October 2015
Volume 307

The Journal of Record
for public-private partnerships
since 1988

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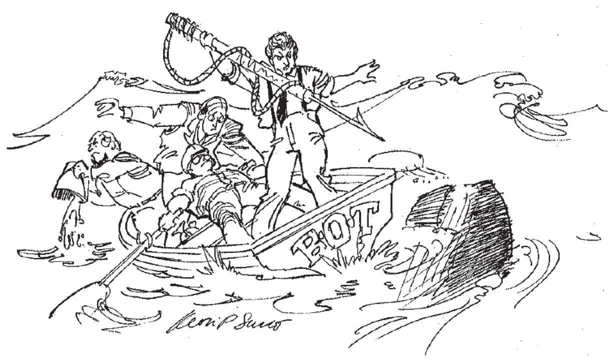
Unpacking the Washington Post's Critique of the Elizabeth River Crossings P3

by Robert W. Poole, Jr.

On October 17th, 2015, the *Washington Post* ran a news story (not an opinion piece, mind you) called "Agreement for New Submerged Tunnel in Norfolk Leaves Virginia Underwater." It's not clear whether reporter Michael Laris (not the Post's knowledgeable transportation reporter Ashley Halsey) has an ideological bias against P3 deals, or simply listened to and accepted misleading interpretations from local critics of the project. Either way, the result is the kind of damaging critique that needs to be answered.



The thrust of the story is that, at least in this P3 deal, Virginia motorists and taxpayers got taken. Among Laris's principal charges are the following:

- The deal should not have been pursued because there was no competition;
- The concessionaire promised a fully private deal, but the government is putting up most of the money;
- In negotiating the deal, the concessionaire pulled a bait-and-switch on a naïve client;
- Virginia DOT would have been better off doing the project itself.

Each of these claims is questionable or false, as we shall see.

The $2.1-billion project calls for the P3 consortium (Elizabeth River Crossings—ERC) to finance, build, operate, and maintain a second Midtown Tunnel; refurbish, operate, and maintain the existing Midtown and Downtown Tunnels; and extend the Martin Luther King Freeway. Although VDOT's previous P3 projects had resulted from unsolicited proposals, the agency planned this one as a competitive solicitation. Its initial Request for Information in 2004 drew three serious responses, and in 2006, as the project looked closer to proceeding, more than 50 companies attended a VDOT information meeting. But when VDOT invited conceptual proposals in 2008, only ERC responded.

To decide what to do, VDOT convened an Independent Review Panel and also had the Commonwealth Transportation Review Board review the situation. VDOT's own CFO and its innovative finance director concluded that ERC was financially qualified and capable of securing equity and debt financing to do the project. We can speculate about why no other team opted to bid, but the likely answer is that they judged the project to be too risky.

ERC's conceptual proposal did say that it could finance, build, operate, and maintain the project for 50 years without state aid. But that would require that the existing tunnels as well as the new one to be tolled, with tolls of $2 to $3 each way for cars (and four times that for trucks).

Large-scale public and political resistance arose to both the idea of tolling "existing" capacity and at toll rates perceived as being very high. In 2009, with the Great Recession still in being, VDOT had already cut billions of dollars from its six-year plan and laid off about 1,000 employees.

But despite VDOT's very limited funds, the Independent Review Panel and others recommended that VDOT put in money to buy down the amount ERC had to finance, thereby permitting lower toll rates. That idea went through several iterations, and eventually ended up with a state investment of $408 million, 19% of the $2.1-billion total. (That percentage is in line with a number of recent P3 toll concessions, including VDOT's I-495 and its forthcoming I-66 express toll lane projects.)

Laris then compares VDOT's $408 million with ERC's $221 million equity investment, to claim that the state is putting in more than the private sector. And he compounds this by portraying the project debt—a $422 million TIFIA loan and $675 million in Private Activity Bonds—as government money. He does acknowledge that those debts are ERC's shareholders' responsibility, but quickly adds that the corporate parent companies Macquarie and Skanska "aren't on the hook to pay them back" if toll revenues fall short. What he never mentions is that ERC's shareholders could lose their entire $221 million equity investment in that case.

He also does not appear to have done his homework as to what happened in negotiating the terms of the concession agreement. He reports that in 2011 negotiations over the concession agreement "hit a wall." He portrays ERC at that point as demanding sweeteners in exchange for state-demanded lower toll rates, but negotiations on that subject had been under way since at least 2009. He also implies that annual inflation-adjustments of the toll rates was a last-minute sweetener, but this had already been agreed to by May 2010 (and is a feature of most P3 toll concessions). Also not last-minute was a compensation clause if VDOT eventually builds another river crossing not in current long-range plans (another very common P3 provision required by toll road lenders). The idea that VDOT was a naïve negotiator is belied by the fact that its advisors on the deal included KPMG, Nossaman, and Halcrow, all very familiar with P3 documents.

Toward the end of the article, Laris quotes VDOT Secretary Aubrey Lane as saying VDOT would have been better off doing the project itself, which would have enabled it to "keep the decades of potential upside itself."

That totally ignores the potential downsides of construction cost overruns, late completion, O&M, and in particular traffic and revenue. By doing the project itself, VDOT would have forced Virginia taxpayers to take all of those risks, rather than ERC. At the time the P3 deal was first being worked out, VDOT had no "equity" to invest, and had it done a 100% debt financing, it would have had to scramble for money if traffic and revenue fell short of debt service in the early years of operation, as has happened with many toll projects, both public and private.

It's dismaying that the *Washington Post* assigned a non-transportation reporter to do this story. The piece reflects misconceptions about P3s that all too many people believe. The P3 community needs do a much better job of educating opinion leaders and policymakers about this important new way of doing transportation mega-projects.

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