



May 31, 2013

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Docket Operations, M-30
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FHWA-2012-0126

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Highway Administration's (FHWA) request for comment concerning Public-Private Partnerships (PPP), published on January 9, 2013, at 78 FR 1918.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

APTA speaks for its members. Its Board of Directors reiterated that fact on March 9, 2013, when it adopted the following statement: "While APTA encourages its members to provide specific examples or impacts in support of the association's positions, APTA crafts its comments to represent those of all APTA members. The association goes to great lengths to ensure its regulatory comments represent the consensus views of our members. Every APTA member has the opportunity to review drafts, participate in discussions, and assist in crafting those consensus comments. In short, we speak with a single voice and, when the rare instance occurs that we cannot reach consensus, we do not speak at all. APTA's comments are those of our more than 1,500 members. This consensus-based method of crafting regulatory comments is a factor underlying APTA's selection of one of Washington's most trusted brands in a broad survey conducted by the National Journal and we encourage all federal agencies to recognize the representative nature of the association's regulatory comments."

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OUR COMMENTS

We urge FHWA to consider the substantial differences in financial, operational, and other models that separate highway and public transportation PPPs. While there is considerable experience in highway projects, there are still relatively few PPP projects involving public transportation. When overlaid with the widely varying state statutory frameworks, any attempt to standardize these agreements can easily turn counterproductive. We realize and appreciate that FHWA is under a statutory mandate to undertake this project. We believe the Administration should start from the premise that while model contract language can be useful as a starting point, standard contract language applicable to public transportation PPPs does not exist.

FHWA should also remain cognizant of MAP-21 section 20013's requirement that FTA undertake a rulemaking to outline 'private sector participation' in transit projects. We believe the Administration must carefully avoid creating a process or framework that would inhibit that rulemaking.

Given that each and every PPP agreement is unique, the elements of the model should be kept basic and flexible, perhaps reading more as "guidelines" rather than anything that might be perceived as prescriptive or limiting. The investment requirements facing public transportation are extensive and a greater role for the private sector is essential in meeting the challenges in the years ahead. Thus, the spirit of any model language should be to facilitate projects rather than make them more difficult.

The model must offer speed and predictability to attract private sector investment. The model should guide public agencies toward both. Processes that allow potential private partners to forecast clear decision points will be helpful in ensuring their interest in PPPs. Deferred decision making is counterproductive.

The model should avoid delving into what are essentially procurement questions such as the weighting of selection factors when choosing a PPP partner.

The model must be flexible enough to overcome normal project requirements that are incompatible with PPPs. For instance, requiring a minimum level of design at various project gateways is incompatible with a PPP where the risks of moving forward are almost exclusively placed with the private partner.

The model should account for the uncertainties of environmental processes. We believe the Department and Federal Transit Administration could be extremely helpful in finding innovative ways to accomplish this, through pilot projects undertaken in conjunction with public transportation agencies.

We appreciate FHWA's efforts to craft a useful and usable framework for meeting the challenges of Public-Private Partnerships and would like to continue working with the Administration, the Department, and FTA to jointly adapt a strong framework to bringing PPPs to public transportation. For additional information, please contact James LaRusch, APTA's chief counsel and vice president-corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,



Michael P. Melaniphy
President & CEO