this would be a first-of-its kind contract with no precedents to follow. And, although VDOT was clear on the concepts that motivate a public-private partnership, they would have to explain these concepts to a diverse set of state agencies to begin the contracting process.

Virginia adopted the Public Procurement Act (VPA) in 1983 in response to challenges to prior State procurement processes and contracts. As it applies to VDOT, the Act defines two types of services – professional and non-professional – and outlines procurement regulations for goods. Each type of service and goods have different legislated and administrative requirements, which are summarized in the following table.

<table>
<thead>
<tr>
<th>Commonwealth Transportation Board Review Required?</th>
<th>Attorney General's Review Required?</th>
<th>Selection Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Services</td>
<td>Yes</td>
<td>Two-Step Process: Qualifications Based then Fee Negotiated</td>
</tr>
<tr>
<td>Non-Professional Services</td>
<td>No</td>
<td>Competitive Sealed Bid or Competitive Negotiation or Non-Competitive</td>
</tr>
<tr>
<td>Goods</td>
<td>No</td>
<td>Competitive Sealed Bid or Competitive Negotiation</td>
</tr>
</tbody>
</table>

This type of procurement regulation is common to many states and state DOTs.

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 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 service 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
in superior financially and practically to low-bid. 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. Most goods may also be procured by VDOT using the VPA.

Two other acts that potentially related to the Partners In Motion procurement were also available to VDOT – the Design Build Act and the Public/Private Transportation Act (PPTA). The Design/Build Act is an amendment to the VPA, outlining additional requirements for Design/Build projects. The Design/Build Act was primarily to address “vertical” construction projects such as buildings. The PPTA was developed to encourage private sector investment in transportation infrastructure in Virginia.

In addition to the existing legislation, two other options were available to VDOT to procure the Partners in Motion project. VDOT could have written new legislation specifically addressing the project, or they could have attached a clause to the Appropriations Act for that year.

In summary, the following procurement options were available to VDOT for the Partners In Motion Project:

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

Selection Of A Procurement Process For Partners In Motion

The Partners In Motion project was a unique undertaking for VDOT. It involves extensive ITS System, it is a public-private partnership, and the project involves revenue sharing. Thus, it was difficult to determine the appropriate, legal and best procurement method. The standard contracts created for more typical VDOT projects did not address sharing of risks and resources that are inherent in a public-private partnership.

Defining the Partners In Motion Project As Non-Professional Services. It was difficult to define the project in VPA terms. Should the work be defined as professional services? There certainly was a requirement for professional engineers to be involved in the work. 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? The contract included a large
amount of systems and field devices to be installed, but most of these would be the property of the contractor. If the private contractor left the partnership, VDOT would retain these “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. VDOT senior management agreed that the classification should be based on 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 actually procuring anything – nothing would be owned or operated by VDOT at the end of the 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 – a non-professional service.

**Using the VPA to Procure Partners In Motion.** VDOT next had to determine if this project should be procured via the VPA, the PPTA, via new legislation or a rider on the Appropriations Act. The PPTA was developed principally to allow 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 Partners In Motion project.

The option of pursuing a design/build contract was rejected early. The Act requires that VDOT develop procedures to allow design/build to be used. These procedures had not yet been developed. In addition, although design/build would be appropriate for a portion of the work, the outcome of the Partners In Motion project goes beyond the provision of infrastructure, which is the intent of the Design/Build Act.

The legislative paths were also rejected. The Attorney General indicated that these would have been the preferred processes, because the legislature would have to clearly state their intent to use a particular contracting vehicle to allow public-private partnerships for ITS. However, timing constrained VDOT’s ability to develop and get political support for legislation. It was simply too late in the legislative session.

The VPA included several perceived and actual barriers to its use for the Partners In Motion project. Some of the barriers were due to the VPA itself, and others were because the VPA did not exempt procurements for other State laws. These issues were:

- Limitations on dispute resolution mechanisms which narrow the remedies available to private sector partners.
- 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 aspects of the agreement, when, in fact, partnerships require that risks and rewards be shared. Requirements for strict and explicit definitions of the scope of services to be provided.

These issues were ultimately accommodated, and VDOT was able to procure the unique partnership project using the existing VPA.

**Contractual Issues**

Issues remain that are impediments to procurement of ITS via public/private partnerships. The Partners In Motion contract dealt with many of the issues, and left others for future resolution. The following table summarizes the key issues and their disposition.
<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Disposition in Partners In Motion Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intellectual Property Rights</td>
<td>relies on specially designed software to integrate and operate the system. Under Virginia law, contractors developing software on projects that include State fund 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 own purposes. This language implies that software can be distributed by the public sector to any party if it meets their purposes. The private sector is concerned that, even if only private sector moneys are used to develop software in the partnership, a license must be granted to the public. If the software rights are in the public domain, this might discourage firms from competing for ITS 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 that issue.</td>
<td>contract was structured to clearly indicate 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.</td>
</tr>
<tr>
<td>Disputes on Dispute Resolution Mechanisms</td>
<td>because Virginia is a “Right to Work” state, binding arbitration is not allowed under the VPA.</td>
<td>contract complies with the VPA and binding arbitration is not allowed.</td>
</tr>
<tr>
<td>Position of Surplus Property</td>
<td>The laws require that property purchased using public funds be owned by the State. This can be an issue in ITS partnerships 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 equipment itself.</td>
<td>Partners In Motion project will include the installation of several pieces of equipment. The partners will evaluate the ownership issues near the end of the contract. One possible outcome is that all equipment and the information service itself will become the property of the private partner at the end of the agreement. Specifically, the contract states: “The disposition of all property shall be at the discretion of the Manager, and such determination shall be in accordance with applicable state and Federal guidelines. The ownership of all property purchased with public funds will be assumed by the Manager of their Contract. No public funds will be used to purchase equipment.”</td>
</tr>
<tr>
<td>Issue</td>
<td>Description</td>
<td>Disposition in Partners In Motion Contract</td>
</tr>
<tr>
<td>-------</td>
<td>-------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Risk (Hold Harmless Clause)</td>
<td>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.</td>
<td>The 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 contractor may be shared by the private contractor and the State, as is outlined in Virginia law.</td>
</tr>
<tr>
<td>records Open to Partner Audit</td>
<td>Though 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 (VFOIA). Even though the contractor can protect data provided for an audit, the audit reports are public information under the VFOIA. Such information may threaten the competitive position of the private partner in the market. Because this is a partnership, both the public and private partners may suffer damage from this. It would be detrimental to all partners if the private partner’s ability to make a profit is damaged.</td>
<td>The contract was not written to remedy the requirement of the VFOIA for these issues. The partners chose to take on this risk.</td>
</tr>
<tr>
<td>Repackaged Data</td>
<td>VFOIA also may affect the traveler in formation 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 be accessible with out cost via the VFOIA.</td>
<td>Written, the contract describes the parties’ intent regarding data handling: “The TIC Contractor reserves all rights to all data regardless of its source. These enhanced data may be used by the TIC Contractor except that the participating State Agencies shall retain ownership of all data. Participating State Agencies shall retain ownership of all data for this Contract.” It cannot be said whether this language will remedy the VFOIA issues, because legal challenges of this type have yet to reach the courts. VDOT believes that, because the VFOIA requires that information be provided within a few days of the request, the value of the data will be low since it is not near real-time. Thus, they do not anticipate that they will field any repackaged data requests from competitors.</td>
</tr>
<tr>
<td>Issue</td>
<td>Description</td>
<td>Disposition in Partners In Motion Contract</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Description of Private Sector Match</td>
<td>Private partners are providing matching funds. The match is in the form of services and new and previously developed software. It was difficult to assign value to the software, and also difficult to ensure that the services proposed would be provided if the project scope changed over the course of the contract.</td>
<td>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 used again in the future to provide 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 “commitments change such that the Federal match requirements cannot be met, VDOT reserves the right to terminate this Contract for convenience.”</td>
</tr>
<tr>
<td>Need for a Detailed Scope of Work</td>
<td>VPA requires that the project scope be defined.</td>
<td>Scope of services is not as detailed and specific as those in typical non-professional services contracts. Because of the nature of this 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 and “Task 1” in the scope of services in which project details will be developed. This is a process similar to developing the contract plan retail 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.</td>
</tr>
<tr>
<td>Performance Recourse</td>
<td>VDOT contracts include strong language to enforce contract completion.</td>
<td>Because the project is a partnership, it was understood that all parties had strong incentives to remain working together. If there were 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 way 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 not become 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.</td>
</tr>
</tbody>
</table>
DEVELOPING AN AGREEMENT THAT RECOGNIZES THE NATURE OF A PARTNERSHIP

Adopting 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. It was difficult to get support from the Virginia State Attorney General’s office and from VDOT Administrative Services on several elements of the contract including the scope of services and the ability for VDOT to pursue recourse if the private partner fails to live up to the agreement. They had difficulty embracing the concept that a partnership agreement includes protections for the State by its very nature. Each party has incentives to remain in the partnership – there would be no other way to accomplish the Partners in Motion project without a public-private partnership. Agreement of the Attorney General and Administrative services was desired, but not required for VDOT to proceed. VDOT upper management made the final decisions regarding contracting processes and contract language considering all input.

The Partners in Motion contract is unique at VDOT because it recognizes the nature of a partnership. For example, the public and private partners share in the revenues. In addition, the contract does not include clauses describing specific recourse if one of the partners fails to perform. If one partner does no perform, the contract ends in recognition that the partnership has failed. It is inherent in a partnership that both parties have a reason to begin a partnership and that reason is adequate for both parties to remain 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.

LESSONS LEARNED SO FAR FROM PARTNERS IN MOTION

There have been two major lessons learned to date from the Partners In Motion project. The first is that the ATIS market is changing rapidly, and VDOT may develop future agreements to recognize it. VDOT has had many discussions with other ATIS information service providers who question the need for a six-year contract term that essentially places control of the traveler information in one party’s hands. Some of the private sector believe that this will reduce competition, resulting in a weaker ATIS market. In addition, the contractor for the project was originally envisioned as a provider of repackaged information to consumer information providers only. It was not considered that they might also wish to become consumer information providers themselves. This also raises questions about the nature of the agreement and whether the agreement as it is structured will stimulate or dampen competition in the ATIS industry.

Second, VDOT has learned that institutional issues are difficult for both the private and public sectors to resolve. However, the public sector institutional issues may be better resolved via public sector processes. The public sector partners in the Partners In Motion agreed to cooperate with the contractor to provide traveler information data. However, the nature of that cooperation was not set out in advance. The
contractor had to negotiate with each of the 26 public partners individually to access their data (if any was available). This process was time-consuming and was difficult for the private sector partner to resolve. It seems that some of the public partners in the project find it difficult to adopt the partnership concept, and tend to negotiate with the private contractor as they would in a typical procurement.

**VDOT APPLIES THE PARTNERSHIP CONCEPTS TO OTHER PARTNERSHIP PROCUREMENTS**

**Statewide Resource Sharing.** VDOT is one of the few states that have solicited proposals for a Statewide resource sharing contract. The state would provide access to their right-of-way for a private sector partner to install telecommunications infrastructure. The State would be provided with access to a portion of the telecommunications capacity, and the private sector would maintain the system. The resource sharing agreement is, in principal, the same as any other public-private partnership, and VDOT will use their existing contracting mechanisms for the procurement.

**Statewide and Hampton Roads ATIS.** VDOT will be actively looking for partners for new ATIS projects. VDOT’s ATIS concept is to develop a Statewide system, with the Washington DC area being the first portion of that system. The second portion is likely to be the Hampton Roads region. Another option will be to develop the Statewide system next. A conference will be held in May 1998 to bring private sector firms together with the Hampton Roads public agencies. The purpose of the conference will be to share information, and to determine how to best structure the ATIS project to ensure a public-private partnership success.

**CONCLUSION**

VDOT was able to successfully develop a unique public-private partnership agreement because of the support of the Commissioner’s office, the FHWA, and because of the VDOT staff themselves. Staff did not rely solely on interpretations of law that were based on traditional contracts. They continued to ask what should be done to best serve the State’s citizens. VDOT staff were convinced that creating a public/private partnership for Partners In Motion project was in the public’s best interest. This conviction and the enthusiasm on individuals involved in the project helped motivate other State staff. VDOT staff were open-minded in their approach to the issues. They did not let typical methods constrain them, and explored all of the options.

Last, VDOT staff truly understand the nature of a public/private partnership, and how a partnership is different from a privatization contract. They understand the concepts of sharing resources, risks and rewards, and that both parties must be motivated to remain in the partnership throughout the life of the project. In fact, VDOT staff were sufficiently open-minded and supportive of the partnership concept that they even briefly considered whether a contract would be required at all for Partners in Motion. VDOT hopes that the current and future success of Partners in Motion and other
VDOT ITS public-private partnerships will help other agencies develop similar agreements.
Acknowledgments

The authors wish to acknowledge the staff of the Virginia Department of Transportation and the Virginia Attorney General’s office for their cooperation and assistance in developing this paper.