

The benefits of public procurement: A case study of Whistler's wastewater treatment plant

*Prepared on behalf of the Canadian Union of Public Employees
By: Robin Jane Roff, PhD*

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The Resort Municipality of Whistler boasts one of Canada's most efficient and environmentally-sustainable wastewater treatment facilities. In 2004, after over 30 years of operation, upgrades to the facility were necessary. British Columbia policy requires that municipal projects receiving over \$50 million in provincial funding consider P3 options, including private financing. Despite having rejected the option of a public-private partnership in 2001, the R.M.O.W. assembled a "Blue Ribbon Panel" in August 2004 to compare the cost of the standard public sector model with that of a P3. Shortly thereafter, Whistler council announced its plan to proceed with a P3.

The decision sparked overwhelming public opposition from residents, members of the Canadian Union of Public Employees (CUPE), and environmentalists, who came together under the auspices of Whistler Water Watch (WWW). Through WWW, councilors and the public accessed crucial documents indicating the P3 option:

- Would not save the R.M.O.W. money over the 20-year contract.
To achieve the promised savings, the P3 proposal omitted necessary elements to reduce odour and maintain infrastructure, cut the labour force from 10 to four, and relied on unrealistic discount rates;
- Exposed the R.M.O.W. to significant environmental, political and financial risk.
A major cost saving measure in the P3 involved trucking sewage waste 60 km south to Squamish through numerous ecologically-sensitive watersheds. In the event of a spill, the R.M.O.W. would have remained accountable to residents and responsible for cleanup costs;
- Eliminated environmental, administrative and financial transparency, but maintained R.M.O.W. accountability.
Under the contract, neither councilors nor the public had access to the documents required to ensure wastewater operations proceeded in a sustainable manner; and
- Jeopardized employment in the region and negatively affected worker morale and productivity.

In light of public opposition that helped bring to light the project's real social, political and environmental costs, the R.M.O.W. opted for regular public procurement in June 2006. The overall budget for the project is \$51.65 million and covers the upgrades to the wastewater treatment plant as well as construction of a new biosolids composter to replace the Squamish facility. As of February 2009, the project was on budget and ahead of schedule.

There are many benefits of keeping operations public. By pursuing traditional procurement the R.M.O.W. will be able to:

- Protect taxpayers from the inevitable cost increases resulting from later including omitted technologies and the changing climate of private finance;
- Avoid the time and costs of re-negotiating contract provisions to account for changing circumstances, such as the closure of the Squamish compost facility;
- Reduce construction time;
- Easily integrate cutting-edge technology into the design that is both environmentally sustainable and cost-saving;
- Maintain oversight of environmental and economic risks for which they would have remained accountable in a P3;
- Maintain required transparency by controlling financial and environmental data;
- Improve labour relations and worker productivity across sectors; and
- Responsibly represent the needs of residents.

It is important to note that despite these benefits, the process of considering the P3 option cost the municipality \$1.37 million in legal fees, payments for staff reports and direct costs to Partnerships BC. Municipalities should consider these costs when deciding whether to examine the P3 option.

The experience of the R.M.O.W. is not unique. A mounting body of evidence indicates that public-private partnerships are not cost-effective, environmentally sustainable or socially desirable. On the contrary, history illustrates that P3s generally cost more than traditional public procurement and transfer few risks away from municipalities.

The current economic climate magnifies these trends. Private credit is increasingly difficult to secure and rates have increased approximately 100 basis points. On a typical project, the cost of private financing has risen by between 10 and 15 per cent, or by upwards of \$20 million for \$100 million in financing over 30 years. The economic and financial crisis has made P3 financing much less certain, and deals with private partners much more risky and susceptible to default.

Public bodies have not experienced the same credit volatility, and have access to the lowest available borrowing rates. In many provinces, this is facilitated by municipal financing authorities (MFAs), through which municipalities pool debt and capitalize on shared risk. In provinces without MFAs, municipalities can still create efficiencies and cost-savings by entering into public-public partnerships with other municipalities. Other available funding sources include federal/provincial infrastructure grants; public bonds (infrastructure bonds, tax-exempt bonds); subsidies to municipalities from other orders of government; creating Crown corporations to channel public investments into infrastructure.

Whistler's experience illustrates the costs of P3 models and the benefits of traditional public procurement practices. Municipalities continue to have significant opportunities to access public infrastructure funding. CUPE does not challenge the need for infrastructure upgrades, nor that municipalities may need to contract with the private sector to design and construct facilities. Rather, CUPE urges municipalities to carefully consider the additional costs, environmental risk and social harm of handing over the financing, operation and control of public services and infrastructure to private corporations.

INTRODUCTION

The Canadian Union of Public Employees (CUPE) represents more than 590,000 workers in Canada including 110,000 in British Columbia. More than half of CUPE's members work in the local government sector. CUPE has considerable experience with the funding, development and operation of public infrastructure. The union has undertaken extensive research on privatization and the impacts of contracting out and P3s on public services and facilities.

In 2006, the Resort Municipality of Whistler (R.M.O.W.) chose not to enter into a public-private partnership to upgrade and operate its wastewater treatment facility. The decision has since allowed the R.M.O.W. to respond efficiently to economic contingencies, and implement creative and sustainable technologies. It has also proven to be comparatively cost-effective. More important, in choosing to keep wastewater treatment public, councilors voted in favour of accountability, transparency, upholding their responsibility to the electorate. This report examines why the proposed P3 failed and explains why regular public procurement was a better option.

BACKGROUND

The R.M.O.W. boasts one of Canada's most efficient and environmentally-sustainable wastewater treatment facilities. In 2004, the Sierra Legal Defence Fund now known as Eco-Justice ranked Whistler's tertiary sewage treatment system second in the country for the high quality of outflow. Per-unit operating costs are also lower than the Canadian average. Yet by 2003 complaints about odour, discharges into nearby watersheds and the looming influx of Olympic visitors in 2010 made improvements to the aging facility necessary.

Whistler municipal council reviewed the possibility of privatizing the wastewater facility through a P3 in 2001, but rejected the option. However, under pressure from the BC Liberal government in 2002, the R.M.O.W. revisited the proposal and entered into consultation with Partnerships BC (PBC).

In August 2004, the R.M.O.W. assembled a "Blue Ribbon Panel" to compare a standard public sector and P3 model. The standard model, prepared by engineering firm Dayton & Knight Ltd., contracted out design and construction but maintained public financing and control of operations. The P3 model, proposed by Partnerships BC, involved contracting out the design, building, financing and operation of the upgraded facility for up to 20 years.

Despite including some very tenuous assumptions, the panel recommended the PBC plan and four days after the release of the panel's report, Whistler council announced it would proceed with a P3. The R.M.O.W. expected to award a contract in 2006 and complete the project by 2008.

The panel argued that a P3 model would cost between \$10 and \$12 million less to build, and an additional \$11 to \$17 million less over the life of the contract. The panel said the P3 would also

transfer risk to the private sector and away from the R.M.O.W., would “ensure that Whistler can meet or exceed environmental standards,” and would accelerate the construction schedule.

The Resort Municipality’s decision sparked a public outcry, and the issue simmered in the media for months. After receiving 1,848 formal opposition statements and considering the project’s real social, political and environmental costs, the R.M.O.W. voted against holding a public referendum on the P3 model and opted for regular public procurement in June 2006.

PRIVATE PROBLEMS AND PUBLIC SOLUTIONS

Why did the R.M.O.W. reject the P3 option despite PBC’s promised benefits? Because, as is common in the privatization of public services, these promises were hollow. The following summarizes the P3 proposal’s major problems, and the solutions found in the traditional public procurement model.

i. Inflating costs

The Blue Ribbon Panel argued the P3 model would cost less than regular public procurement -- saving 15 per cent in construction costs alone. However, these projected savings resulted from a flawed comparison and an unrealistic discount rate applied to the P3 model. To begin, the PBC proposal lacked elements necessary to reduce odour and maintain the wastewater treatment operation that were present in the Dayton & Knight Ltd. comparator. Costs for the P3 project would have risen once these omissions were included.

A second source of inflating costs in Whistler was the panel’s use of an unrealistic six per cent discount rate to extrapolate net present value of operating costs for 20 years. The result was an artificially high figure for the public sector option given that, at the time, inflation was roughly three per cent and the interest rate for 20-year municipal borrowing was 4.7 per cent.

Inflated discount rates are common across P3 proposals. In a study of available data on BC P3s, noted forensic accountants Ron Parks and Rosanne Terhart found that the practice of adding a few percentage points to discount projections skews comparisons in favour of privatization. However, in practice, P3 models cost substantially more over the long term – in some cases, 130 per cent more.

When the R.M.O.W. recognized the inevitability that final costs would increase after bids were tendered and approved, the municipality amended the Request for Qualifications to allow additional funding above currently available funding. The decision made some councilors wary of moving forward. Public control of wastewater operations avoids these additional costs and has allowed the R.M.O.W. to maintain the high quality of service for which it is known.

ii. Technological inflexibility

Like most P3s, the proposal involved a multi-decade contract. However, the costs reflected present technology. If the municipality wanted to implement a new process or take advantage of new equipment, it would need to amend the agreement –

incurring legal and administrative costs as well as additional charges from the private company. The resulting negotiations would also take time and delay the potential advantages of new technology.

The long contract period of a public-private partnership would also have reduced the Resort Municipality's ability to respond to unexpected events or take advantage of linkages between sectors. The need to renegotiate provisions with a third party would further raise service costs. For example, trucking biosolids to the Squamish compost facility was a major cost-cutting measure assumed by the PBC proposal. Yet in 2006, the Squamish-Lillooet Regional District closed the facility for odour and nuisance violations. Whistler is now building its own compost facility at an additional cost of between \$13 and \$15 million. If the P3 had gone ahead, the R.M.O.W. would have had to cover this cost directly and negotiate that the private firm use the facility, or re-contract with the firm to build a private facility. Either way there would have been lengthy delays.

Public-private partnerships parcel out municipal services, limiting the advantages of creative interaction between sectors. In Whistler, keeping wastewater treatment public enabled the municipality to implement a novel heat-exchange process with the Olympic Athletes' Village – an environmentally and economically sustainable option that would have been costly and difficult under a P3.

iii. Municipal risk and accountability

One of the leading arguments in favour of P3s is that they transfer risk from government to the private sector. Evidence indicates that P3s rarely transfer significant economic risk, and do not shift environmental or political risk away from public bodies. Moreover, municipalities have to pay dearly for any risk transfer. To account for potential cost increases over time, bids include a risk premium – often millions of dollars more than the expected operating costs. For example, in negotiations to renew a contract for water and wastewater operations with the city of Hamilton, American Water asked for a premium of \$26 million over the annual operating costs of \$13 million. Alternatively, private firms keep costs down by reducing service quality and delivery or reducing the labour force. Regardless, municipalities ultimately pay the costs of private sector risk.

Municipalities are politically and socially accountable for the actions of private firms, yet they have very little control over these actions. Municipal councilors cannot offload their responsibility to protect ecological systems and the safety of residents. In Hamilton, despite the municipality's best efforts, the private operator of the city's wastewater treatment plant refused to accept any liability for damages caused by a spill of 180 million litres of raw sewage into the harbour and almost 200 homes. It was left to the municipality to pay the cleanup costs.

The Whistler P3 proposal downplayed the legal liability and environmental risks. If the proposal had proceeded as planned, the municipality, not the private contractor, would have been accountable to residents throughout the Sea-to-Sky corridor for any environmental or health and safety problems. Keeping the facility public not only protects residents and the environment, but also ensures the municipality controls the operations for which it is ultimately responsible.

iv. Transparency

While municipalities are responsible for the outcomes of private infrastructure projects, they are not privy to sufficient information to protect the public interest. More often than not, key information is withheld as “confidential business information”. In their review of P3 projects, Parks and Terhart conclude that P3s suffer from a lack of transparency. In the Whistler case, it took over a year for a coalition of residents, CUPE members and environmentalists, known as Whistler Water Watch (WWW), to obtain the documents necessary to evaluate the P3 -- even though the Freedom of Information Act requires these documents be publicly available. An elected body cannot be accountable to its constituents when neither politicians nor citizens have full access to information.

One such document was a critical analysis of the P3 proposal by Dayton & Knight Ltd. The scathing review, which was delivered to the Blue Ribbon Panel before its final decision, revealed crucial financial, technical and ecological problems. Chief among them was that the PBC bid was a “shadow bid” and did not include supporting documentation or engineering analysis necessary to evaluate Whistler’s unique climatic, technical and socio-economic needs.

The report also revealed that the comparison was a classic case of comparing apples with oranges. In an effort to appear superior, the PBC bid omitted many of the technical components necessary to meet Whistler’s needs. For example, the P3 proposal did not include sufficient odour control upgrades, lacked digester improvements and trickling filter modifications, and provided no roof for the biofilter -- a requirement for moisture control and snow protection. While technical specifications were not included in the PBC bid, cost estimates also suggest that the “shadow bid” assumed a simple biofilter that was not applicable to Whistler’s extreme weather conditions or expected service loads.

In light of these glaring problems, Dayton & Knight Ltd. concluded: “Support for the DBO [P3 proposal] can be made only for political or self-serving reasons. Its selection over the current traditional approach lacks or excludes common sense, ethics, imagination, history and reason.”

Councilors should have heard these strong words, but the Dayton and Knight Ltd. report was never shared. Once the findings were made public, the R.M.O.W. took the findings seriously. In doing so, they upheld essential democratic checks and balances and ensured that the Resort Municipality had the information necessary to operate a sustainable wastewater treatment system.

v. Labour relations problems

The cost-reductions promised by privatization and public-private partnerships are often derived by changes in employment, such as wage and benefit reductions and weakening job security. As a result privatization is generally followed by lower retention rates and job satisfaction.” Even when P3 contracts maintain the salary and benefits of existing employees, nothing prevents reductions for future workers if these employees choose to work elsewhere, retire or have their contracts terminated.

The PBC proposal would have reduced staff at the wastewater plant from 10 to between two and four. Not surprisingly, after the R.M.O.W. announced its plans, employee morale plummeted, labour relations at the treatment facility deteriorated, and the workforce of nine dwindled to a skeleton crew of four – not nearly enough to maintain efficient wastewater operations .

The rapid improvement in the employment environment after P3 plans were cancelled in January 2006 highlights the benefits of keeping services public. According to Peter Davidson, the president of CUPE 2010 (the union representing Whistler municipal workers), “We had very poor morale during the process. But we’ve come full circle. We have a highly motivated crew now.”

vi. Public opposition

The majority of Canadians overwhelmingly oppose privatization of water or wastewater treatment in their municipality. Whistler residents are no exception. Whistler Water Watch challenged the possible privatization of water services, highlighting the loss of employment and the water quality problems that would likely arise if the P3 proceeded. They also questioned the sustainability and responsibility of trucking sewage biosolids through numerous ecologically-sensitive watersheds to Squamish. In addition, they challenged the lack of public accountability in the P3 option. WWW did not oppose a regular design/build model involving the private sector. Instead they focused on the significant loss of public control entailed by a 20-year agreement with a private operator.

These arguments galvanized the public. The R.M.O.W., which is renowned for its innovative environmental policy and commitment to sustainable planning, was widely criticized in the media for putting financial concerns and potential savings before the needs of residents and the environment.

BC law requires public consultation before a municipality can sign a contract longer than five years. To satisfy this requirement, council undertook an Alternative Approval Process (APP). On June 12, 2006, WWW volunteers delivered 1,848 Electorate Response Forms (ERF) to council – more than twice the number required to force a referendum on the issue. The ERFs unanimously voiced opposition.

THE OUTCOME

In June 2006, R.M.O.W. reversed its original decision on the P3 model and chose a traditional design/build process. The overall budget for the project is \$51.65 million, which covers the upgrades to the wastewater treatment plant and construction of the new composting facility. As of February 2009, the project is on-budget and ahead of schedule.

As noted, this decision allowed the R.M.O.W. to quickly and efficiently deal with the loss of the Squamish compost facility, to integrate cutting-edge technology into the design that is both environmentally sustainable and cost-saving, and to improve labour relations, productivity and worker morale.

However, even considering a P3 came at a cost. During the process, the municipality paid \$1.37 million in legal fees, costs for staff reports and fees to PBC. The legal fees alone were \$121,516 and communications to boost public confidence cost \$56,091. Municipalities should carefully consider these costs when deciding whether to pursue public-private partnerships.

FUNDING MECHANISMS

While there is no one-size-fits-all solution for Canadian communities, there are many cost-effective alternatives to P3s. In Whistler, transfers from reserves and a low-interest, 20-year loan from the BC Municipal Finance Authority (MFA) will cover the majority of capital, construction and operation costs. The loan is part of a larger financing package for large-scale and long-term infrastructure development associated with the Olympics, as well as rapid growth. The remaining portion of the budget is covered by a \$12.6 million grant from the Canada/British Columbia Infrastructure Program.

Most municipalities have access to the lowest available borrowing rates. In many provinces, this is facilitated by municipal financing authorities, through which municipalities pool debt and capitalize on shared risk. In provinces without MFAs, municipalities can still create efficiencies and cost-savings by entering into public-public partnerships, where experience and capacity of one community's utility are used to help foster the capacity of another on a not for profit-basis. These provide the advantages of public financing, maintain clear public accountability and overcome many of the financial problems faced by smaller municipalities (or even large ones) undertaking infrastructure upgrades and management on their own.

There is significant leeway for local governments to borrow additional funds. As of 2007, debt charges for Canadian local governments were extremely low, comprising only 2.6 per cent of total expenditures. Ratios are comparable across the country with the highest percentage debt payments in Quebec and the lowest in Nunavut (Table 1). While federal and provincial transfer payments have declined in recent years, so have overall debt loads.

Table 1: Local Government Debt Charges as Percentage of Total Expenditure, 2007

(Thousands \$)			
	Expenditures	Debt Charges	% Debt Charges

Canada	112,166,933	2,938,687	2.62%
Newfoundland	1,191,123	30,451	2.56%
PEI	289,233	1,486	0.51%
Nova Scotia	2,417,996	36,695	1.52%
New Brunswick	904,765	34,746	3.84%
Quebec	24,685,352	1,153,679	4.67%

Ontario	49,612,924	852,305	1.72%
Manitoba	3,565,744	106,290	2.98%
Saskatchewan	3,248,795	19,612	0.60%
Alberta	13,692,386	354,538	2.59%
British Columbia	12,121,574	346,257	2.86%
Yukon	71,655	473	0.66%
NWT	210,114	1,467	0.70%

Nunavut	155,272	688	0.44%

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With tried-and-true government borrowing, municipalities can pursue public bonds (infrastructure bonds, tax-exempt bonds); federal/provincial infrastructure grants; subsidies to municipalities from other orders of government; establishing Crown corporations to channel public investments in infrastructure; and public interest companies.

DISCUSSION

Across Canada, public-private partnerships are increasingly being promoted to meet municipal infrastructure needs. However, as the use of P3s rises, so does evidence of their problems. Repeatedly, P3s involve higher costs, compromise service quality, involve substantial secrecy, and have minimal risk transfer and a basic lack of public control and accountability.

The Whistler case exemplifies these problems, along with the benefits of keeping services public. Had the P3 proceeded it would have taken longer to complete, harmed labour relations and exposed the Resort Municipality to significant financial, political and environmental risk. Preliminary negotiations illustrated the secrecy surrounding the private contract and the difficulty of securing essential documents. More important, despite PBC's promises, the project would not have saved money.

The current economic climate magnifies the economic benefits of maintaining publicly-financed services. The easy credit and low interest rate spreads for private borrowers of the past few years have evaporated. Private credit is increasingly difficult to secure and rates have risen. Public bodies have not experienced the same credit volatility. The spread for short-term borrowing rates in Canada is now about 100 basis points higher than it was during the earlier part of the decade. According to a recent industry report, the 2009 spreads for P3 financing have doubled on average compared to 2008. On a typical project, this increased spread of 100 basis points would increase the cost of private financing by between 10 and 15 per cent, or by upwards of \$20 million for \$100 million in financing over 30 years.

Rapid cost increases, stock market volatility and a general slowdown in economic activity is bankrupting many private firms. When this happens, municipalities are left to find new contractors on short notice and at a high price tag. The economic and financial crisis has made P3 financing much less certain, and deals with private partners much more risky and susceptible to default.

Privatization is also politically and socially harmful. By maintaining public services, municipalities can maintain the efficient service levels residents expect while ensuring that employees have the job security, income and health and safety protections necessary for a decent quality of life in today's uncertain economic climate.

CONCLUSION

Like R.M.O.W. residents, CUPE strongly supports improvements to public infrastructure in Canada. However, CUPE disputes the logic that handing over the financing, operation and control of public services to private companies will reduce costs and benefit residents, workers and the environment.

On the contrary, as Whistler's experience shows, regular public procurement enables municipalities to respond efficiently to contingencies, capitalize on new technologies that can reduce operating costs and environmental impacts, and meet residents' needs.

Source: Statistics Canada, Local Government Revenue and Expenditure, by province and territory