AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

September 29, 2017

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

RE: Docket No. FTA-2016-0008

Dear Docket Clerk:

On behalf of its more than 1,500 member organizations of the American Public Transportation Association, I write to provide comments on the Federal Transit Administration's (FTA) Private Investment Project Procedures (PPIP): Notice of Proposed Rulemaking (NPRM); request for comments, which was published in the Federal Register on July 31, 2017.

The NPRM invites comments in several different areas. Accordingly, APTA has organized its comments under three headings: 1) General Comments; 2) Comments on FTA PIPP Procedures; 3) Impediments to Public-private partnerships.

GENERAL COMMENTS

APTA very much appreciates efforts to incorporate into FTA a process similar to the Special Experimental Project Number 15 (SEP-15) process employed by the Federal Highway Administration. As the Moving America Forward for the 21st Century Act (MAP-21) was considered, APTA was at the center of efforts which called for a similar program within FTA to develop and implement procedures on a project basis to address impediments to public-private partnerships (P3s), and private investment in public transportation capital projects.

APTA cautions, however, that despite our embrace of P3s and innovative financing tools, they alone cannot solve the infrastructure deficit the transit industry faces. New revenues to provide greater support for existing federal transit programs must be a fundamental element of any new federal initiative to support infrastructure investment.

We also note that "impediments" are not always the determinant as to whether P3s are the solution. The characteristics of certain projects make them more legitimate candidates for P3s, while other projects are less suitable

Finally, we note that public-private-partnerships exist in a wide variety of forms. While there has been much attention in recent years of the major Design-Build-Finance-Operate-Maintain turnkey projects in Denver and in Maryland, enhanced private sector involvement has also been achieved in projects such as the CNG-bus facility deal in Miami, the negotiation extractions activities in Boston, and the naming-rights deal in San Diego. Such success stories are not the focus of APTA's comments today, but are important to recognize none-the-less.

COMMENTS ON FTA PIPP PROCEDURES

It is perhaps an irony, that in seeking to expedite federal procedures, one must initiate still another new procedure (PIPP). It would behoove FTA to keep the process, the paperwork and the review time especially short.

Also, it has come up in discussions that FTA might consider a practice of publicly disclosing waivers / exemptions, when they were granted, and the rationale for doing so.

IMPEDIMENTS TO PUBLIC-PRIVATE PARTNERSHIPS

- First and Foremost: The ability to secure private sector interest and risk-sharing in projects hinges on a strong commitment from the public sector. Recent P3 success stories in Denver and in Maryland have strong bases of local / state support, together with strong federal commitments, all of which were necessary in leveraging private equity. It does not happen in the abstract.

  Public-private partnerships for public transport projects that, unlike toll roads, do not generate substantial revenue from users, require increased and sustainable federal funding in order to succeed. Local funding from state and regional authorities and local taxpayers is certainly part of the equation, but without a strong federal commitment to public transportation as a national priority and concomitant long-term funding, it will be virtually impossible to generate substantial private sector investment

  Moreover, our collective ability to deliver high performance Infrastructure requires us to have access to a range of both funding sources and financing approaches that are best suited to individual projects and can best achieve local, regional, state, federal, and - where relevant - private sector objectives. Stable, reliable, and robust federal funding is an essential part of the mix, as are financing tools that provide flexibility and creativity to involve the private sector in designing, building, financing, operating, and maintaining projects where appropriate. P3 is part of the mix. There is no single solution.

- Satisfactory Continuing Control: The requirement for public grantees to maintain satisfactory continuing control over federally acquired assets can have an adverse bearing on the engagement of a private partner in a transit project. Enforcement of this provision should anticipate the use of private partners, and the objective of making P3s more inviting.

- New Starts Process: Several transit agencies have observed that the process for obtaining Capital Investment Grants (CIGs) is not always friendly to P3 projects. The process should be reevaluated along those lines.

  The CIG program is focused on the traditional design, bid, build approach and it limits the opportunity for innovations. Under the CIG program (New Start, Small Start, and Core Capacity), projects are to be taken to a thirty percent level of design during Project Development before moving into Engineering (final design). The thirty percent level of design creates an extremely high level of design that unnecessarily complicates the opportunity to work with non- traditional project delivery methods such as design build and P3 methods. Typically, by 10 percent the design is advanced rather significantly and by thirty percent it is extremely advanced. Bringing in designers and contractors at thirty percent to identify and take advantage of any innovations that that they would offer becomes extremely expensive and leads to potential changes that cost design money. Those changes can have significant implications on the capital cost estimate as well as additional design costs at the time that you are trying to enter Engineering. Bringing in the designers and contractors early can lead to problems during NEPA because they would have a financial interest in the outcome of the design and that would be a violation of NEPA process.

  It is noted that section 3005(b) of the FAST Act established an experimental program for expedited project delivery for P3 projects. This program the opportunity for alternative approaches.

- Uniform Relocation Assistance Act Requirements: Fulfilling the requirements of this law, as they are currently administered, can add an inordinate amount of time to projects. This can discourage private involvement, and should be reevaluated.

- Private Activity Bonds: APTA has urged legislation to enhance the availability and use of low-interest private activity bonds (PABS) for public transportation projects with significant private participation (such that the projects otherwise would not qualify for tax-exempt financing). APTA supports expanding the eligibility of mass-commuting facility PABs beyond their current use (construction of rail and bus infrastructure and facilities to include acquisition of rolling stock. APTA further supports removing mass-commuting facilities from the federally-imposed state volume cap for PABs, thereby aligning public transportation activities with airports, docks and wharves which are not subject to the PAB state volume caps.

- Investment Tax Credits: Where Life-cycle costs and benefits are concerned, the tax consequences of long-term private investment may substantially reduce the required public subsidy for transit facilities and services. Thus, utilizing federal tax policy as an instrument for promoting P3s can be a positive action, presuming that tax revenue lost through such mechanisms is less that the direct federal investment necessary to achieve the same outcome through a traditional grant-in-aid approach. Should investment tax credits be part of an infrastructure initiative, APTA recommends implementing them with the maximum levels of flexibility for public project sponsors and private investors to ensure that the fullest possible range of projects can take advantage of ax credit availability.

- Private confidence: If private investors are demonstrating confidence in the viability of a project, with their own risk-equity as stake, this should be interpreted as a sign that a project is viable, and the review-time under the Capital Investment Grant Program should be kept to a minimum. In projects with a high degree of private risk, any lengthy analysis will most likely be counterproductive.

- Amount of Non-federal Participation: Higher levels of private and other non-federal participation should be accompanied with lower levels of federal oversight and an expedited review process. In such cases, a set response time should be set. If deadlines are not met, projects could move forward absent the review.

- State procurement statutes: In some states, P3 projects have been obstructed by procurement statures that have not kept pace with the employment of P3s, inhibiting certain projects.

- Need for A Balanced Approach: Transit agencies should be encouraged to maximize earnings from their real estate holdings, from tall roads in the same corridors with transit operations, and in other new and innovative ways. However, such innovation should not be mat with a threat that these will merely substitute for any loss of more traditional sources.

We appreciate the opportunity to assist FTA in this important NPRM. We look forward to working with FTA to promote P3 and other best-practices in the transit industry.

For additional information, please contact Linda Ford, APTA's Chief Counsel, at (202) 496-4808 or lford@apta.com.

Sincerely yours,

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