

Progressive Contracting in Practice: Commercial Lessons from Ontario's Major Transit Projects

Practical commercial lessons on managing scope, risk and change under progressive contracting models across Ontario's major transit projects.



By John Aslett

Ontario, Canada, is in the middle of one of the most ambitious public transit expansions in its history. Billions of dollars of capital investment are flowing through delivery of projects. Due to some of the benefits, including transfer of risk, the construction market has increasingly embraced progressive contracting models.

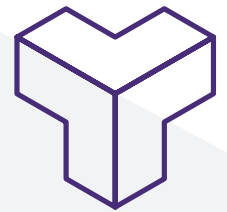
There are a number of different progressive contracting models and one of those being used readily in Ontario is the progressive design build ("PDB"). PDB agreements offer to identify, mitigate, and share design, schedule, and pricing risk through two phases of project delivery: a development phase and a construction phase. PDB's promise greater collaboration, earlier contractor involvement, and more intelligent risk allocation than a traditional lump-sum delivery.

The promise of a PDB is real. But so is the commercial complexity that comes with it. Being engaged across multiple major transit programmes in the Province, Systech has observed a consistent set of commercial challenges that progressive models generate, and these are challenges that owners, contractors, and their advisors need to anticipate if these projects are to deliver on their potential.

Scope evolution is the defining commercial risk

Progressive contracting models are deliberately structured to allow scope to develop. It can also be the source of their most persistent commercial tension. Generally, the contractor will submit a proposal for the development phase work and the design will progress collaboratively to an advanced stage.





The cost estimates will also progress in the same way, collaboratively, until a final figure is agreed (commonly a Target Price or Guaranteed Maximum Price).

However, the design may still materially evolve as the construction is progressed. This prompts a series of questions: What was actually priced; What constitutes additional scope; and is the Contractor entitled to a variation. These can be difficult to answer without the right commercial behaviours being put in place. What happens in the development phase is critical to avoiding some of the issues. The parties need to clearly identify the basis of design, as well as the basis of the estimate, including records of all decisions that have been made during the process.

Unlike a traditional lump sum contracts where the scope is fixed at award, progressive models create a moving baseline. Without specific commercial behaviours from day one, such as, detailed scope registers, contemporaneous records of design development, and clear contractual mechanisms for instructing and valuing change, disputes about scope creep or variation entitlement become almost inevitable as the programme matures. Detailed record-keeping is key.

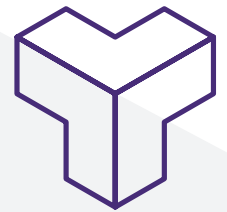
The lesson is straightforward, even if the execution is not: commercial discipline must be established at programme outset, not retrofitted when a dispute is already forming.

Risk allocation theory meets procurement reality

Progressive models are designed to align risk with the party best placed to manage it, with risk transferred progressively as design certainty increases. In theory, this should produce a better outcome than forcing a contractor to price unknown risks at tender. In practice, the transition points between phases, where risk allocation shifts and commercial commitments crystallise, are frequently underdeveloped in contract documentation.

When it comes to supply chain risks, Systech has witnessed that the gap between what the main project agreement intends and what subcontract frameworks actually deliver is where one of the most significant commercial exposures tends to accumulate.





Flow-down provisions, often dropped into subcontracts as appendices, may look adequate in the project agreement but fail to replicate the nuance of the upstream risk allocation when translated into subcontracts.

This results in a material misalignment. Contractors may carry risk their subcontractors have not priced, or subcontractors may be exposed to upstream obligations that the project agreement framework was designed to protect against. The lesson here is, getting subcontract alignment right is not just a procurement formality. It is essential.

Early warning systems: the gap between contractual obligation and commercial practice

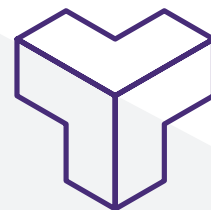
Some major P3 and PDB contracts contain sophisticated early warning and compensation event mechanisms. These mechanisms are designed to identify risk early, enable collaborative problem-solving, and create a contemporaneous record of project events. On paper, these mechanisms are among the most commercially focused features of PDB contracts.

In practice, they tend to be underused, or misused, particularly in the early phases of a programme when relationships are new, optimism is high, and raising a formal early warning feels unnecessarily adversarial. By the time commercial pressure builds, and the mechanisms would be most valuable, the notification timeframes have passed, and the evidentiary records are thin. The commercial lesson here is cultural as much as contractual. Owners and contractors need to normalise early warnings as a programme health tool, not as a claims or disputes precursor. Commercial teams have a role in building that culture from mobilisation, not just signposting to contractual provisions but ensuring project delivery teams understand how to use them effectively.

What progressive contracting actually demands

The fundamental insight from Ontario's transit pipeline is this: progressive contracting models do not reduce the need for commercial expertise, they actually increase it.





The collaborative framing of these contracts can create a false sense of comfort that there is going to be agreement and alignment on commercial issues.

That is a little naive. Robust change management, disciplined scope control, and active commercial advisory support are precisely what make collaboration sustainable over a multi-phase programme.

For owners, this means investing in commercial oversight capability that is present and active across all phases, not just at key decision gates. For contractors, it means treating commercial management as a core delivery function from day one, not a reactive resource deployed when problems emerge. For advisors, it means understanding both the contractual framework and the programme dynamics well enough to add value at the point where theory meets execution.

Ontario's infrastructure pipeline will continue to generate complex, high-value progressive contracting opportunities for years to come. The organisations that navigate them most successfully will be those that bring genuine commercial sophistication across the entire delivery of the projects. Having advisors that are experienced in administering the PDB model should be at the forefront of these organisations.

About Systech

Systech provides commercial and contract advisory services across major infrastructure programmes. To discuss how we support owners, contractors, and public sector clients through complex project delivery. Visit our Website for more: www.systech-int.com

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