

The Similarities and Differences

Between Infrastructure and Transit-Oriented Development (TOD) P3s

When developing public infrastructure or developing real estate around transportation facilities or in redevelopment districts, policymakers, public agency practitioners, and private developers often realize

these through public-private partnerships (P3s), agreements that take advantage of the strengths and risk-bearing capabilities of public and private parties. Some define each very differently, while others blend the definitions. Making these clear and comparing and contrasting these P3 types can help all parties involved in P3s understand how to best use these tools and deliver critical projects.

In the first of three articles, this article explores the differences between design-build-finance-operate-maintain (DBFOM) or “infrastructure P3s” and master development agreement (MDA) P3s or “transit-oriented development (TOD) P3s”, respectively. By defining these P3 types, newcomers can obtain a solid foundation to the P3 field. And experienced practitioners may gain from thinking about the nuances in utilizing these approaches. In later articles, we explore how these P3s compare in terms of risk allocation, competition, and flexibility, and how they can learn from one another.

This article is based on the paper “Comparing and Contrasting Design-Build-Finance-Operate-Maintain (DBFOM) and Master Development Agreement (MDA) Public-Private Partnerships (P3)” (<https://lnkd.in/d/H8UTRvk>), written by Sasha Page, Christine Shepherd, Marcel Ham, and Saunders Ruffin in conjunction with the Build America Center, in October 2024.

¹ TOD P3s are also known as “real estate P3s.”

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Below, we have distilled each P3 type into its most standard or “archetypical” form:

- In an archetypical infrastructure P3, the private partner takes on many responsibilities and risks throughout the infrastructure project life cycle. In return, it can either collect user revenues or receive performance-based payments from the public agency (also known as availability payments). Infrastructure P3s are used in transportation, energy, water, social, and technology projects.
- In an archetypical TOD P3, the private partner is often responsible for preparing a plan or a masterplan to develop single or multiple properties (a master development) and often self-performs on some or all land parcels, developing commercial or residential real estate, as well as public spaces, public infrastructure and government facilities. Sometimes, these arrangements are labeled “master development agreements” and not necessarily P3s.

Here are some examples:

HOWARD COUNTY COURTHOUSE, INFRASTRUCTURE P3 (PHOTO BELOW)

Howard County, MD utilized an infrastructure P3 approach to realize a new 238,000 square foot courthouse, in which a private partner, selected through a two-step procurement process, designed, built, and is now operating and maintaining the facility for 30 years as shown in the photo (photo credit: Edgemoor Infrastructure & Real Estate).³ Financing was split between public and private parties, combining attractively-priced public financing with more risk-taking private financing. The private partner is being compensated with milestone and availability payments.



DENVER UNION STATION, TOD P3 (PHOTO ABOVE)

Denver public agencies turned a decommissioned railyard property around, into a vibrant, mixed-use area.⁴ In 2005, the Denver Regional Transit District RTD, the regional transit authority, launched a two-step procurement to select a master developer to implement that transformation. Because of the indicative nature of the project, a “hard bid” price was not appropriate. Instead, the preferred bidder, Union Station Neighborhood Company, was selected based on qualifications and set to work creating a technically and financially feasible plan. The master developer redesigned the previous master plan; assembled a public finance package of \$200 million of local, state, federal, and private developer generated funds and \$300 million of Federal loans, including Transportation Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Finance (RRIF) loans ; tendered the construction of the infrastructure to a design and construction team via a design-build approach; purchased and developed six on-site parcels; and shepherded the project through community engagement and the entitlement process. Completed in 2014 as shown in the photo on the next page (photo credit: RTD Denver), the project included commuter rail, light rail, and regional bus facilities maintained and operated by the local transit agency, and 10 acres of urban plazas and open space. It is surrounded

³ See: <https://rebelgroup.com/en/projects/howard-county-courthouse/>

⁴ See: <https://www.rtd-denver.com/about-rtd/projects/denver-union-station>

⁵ See: <https://www.transportation.gov/buildamerica/financing>

While both P3 arrangements are long-term agreements between a public and private entity in which the private party bears significant risk and management responsibility, and remuneration is linked to performance of the assets, there are important differences. The table below summarizes these differences.

CHARACTERISTIC	DEFINITION	INFRA-STRUCTURE P3	TOD P3
DELIVERABLE	The kind of asset(s) the project typically delivers	Public infrastructure (e.g., highway, bridge, tunnel)	Private mixed-use commercial real estate development with public improvements
NUMBER OF ASSETS/USES	The number of assets the project delivers or the uses by which it is characterized	Usually one (like a bridge or a school building)	Often more than one (like housing, retail, and or public functions)
INITIAL PROJECT SCOPE	Setting of project goals, roles, and responsibilities of each party at the point of financial and commercial close	Fully defined	Defined at a high level, but often flexible enough to respond to market
PROJECT PHASING	The typical stages of a project	One phase	One or more phases
BIDDER SELECTION	The criteria the procuring agency predominantly uses to select a preferred bidder	Price and technical approach	Qualifications, technical approach, and potentially price
PROPOSAL COMMITMENTS	The components of a proposal the private bidder pledges to execute at the point of proposal submission	Project cost, financing, and completion date	Developer cost, sometimes a first phase of a master development may include fully committed financing
ESTABLISHMENT OF CONTRACT TERMS	The point at which most contract terms, including technical program, financial compensation, and other terms, are decided	Before selection of the preferred bidder	Post-bidder selection and over the course of project implementation
PROCUREMENT OF PROJECT COMPONENTS POST-AWARD	The likelihood of procuring a complementary project asset after financial and commercial close	Complicated	Possible and often planned for

In infrastructure P3s, projects tend to have clearly defined scopes focused on one structure or use, such as a toll road or a public building. Sometimes, the infrastructure project may also include less material bike lanes or public parks. If there are future phases, they are often bid out separately, as in the development of managed lanes in northern Virginia, which were mostly a series of separate procurements. In TOD P3s, there may be a planning document guiding the project(s), but that may be revised by the selected developer. These projects may include one or more phases, often procured at one time.

In infrastructure P3s, the public agency usually requires a “hard bid.” The proposer’s technical and price proposals need to be clearly stated, the former often in extensive detail. Proposals are evaluated according to a rigorous point system. On the other hand, TOD P3s vary more, often with an “indicative” price bid based on market parameters and entitlement process outcomes (although sometimes that also may have a hard price bid for the value of the land). In TOD P3s, public agencies may choose developers primarily for their development experience or vision, with project scope and compensation terms negotiated at a later time. In those cases, appraisals and/or other benchmarks are used to ensure that the public agency is receiving a market value for the property that they sell or lease. This aspect of the TOD P3s gets more complicated when public infrastructure is involved, something we will delve into in later articles.

Correspondingly, infrastructure P3 contract terms are set in most material ways before the preferred bidder has been selected, whereas TOD P3 terms generally allow for greater flexibility. For example, if the real estate market dips, making a second phase infeasible, the contract terms may allow for a delay in those phases or even a chance to alter the master plan post-award, something that is more difficult in an infrastructure P3 (though not impossible).

Hopefully, this definitional discussion is helpful for those working in these spaces, since the definition of a P3 can vary a lot. Infrastructure P3s tend to be about single assets that can include both civil infrastructure, like bridges or social ones, like courthouses. TOD P3s are focused on the development of housing, offices, retail and other private real estate. However, they may also include social infrastructure, such as public offices or associated with infrastructure like the Denver Union Station example, which makes them more complicated. The next two articles will further delve into these differences.



Questions, comments,
or new ideas?

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