Institutional Issues:

Public-Private Partnerships and the Minnesota Guidestar Travlink Operational Test

Authors: Tom Buffkin
Cambridge Systematics, Inc.
150 CambridgePark Drive
Cambridge, MA 02140
(617) 354-0167 (Phone)
(617) 354-1542 (Fax)

Roanne M. Neuwirth
Cambridge Systematics, Inc.
150 CambridgePark Drive
Cambridge, MA 02140
(617) 354-0167 (Phone)
(617) 354-1542 (Fax)

Marilyn Remer
Minnesota Department of Transportation
Guidestar Program
117 University Avenue, Room 235
St. Paul, MN 55155
(612) 282-2469 (Phone)
(612) 215-0409 (Fax)
ABSTRACT

The purpose of this paper is to describe the results of a study on the institutional issues associated with the Minnesota Guidestar’s Travlink project. The Travlink project was formulated through a public/private partnership. Of particular interest in the evaluation were the institutional issues associated with that partnership process.

This paper describes the process used to evaluate the institutional issues, the results of the process, and a summary of key issues and lessons learned. The key objectives of the analysis were to assess whether the public/private partnership mechanism was the most effective implementation mechanism for a project such as Travlink, and to identify the extent to which the partnership structure facilitated the project. The analysis was based on interviews with project participants.

The paper presents the results of the interviews by key topics, including the following issues: the formulation of the partnership process; the expectations of the participants; legal issues and other issues and stumbling blocks; what participants liked most and least; how much time participants spent on the partnerships; what participants would change about the process; comparison of the public/private partnership process with the traditional Request for Proposal (RFP) process; and advice for those undertaking a public/private partnership.

In summary, the most interesting finding overall was that although all of the participants noted problems associated with public/private partnership agreements, all of the private partners, and several of the public participants have been involved in at least one, if not several, partnership agreements since Travlink.

Many of the participants, both public and private, expected different (and better) working relationships to develop from the public/private partnership process. Several of the participants expected that the partnership process would allow them to explore new technologies and bring them to a test market more quickly, and with less risk than a traditional approach. The partnership would also allow the public sector to explore these technologies while leveraging public funds.

The major stumbling blocks to carrying out the agreements were legal issues. The key issues of concern included proprietary issues and property rights; copyright and ownership; license agreements; confidentiality; and ability to carry out partnership agreements under Minnesota enabling legislation. The key non-legal stumbling blocks identified included the turnover of key staff mid-way through the project; internal staff resources and competition; obtaining senior level buy-in; and lack of a single project manager.

Among the positive benefits of the partnership approach were: creativity and flexibility; the ability to share information and resources; the ability to share risks; the ability to test leading-edge technology; and the funding potential associated with private sector contributions. Among the negative impacts were: the inability to control private vendors and enforce the agreement; the lack of profit for private vendors; the difficulties associated with team decision making; and the length of time involved in developing and executing the agreements.
INTRODUCTION

Purpose

The purpose of this paper is to describe the results of a study on the institutional issues associated with the Minnesota Guidestar’s Travlink project operational test evaluation. The Travlink project was formulated through a public/private partnership. Of particular interest in the evaluation were the institutional issues associated with such a partnership, and lessons which could be learned from the process. This paper describes the process used to evaluate the institutional issues, the results of the process, and a summary of key issues and lessons learned in undertaking a public/private partnership for the interest of developing an ITS operational test such as the Travlink project.

Project Background

The Travlink project is part of the FTA’s Advanced Public Transportation Systems (APTS) Program, established under the umbrella of the Minnesota Department of Transportation (MnDOT) Guidestar program. The objective of Travlink is to operationally test and evaluate an Automatic Vehicle Location (AVL) Computer Aided Dispatch (CAD) and Automatic Vehicle Identification (AVI) Systems on Metropolitan Council Transit Operations (MCTO) buses, and distribute real-time transit and traffic information to travelers using Advanced Traveler Information Systems (ATIS).

An important aspect of the Travlink project is that it was the first of a series of ITS projects to actually complete public/private partnership agreements and carry out the project, as opposed to the traditional Request for Proposal (RFP) process. Since the successful completion of Travlink’s partnership agreements, a number of other projects in Minnesota have successfully formed public/private partnership agreements. As the first project of this kind, Travlink represented an important testing ground for the use of public/private partnerships to carry out operational test projects for ITS-related technology.

Key Objectives

Key objectives of this analysis were to assess whether the public/private partnership mechanism has been the most effective implementation method for a project such as Travlink and to identify the extent to which the structure of the partnership has facilitated the project. It was expected that organizations forming similar public/private partnership agreements could benefit from the lessons learned from the Travlink project.

The evaluation of institutional and legal issues associated with Travlink involved the following activities:

- Identifying institutional and legal issues and assessing their impact.
- Estimating costs and time spent to create the public/private partnership.
• Assessing the cost/time benefits of public/private partnerships, relative to other forms of project formation, such as the RFP process.

• Assessing participants’ attitudes towards the public/private partnership.

• Identifying institutional and legal barriers and lessons learned.

METHODOLOGY

The analysis was based on interviews with project participants. The purpose of the interviews was to gather information on how the public/private partnership process began, what steps were taken in its formation, what issues were raised, what expectations there were for the process, and the participants’ view of public/private partnerships.

Interviews were conducted with all of the public and private project participants. An attempt was made to interview people serving in different functions at each of the participating agencies and companies, including legal staff, administrative staff, and technical staff. In some cases where there had been staff turnover, former participants were also interviewed.

Public participants include: Minnesota Guidestar; Minnesota Attorney General’s Office; Mn/DOT Finance and Administration Division; FHWA; Metropolitan Council; Metropolitan Council Transit Operations. The private partners for the project are: Westinghouse/TMS; U.S. West; 3M and Rennix; Motorola; and Etak. The firm of Stgar-Roscoe-Fausch provides project coordination services.

The interviews were conducted in person. In addition to the interviews, copies of documents, files and other information were requested of project participants. These documents will be assembled in a library which will be maintained at Mn/DOT.

RESULTS

As described above, the purpose of the interviews was to gather information on how the public/private partnership process began, what steps were taken in its formation, what issues were raised, what expectations there were for the process, and the participants’ view of public/private partnerships. The following summarizes the findings of the interviews in terms of these issues.

The Formulation of the Process

The Travlink public/private partnership began as informal discussions and meetings between Guidestar staff and potential private partners, including Westinghouse, U.S. WEST, and 3M/Rennix. Motorola was also invited to participate because they were one of Westinghouse’s preferred vendors. Other public partners included the Metropolitan Council (MC), Metropolitan Council Transit Operations
(MCTO), and the Federal Highway Administration (FHWA). There were a number of discussions and meetings initially to scope out the project and plan the partnership. The partnership agreements were then developed individually between Mn/DOT and the private partners through negotiation.

Mn/DOT wanted to develop the project as a public/private partnership for several reasons. First, they were required to do so by FHWA in their solicitation process. The application was in part successful because it contained informal letters of participation and pledges from several partners. Further, the partnerships would allow cost sharing that would leverage public dollars. It was also thought that due to their technology expertise, the private partners could implement the project more rapidly, since it would not be necessary for Mn/DOT to develop the technical expertise in-house.

One point made by Mn/DOT legal staff, and reiterated by several others, was that the discussions and negotiations began before Mn/DOT staff had determined whether or not they could legally commit to this type of relationship, given Minnesota laws regarding the competitive process. This caused some delay and difficulty in moving the partnerships forward. In one case, because of the laws requiring fair competition, one of the private partners had to respond to an RFP after they had already been accepted as a partner.

Participants’ Expectations

There were a range of expectations about participating in a public/private partnership for the Travlink project.

Public sector participants expected that it would provide an opportunity for cost sharing that would leverage public dollars, allowing Mn/DOT funds to go further and fund more projects. Public participants also expected that a partnership arrangement would result in a more rapid implementation of the APTS project by bringing private sector technology expertise to the table without the need for the public agency to develop that expertise in-house. One participant felt that the partnership format afforded a unique opportunity to work with vendors from a different perspective. Another public participant hoped that the partnership process created in Travlink would develop into a viable process that could be used in the future.

Public participants perceived a number of risks associated with the partnership approach. First, without an open solicitation, there was no way of insuring that costs were competitive. In addition, there was the possibility that better partners could have been found. Finally, there were potential problems associated with getting several organizations with very different operating procedures and styles to work together effectively.

Several private sector participants entered into the partnership process with the expectation that it would help establish a closer working relationship between the private partner and Mn/DOT. Many participants went further to say they anticipated that operating the project as a partnership would result in a less adversarial working relationship than that experienced with typical government contracts. Another private partner expected that the partnership would allow them to help develop the project, and have common goals with the public entity carrying out the project. One private vendor hoped that the public/private partnership would give them a chance to work with several different partners, not just on Travlink, but on various projects. Several private partners also expected that the partnership arrangement would allow them to an opportunity to try out their equipment with less risk.
Several of the private partners mentioned some negative expectations about the partnership. One expected at the outset of the project that it would be difficult to develop a business case and a risk analysis to justify the project in-house, because of the additional uncertainties caused by the “partnership process.” Another expected to encounter a lot of issues, problems, obstacles, etc., because this was a “new way of doing things.” This partner had expected that while it probably would not be easy, it would be worth the effort. One of the legal representatives was concerned about partnership agreements because they are one of the more difficult kinds of arrangements to make. Another partner expected there to be some difficulties because they have had difficulty working with government entities before.

Some comments were shared by both the public and private entities. Many felt it was a good idea to have both parties contribute and share the risk, which could happen effectively through the partnership mechanism. Those interviewed also anticipated the possibility of moving faster with a partnership approach than with the traditional approach.

In general, the participants interviewed seem to feel that their expectations had been met. Although a number of participants felt that the creation of the partnerships took too long, they also seemed to feel that the partnership arrangement provided a quicker way to bring technology to the marketplace for testing.

**Legal Issues/Stumbling Blocks**

Legal issues represented the most frequently mentioned stumbling blocks in the process of developing the partnership agreements.

**Proper Application of the Minnesota Enabling Statute**

The first legal issue to arise in the Travlink project came at the very outset of the negotiations. In the beginning of the project, Mn/DOT did not have any statutory authority to create these partnerships. Minnesota law was very specific about procurement, which required that it be based on competition and low bid. There was nothing in the existing legislation that specifically authorized the Commissioner to become involved in this type of contracting relationship. This was a problem for the Travlink project because Mn/DOT had already started negotiating with the various partners before they went through the approval process or determined whether they could legally create such partnership arrangements. However, legislation was subsequently passed that permitted the Commissioner to engage in these type of partnership contractual relationships with both public and private entities. To ensure that an element of competition was built into the partnership process, the process was ultimately designed to include the use of a Request for Private Partners (RFPP).

In Minnesota, competitive bidding is not required for purchases of unique equipment, hardware or software, if it can be shown that there is no other provider of those goods in question. A number of the partnerships developed in the Travlink project came under this category, and those partners did not have to respond to an RFPP. One partner found out they had to respond to an RFPP after they had already participated in negotiations, which created a delay and some frustration on the part of that partner.
Audit Requirements

One of the internal policies of Mn/DOT is a requirement for a pre-award audit evaluation for consultant contracts over $50,000. The purpose of the audit is to review overhead factors and accounting policies, to ensure that the costs to be paid from state and federal funds are reasonable, and to make prompt payment. Several of the private sector partners did not like being audited and having all of their information subject to scrutiny. They found this requirement difficult to agree to in the course of the negotiations.

Proprietary Issues/Intellectual Property Rights

Conflicts arose between the private sector’s desire and expectation to own the rights to their ideas, and the government’s desire and expectation to own the rights to work they have funded. A specific issue came up with several partners with regards to releasing the computer codes for their products, which are proprietary. Mn/DOT resolved this issue by taking the position that it would not insist on sharing intellectual property rights other than to preserve unto itself and to the federal government the unconditional license to use the product. (See below discussion of copyright).

Copyright and Ownership of Documents

The issues associated with intellectual property rights are closely linked to copyright issues and ownership of documents. The nature of the copyright issues varied depending on the cost participation and individual interests of the private sector partner. The following describes the nature of the solution developed in the Travlink project. When the agreements involve the purchase or lease of equipment, hardware or software developed by the private partner prior to or during the project with its own funding, Mn/DOT only retains the rights of ownership and copyright to any reports, studies or other materials and documents produced by Mn/DOT as part of the test. A different situation exists if the private sector partner develops technology as a part of the project and both public and private sector funds are used in the development stage. Typically, the state and the federal government reserve a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use and authorize others to use for federal or state government purposes the copyright in any works developed under the agreement, and any rights of copyright to which Mn/DOT purchases ownership. FHWA usually retains these rights, with the understanding that it is FHWA policy to allow non-Federal partners to retain all intellectual property rights developed under the agreement.

Federal Acquisition Regulations

One private partner reported that the Federal Acquisition Regulations (FARs) which are used in federal government contracts are lengthy and complex. This was a problem for them because they normally do not use these regulations and do not have the time or knowledge to analyze or review them. They resolved this issue by asking another division of theirs in another state, one which uses the FARs quite regularly, how they addressed the issue.

Liability and Indemnification Issues

Both private and public sector partners raised questions regarding liability concerns. The issues included who would be liable if something happened on the equipment, and which state’s law would gov-
ern in the case of liability of third parties. The question of liability included both product liability and personal liability.

The resolution of these issues in the contract language differed somewhat, depending on the nature of the relationship between Mn/DOT and the private partner. In the case where the partnership was for consultant services primarily, generally the contract clause would require the contractor to indemnify and hold Mn/DOT harmless from any and all claims or causes of action arising from the contractor’s performance of its contract obligations. In cases where the partnership was for technological testing, or where the greater percentage of development costs was to be borne by the private partner, the contract would contain a provision that the liability of the parties will be determined according to the respective acts or omissions of the parties and in accordance with applicable laws.

Another instance with potential disagreement occurred in a situation if a private sector partner requested that Mn/DOT indemnify and hold that partner harmless for any claims arising out of the obligations in the partnership agreement. Standard license agreements often contain a provision of this nature. This is problematic because Mn/DOT cannot agree to obligations to pay unknown future costs or expenses, because it has no authority to pay funds which have no appropriation. Therefore Mn/DOT could not agree to that clause.

Confidentiality and Restrictions under the Minnesota Data Practices Act

Another difficult area for both public and private partners is the issue of confidentiality. The Minnesota Data Practices Act requires that the public have access to “public” data. Because of this act, once a company has entered into the public arena, if the government has access to that data, there is a mechanism that allows the public to gain access to that data as public information. Private sector partners, particularly in the field of ITS, which is an emerging and highly competitive technology area, want to protect their “trade secrets,” including source code and data. To address this, the state, under certain circumstances, can classify information as non-public data, which allows Mn/DOT to protect data which has commercial value. However, the potential exists for a challenge to that classification, which makes it difficult for Mn/DOT in its negotiations over confidentiality. To address this, Mn/DOT required from the private partners an agreement to cooperate in the defense of such a challenge.

License Agreement Language

An issue which was overlooked until late in the process for several Travlink participants is the language in many private partners’ standard software or other license agreement. There were often inconsistencies between partnership agreement provisions and license agreement clauses. It was a problem, especially for one of the partners, because they had standard language to which the state could not legally agree.

Assignment

There is language in the partnership agreements that states that neither party may assign the agreement or any of its rights or interests to any other person or entity without the prior written consent of either party. This may become an issue if a private sector partner merges with another business or sells its assets. To address this, Mn/DOT reserves the right to either terminate the agreement or enter into a contractual relationship with the new entity.
Definition of “Public/Private Partnership”

A number of participants on both the public and private sides stressed the fact that the legal term “partnership” does not actually apply to the relationships created in Travlink. The relationships described by the agreement are not legal partnerships, but rather are cooperative agreements. The agreements do not actually use the term “partnership.” It was important to clarify that no joint venture or separate legal entity was formed by the agreements.

Governing Law

An issue that came up on several occasions involved questions about which state’s law governs, Minnesota or some other state? Mn/DOT, in its negotiations, cannot waive any jurisdiction. Therefore, in the agreements, they were usually able to include the provision that Minnesota laws should apply to contracts.

Arbitration

In most areas, Mn/DOT does not agree to arbitration as a means for settling disputes. Minnesota law does not prohibit this, but as a matter of policy, Mn/DOT does not want to waive any rights to litigate disputes.

Other Issues/Stumbling Blocks

In addition to the legal stumbling blocks described above, a number of participants identified other issues which had to be resolved in the course of the negotiations.

Both the public and private participants reported that turnover and changes in key staff positions throughout the project created problems in expediting the partnership agreements and keeping the project moving forward. Mn/DOT project managers changed several times at critical points in the negotiation process, which caused delays as new personnel were brought up to speed regarding the partnership process and negotiation techniques. Staffing changes also occurred at some of the private partners. In several instances the original champion of the project within one of the private partners moved on and someone new had to pick up the ball. Other internal changes at the private partners, including the shutdown of a group and the sale of a division, also affected the partnership agreements and delayed implementation.

Personnel issues of other types were also a problem. Lack of skill in negotiation and contract development on the part of Guidestar project managers was identified by one participant as a problem. Another participant pointed out that the private sector, particularly the legal staff of the private partners, are well trained in the art of negotiation. The lack of training on the part of public participants in the private sector “negotiation language” made it difficult for the public participants to negotiate effectively.

Both public and private partners identified staff resources as an issue throughout the course of the process. There was often an internal competition for resources (both staff and financial) to help on the project. For several private partners, it was hard to justify getting internal resources because the project was relatively small. This was also an issue for the public sector.
Another internal staff issue for both the public and private partners, but particularly noted by the private partners in the Travlink project, was getting senior management level support for the project. Private partners noted that in many cases it was difficult to convince superiors that the partnership approach was not a risky way to participate in a public project. The fact that there was no model, and that no one knew how to do these partnerships, made it somewhat difficult to overcome this skepticism on the part of management.

Both public and private participants reported that a problem with the Travlink partnership was that there was not one single project manager. The partnership approach lead to management by committee, which several of those interviewed felt made the whole process more difficult. One partner referred to the difficulty of serving two masters. Another felt it resulted in a lack of direction for the project. Some of the public agencies interviewed were not comfortable with Mn/DOT leading the Travlink initiative because it is a transit project, and therefore not part of Mn/DOT’s traditional “territory.”

Another issue identified by public and private partners was the level and value of contributions to be made by the private participants. Several of those interviewed noted that many of the contributions by the private partners became “softer” as the negotiations went on. Also, Mn/DOT did not really have the ability to verify costs or the value of in-kind contributions, which made it more difficult for them to negotiate on those points. On the other hand, several private partners felt that their true contributions were not recognized, and that they were contributing far more in terms of time and resources than the amount for which they were credited.

An elemental stumbling block for a public/private partnership, one that was mentioned by both parties, was the fact that the public and private sectors the speak in different “languages.” This sometimes makes it hard for each side to understand where the other is coming from, which can slow negotiations. One public participant specifically noted a difficulty in being able to convince private partners that this was not a typical, strict commercial arrangement, and that the state was different from a commercial customer.

What Participants Liked Most

All of the participants were asked what they liked the most about the public/private partnership approach used for the Travlink project. Interestingly, despite the stumbling blocks and problems that were encountered throughout the course of the project, all of the participants liked a number of things about the partnership process. The aspects of the partnership participants liked the most include the following:

- It provided an opportunity to work with the other side (both public agencies and private operators) on a partnership basis as opposed to a contractual basis.

- The partnership arrangement provided more of a feeling of a team working together, an atmosphere of camaraderie and cooperative spirit. The partnership provided a less adversarial relationship between the two sectors. It also gives everyone a vested interest in the project, and also allowed risks to be shared by all partners. The team approach also resulted in issues being more “out on the table.”

- Using a public/private partnership for an operational test of new technology allowed team members to form relationships with and gain knowledge from the other participants. It also allowed partners to build on each other’s strengths, and leverage public dollars to test new technology.
• It provided funding advantages. Through this type of arrangement, Mn/DOT ends up having additional funds, allowing them to complete more projects.

• An element which was widely appreciated was the fact that the public/private partnership encourages more creativity than the traditional process, and provides more flexibility.

• Many partners reported that the partnership provided them with the opportunity to work with “a really good bunch of people.” Further, the partnership format helped to build trust among the partners.

• For private participants, the partnership provided a chance to test new technologies in the marketplace without the usual risk associated with new market testing.

• Conducting a test like Travlink through a partnership mechanism allowed the public sector to work more efficiently with the private sector, in terms of minimizing the time from development of the concept to application.

What Participants Liked Least

Participants were also asked about what they liked least about the public/private partnership as a process for implementing the Travlink project. The responses included the following:

• Several public sector partners did not like the risk associated with giving up control of the private partners’ activities, the type of control they typically have with a traditional RFP contractual arrangement.

• A particular manifestation of the lack of control was the inability to ensure that all of the partners kept up their end of the bargain. A number of participants described as problematic the fact that when a partner did not fulfill their promise, there was no leverage. They disliked the fact that the partnership agreement process did not provide for any consequences for non-performance.

• A number of partners, both public and private, felt that the negotiations took too long. Some also felt that the consensus nature of the partnership structure resulted in the whole process taking too long. It was also difficult to have to try and reach consensus all of the time.

• One public team member disliked the fact that the partnership agreements were bilateral, all with Mn/DOT. He felt that this structure resulted in his agency having no say in the selection of project leader or the expenditure of funds.

• Several private partners were disappointed by the feeling that their contributions to the projects were not valued as highly as they should have been. On the other hand, some of the public partners were disappointed by not being able to secure more “hard” contributions.

• One partner disliked most the fact that all of the private partners were not treated equally, with some having to respond to an RFP to become partners, and some not having to respond to one.

• One participant felt it was impossible to know if a more traditional procurement method would have been less expensive than the public/private partnership process.
• A public partner reported that the most difficult aspect of the Travlink public/private partnership process was having to retrain new project managers when there was no formal training process set up at Mn/DOT for forming the agreements.

Time Spent by Participants

Participants were asked to determine how much time they and their staff have spent specifically on the partnership agreements, and to estimate how this time would translate into costs. We found that for the most part, participants could not estimate a cost associated with this, and therefore the results of this aspect of the analysis were more qualitative in nature than originally intended. Further, a few partners could not separate out the time they spent on the Travlink project from other partnership projects in which they were involved. The following summarizes the information which those interviewed were able to provide.

• Mn/DOT Finance and Administration – No estimate available on this individual agreement. Their staff has spent hundreds of hours on partnerships in general.

• Motorola – The project manager spent approximately 40 hours, legal staff approximately 30 hours on the agreement.

• SRF – The project manager estimated their staff spent in total on the agreements approximately two staff months, or $24,000.

• Rennix – The project manager and staff spent several hours in total.

• Westinghouse – The project manager and staff spent approximately four person-months on the agreement.

• Mn/DOT Project Manager – The Mn/DOT project manager who participated in a large portion of the agreement negotiations spent approximately 50 percent of his time during the period of time he was working on the agreements.

• ETAK – The ETAK attorney spent between 40 and 50 hours on the agreement, and the sales and marketing manager spent approximately 20-30 hours.

• FHWA – Local project staff spent about one-person day per month on the agreements at the time of the negotiations.

The other participants interviewed could provide no estimate.

What Participants Would Change

The Travlink partners were asked what changes they would make in the process to form public/private partnership agreements. The following list highlights the types of issues or steps the various partners felt should be changed to make the public/private partnership process work more efficiently:
• The project manager/creator needs to have a clear understanding of the partnership’s goals and objectives before it starts.

• There should be a systems integrator, who also acts as a prime. The partnership should be created with one vendor, and subcontractors used for the additional vendors.

• The partnership should be formulated as a multi-lateral partnership.

• The stakeholder, or the one who will implement the technology, should also be the project manager.

• The potential stumbling blocks or issues should be brought out up front in the process.

• More preliminary engineering should be carried out up front, but care must be taken not to go too far and over-define the project.

• The public sector project manager should be trained in negotiation.

• The procurement regulations that are going to apply to the partnership agreements should be clarified in more detail.

• The RFPP should require a more specific definition of the proposed cost-sharing, identifying the actual dollar value of contributions of both materials and staff time. Make the contributions a little “harder.”

• There should be mandatory time limits for completion of negotiations.

• There should be the normal performance penalties or incentives related to contractor performance.

**Comparison of the Public/Private Partnership Process with the Traditional RFP Process**

In order to gather more information on whether the public/private partnership process is a viable alternative to the traditional RFP process, the participants were asked to compare the two processes.

Several of the public participants felt that it is much easier to control the quality of the work done by the vendors using a traditional RFP, because then there is a mechanism to hold the private partners accountable for what they agreed to do. In the traditional contractor relationship, the public sector does not have to try to compensate for the partners if they are under-resourced or just not doing their job.

Both public and private sector participants mentioned that the traditional RFP process takes less negotiating, less “being nice,” to carry out the project. It was also noted that the public/private partnership process is less adversarial than the traditional process.

Several noted that the traditional RFP process is a little easier because everyone is familiar with it, and many people have done it before. The partnerships take longer than the traditional RFP process because of this.
One partner noted that in theory, the partnership agreement offers the opportunity to move faster than the traditional approach, because it allows the team to bypass many of the preliminary technical learning and development steps by combining the talents of all parties. However, in practice it has not been totally developed to this point. By the same token, several interviewees noted that the partnerships saved Mn/DOT a lot of work because Mn/DOT staff did not have to learn all about the technologies and the possibilities before putting out the project. They did not have to write lengthy specifications, or get up to speed on the technologies as they would have to write a traditional RFP, which includes much more detail on what is to be required than a partnership approach. This aspect of partnership agreements was also mentioned as allowing more creativity than the traditional RFP process.

One partner felt that in the partnership process there seemed to be more of a lack of direction than in a traditional RFP, and that it made it more difficult to work as decisions are made by consensus.

For one partner, it was a traditional RFP process, and he saw no difference.

Now, all of the agreements that Mn/DOT handles are done with RFPPs, so the two processes are more similar. The RFPP (Request for Private Partners) is a hybrid of the traditional RFP and a totally sole source partnership, trying to combine the better elements of both approaches.

One private partner compared the two processes in this way: convenience, about the same; time requirements, about the same; ease, about the same; preparation costs, the costs of preparing a partnership agreement appear to be less than a similarly sized RFP.

**Impacts on Travlink**

The Travlink project participants were asked for their views on how using the public/private partnership affected the Travlink project, both positively and negatively. The following summarizes the impacts described by the participants.

**Positive Impacts**

- Many of the participants felt that the partnership approach promoted teamwork and the creation of good working relationships. One participant noted that people treat others better when they are on equal footing. Another noted that the partnership breeds trust among the partners. The team approach was also credited with leading to a more coordinated result.

- The public/private partnership resulted in “some really good ideas, ” with the partnership format allowing partners to do things that they thought they could not do.

- The public sector described the positive impact of funding which is created by a public/private partnership.

- One private partner felt that the bi-lateral nature of the partnership made it easier to come to an agreement and get started on the project.

- Several participants described the positive impact the partnership approach had in terms of allowing a vendor to test products or services they want to bring to the market, without bearing the full risk.
Both public and private partners felt that the partnership also allowed for the opportunity to be labeled as a developer of leading edge technologies, something they find desirable.

- Another positive impact associated with the partnership is that it provided room for creating new initiatives. It also permitted more flexibility, such as in scheduling, and the change-order process.
- The partnership approach was also credited with creating a shared responsibility for the project’s success, which one partner felt resulted in commitment on both sides.

**Negative Impacts**

- Several public participants felt that a negative impact of the partnership format on the project was that it does not provide the ability to ensure performance.
- The lack of control prompted one participant to feel that the partnership approach caused him fear that it could fail, and jeopardize the whole ITS program.
- Several private partners feel that the public/private partnership made it harder to justify their involvement in the project to upper level management.
- Several of those interviewed felt that the partnership agreements took too long.

**Advice for Undertaking a Public/Private Partnership Agreement**

Finally, in the interests of using the Travlink experience as a learning tool for others who may wish to try the same approach, participants were asked what advice they would give to someone who was going to undertake such an agreement for the first time.

- Participants should be aware that the public/private partnership process is going to take some time.
- It is important to define expectations of the project and responsibilities of the partners right from the beginning, in order to have a clear and positive outcome.
- Participants need to be proactive and committed to the process in order for it to be successful.
- Participants on both sides of a public/private partnership need to be sensitive to the fact that the other sector operates differently, and what is a problem for one side is not a problem for the other.
- It is very important to involve all parties on both sides at the outset of the project, and require them to designate a project manager. Further, it is critical to have project managers who can handle complex issues and situations, and who have strong negotiation skills. Participation and commitment from whoever is going to implement and/or receive the technology is critical.
- Several of the Travlink participants feel that it is very important to use a systems integrator in an operational test project such as Travlink.
- It is extremely important to have management support and senior level buy-in at each of the partners.
• Several of the private partners stressed the fact that potential private vendors need to realize that they will have to put up “real dollars” to become involved. In addition, they will have to put in a lot more in the form of soft contributions than they initially think. Finally, they need to be prepared to give up some of their intellectual property to participate in a partnership.

• It was also recommended that participants in a partnership develop a contract or partnership procedures manual so that new employees at their agency or company do not have to “reinvent the wheel” each time there is staff turnover.

• Prospective participants in a public/private partnership should do an analysis of their state’s laws to determine whether or not they can do what they want to do, prior to becoming involved in partnership negotiations.

**SUMMARY AND CONCLUSIONS**

The most interesting finding overall was that although all of the participants noted problems associated with the Travlink public/private partnership agreements, all of the private partners, and several of the public participants have been involved in at least one, if not several, partnership agreements since Travlink. For the most part, for the participants of Travlink, the benefits of conducting an operational test for new technology using a public/private partnership appear to outweigh the negative aspects of the process.

Many of the participants, both public and private, expected different (and better) working relationships to develop from the public/private partnership process. The theme of working relationships emerged throughout the interviews. One of the largest benefits of the process appears to have been to create good working relationships with the various parties. Some felt they learned from the other side, others referred to a build up of trust. Several people mentioned that they enjoyed working in a non-adversarial atmosphere, and that the people involved were really good to work with.

Several of the participants expected that the partnership process would allow them to explore new technologies and bring them to a test market more quickly, and with less risk than a traditional approach. This expectation, too, appears to have been met, based on the interviews. This was considered to be one of the benefits from the Travlink project. The project also allowed the public sector to explore these technologies while leveraging public funds, allowing more projects to be undertaken by Mn/DOT.

A number of the private partners had some expectations concerning the difficulties that would be involved in a public/private partnership, including difficulties in justifying it in-house, legal stumbling blocks, and time delays because of the fact that this was a new process. These issues proved to be the experience of the participants, both on the public and private side. The two largest problems identified by the participants were the length of time the project took, and the legal issues which contributed to the delay. At the same time, a number of those participants also said that much of the delay and the skepticism was caused by the fact that the partnership was a new process, and everyone learned a lot by doing it for the first time.

The major stumbling blocks to carrying out the agreements were legal issues. The key issues of concern for both sides included proprietary issues and property rights; copyright and ownership; license agreements; confidentiality; and ability to carry out partnership agreements under Minnesota enabling legislation. All of the issues were resolved. The resolutions included developing an RFPP (Request for
Private Partners) process to retain competition and ope bidding; development of legislation to permit partnership agreements; and negotiations for both parties to develop mutually acceptable language on many of the issues.

The key non-legal stumbling blocks identified by the participants included the turnover of key staff mid-way through the project; internal staff resources and competition; obtaining senior level buy-in; and the fact that there was not one single project manager. Most of the participants on both the public and private side mentioned these as problems, and they were not able to find a simple resolution to most of these for Travlink.

The interviews also revealed a series of benefits and disbenefits from using a partnership approach to the Travlink project. Among the positive benefits were: the creativity and flexibility; the ability to share information and resources; ability to share risks; the ability to test leading-edge technology; and the funding potential associated with private sector contributions. Among the negative impacts were: the inability to control the private vendors and enforce their end of the agreement; the lack of profit for the private vendors; the difficulties associated with team decision making; and the length of time involved in developing and executing the agreements.

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