



FEDERAL TRANSIT ADMINISTRATION

Private Investment Project Procedures

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Background

- Section 3011(c) of SAFETEA-LU established Penta-P pilot program
- Purpose of Penta-P was to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects.
- SAFETEA–LU also required that the Secretary identify and examine the costs, benefits, and efficiencies of applying P3 delivery approaches to transit projects.

Background

- In 2009, GAO released a report, “Public Transportation—Federal Project Approval Process Remains a Barrier to Greater Private Sector Role and DOT Could Enhance Efforts to Assist Project Sponsors, (GAO–10– 19)”
- The report recommended that FTA increase efforts to better equip project sponsors by developing guidance and providing technical assistance on P3s.
- In response to the GAO Report, FTA created a Private Sector Participation Web site that provides guidance, technical support and resources to those project sponsors considering P3s.

Background

- FTA conducted an online dialogue from October 2014 to January 2015 with grantees and stakeholders to help inform this rulemaking process.
- Commenters' suggestions included:
 - FTA grant processes should be further streamlined in order to encourage greater use of public-private partnerships and private investment
 - the timing of grant awards can discourage lender interest because it is perceived to be incompatible with the timing of private financing schedules, public agency procurement schedules and DOT financing programs, such as TIFIA, RRIF and PABs.

Background

Online Dialogue (con't)

- the level of Federal oversight could be more flexible and dependent upon the experience of the project sponsor, terms of agreements, and the existence of concurrent, independent oversight, such as state or regulatory agencies, and type of financing.
- FTA should rely more heavily upon approvals of third parties with jurisdiction over a project, rather than replicate certain reviews, and questioned whether any necessary FTA reviews could be expedited by having them performed by an independent third party selected by FTA, but paid for by the project sponsor.

MAP-21

Statutory Requirements

- Section 20013(b) of MAP-21 requires FTA to identify any provisions of 49 U.S.C. chapter 53, and any regulations or practices thereunder, that impede greater use of public-private partnerships and private investment in public transportation capital projects.
- The statute requires FTA to develop and implement, on a project basis, procedures and approaches that (i) address such impediments in a manner similar to the Special Experimental Project Number 15 of the Federal Highway Administration (FHWA) (commonly referred to as “SEP-15”) and (ii) protect the public interest and any public investment in public transportation capital projects that involve public-private partnerships or private investment in public transportation capital projects.
- FTA must issue a rule to carry out the procedures and approaches.

What is FHWA's SEP-15?

- Allows the Secretary to waive the requirements of title 23 and the regulations under title 23 on a case-by-case basis. SEP-15 allows FHWA to experiment in four major areas of project delivery—contracting, right-of-way acquisition, project finance, and compliance with FHWA's NEPA process.
- SEP-15 allows FHWA to identify current FHWA statutes, regulations, and practices that inhibit greater use of P3s and private investment in transportation improvements and allows FHWA to develop approaches that address these impediments.
- Since October 2004, FHWA has received 16 SEP-15 waiver requests, and approved 13 waivers. The FHWA has not received a waiver request since 2014.
- A notable distinction between SEP-15 and the authority provided to FTA by MAP-21 is that FHWA may waive provisions of title 23, and FTA may not waive any provisions of federal law.

FTA's Private Sector Participation NPRM

- A primary goal of the NPRM is to address impediments to the greater use of public-private partnerships (P3s) and private investment in public transportation capital projects.
- FTA expects the procedures outlined in the NPRM to encourage
 - increased project management flexibility,
 - more innovation in project funding,
 - improved efficiency,
 - timely project implementation, and
 - new project revenue streams.

FTA's Private Sector Participation NPRM

- Allows project sponsors to request a full or partial waiver for any FTA guidance or procedure.
- Pursuant to section 20013(b) of MAP-21, the NPRM does not allow waiver or modification of the labor standards provisions of 49 U.S.C. chapter 53, NEPA or any other provision of Federal law.
- Administrator may waive, in whole or in part, FTA guidance or procedures only if it is determined that:
 - the FTA guidance or procedure impairs the use of a P3 or private investment.
 - the modification will encourage a P3 or private investment.
 - the public interest and any public investment in the project is protected.

FTA's Proposed Process in NPRM

(Similar to FHWA)

- **NPRM proposed applicants must include the following in any waiver application:**
 - A description of the project (cost, schedule, source of FTA funding)
 - Whether the project is a P3 or includes private investment
 - Specific guidance or procedures that are requested to be modified
 - Justify or explain the requested modification
 - Describe how the public interest and public investment will be protected
 - Include supporting documentation (financial model and letters of commitment)
 - Identify performance measures
 - Identify the consequences of what happens if a waiver is not granted.

The Administrator notifies the applicant of the approval or denial of the waiver

PIPP NPRM Comment Overview

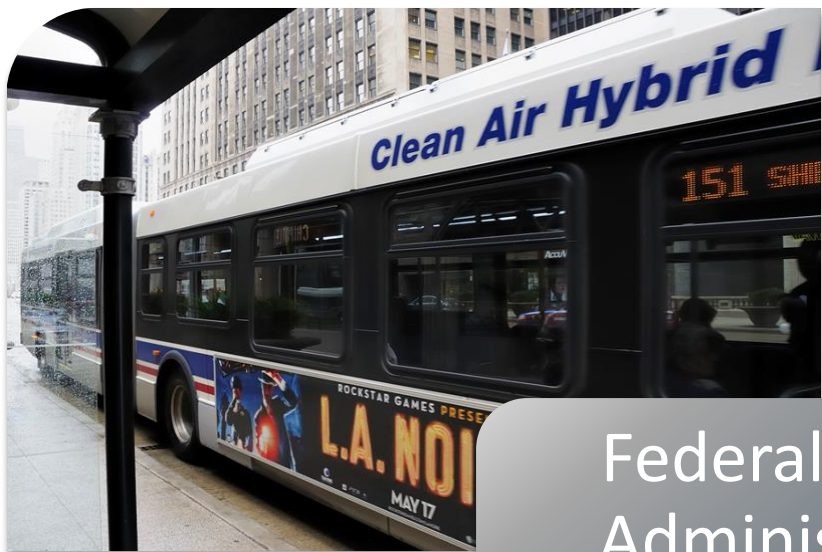
- Received input from 21 commenters, including
 - State DOTs—one submission from five state DOTs
 - Transit Agencies—five
 - MPOs—one
 - Industry associations—six
 - Consultant organizations—two
 - Unions—one
 - Private Operator—one
 - P3 Authority—one
 - Development Corporation--one
 - Individuals—two

Changes to Final Rule in Response to Comments

- Final Rule Published May 30, 2018 (83 Fed. Reg. 24672)
- Commenters suggested that not all project funds should be required to be committed before an applicant submits a waiver request
 - Amended section 650.31 to permit applicants to identify proposed, as well as committed, funding for the project, and to provide that FTA will post on its Web site information related to waivers the FTA Administrator has granted.
- Commenters suggested that multiple waiver requests should be permitted for each project
 - Amended section 650.11 to permit one application per phase of a project, and to clarify that multiple waivers or modifications may be sought in one application.
- Commenters suggested FTA should include timeframes in which FTA would respond to a complete application. Generally these ranged from 30 to 60 days
 - Declined to accept this suggestion, but pledged to respond to applications expeditiously.

Changes to Final Rule in Response to Comments

- Commenters suggested that FTA should require a value for money analysis for all P3 projects.
 - Declined to accept this suggestion, as it is beyond the scope of the rulemaking.
- Commenters suggested FTA post waiver requests and the approval or denial of each waiver request on FTA's web site.
 - Amended section 650.31 to provide that FTA will publish on its Web site information related to waivers the FTA Administrator has granted.
- Commenters suggested projects should be eligible for waiver or modification of administrative requirements only if the project is part of a region's approved long-range transportation plan.
 - Amended the definition of "Eligible Project" to require that a project be included in the statewide long-range transportation plan or the metropolitan transportation plan, as those terms are defined in 23 CFR 450.104.



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