PUBLIC-PRIVATE PARTNERSHIPS IN PUBLIC TRANSPORTATION: POLICIES AND PRINCIPLES FOR THE TRANSIT INDUSTRY

American Public Transportation Association
Task Force on Public-Private Partnerships

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In November 2006, the Executive Committee of the American Public Transportation Association (APTA) created a task force to advise APTA and its membership on approaches to develop and utilize opportunities arising from partnerships between the public and private sectors. This paper summarizes the background, context and recommendations of APTA's Task Force on Public-Private Partnerships, including definitions, premises, policy objectives, guiding principles and proposed actions.

Context and Background

In North America, transit ridership peaked in the mid-1940's as the Second World War was coming to an end. Virtually all public transport in American cities and rural areas during that era was provided by bus and railroad companies that were privately owned and operated. Many roads and bridges of that era were also built by private companies whose undertakings were financed in whole or in part by toll revenues.

Bus and rail ridership began to decline in the 1950's and 1960's, owing largely to the huge boom in federal Interstate road building and the concomitant rise in automobile ownership. As a result, many private transit companies became publicly-owned entities through federally-assisted regional government purchases and buy-outs, partially facilitated by the passage of the Urban Mass Transportation Act in 1964 and the subsequent creation of the Urban Mass Transit Administration (UMTA). Thus, in the mid-1960's, public transit joined highways, aviation, waterborne transportation and other modes in receiving federal government subsidies to help underwrite the investment necessary to meet overall federal transportation and mobility goals.

In recent decades, overall investment has not kept pace with the growing need for improved public transportation. Public funding has been insufficient to do so and private investment has played only a modest role reflecting changing federal policy dictates. In the 1980s and 1990s, various tax incentives such as sale/leaseback arrangements spawned increased private investment, but such arrangements have been substantially curtailed by Congressional action. In more recent years, however, federal policies championed by the Executive Branch have encouraged the transportation industry to again look to the private sector to help fill the funding gap created by the growing imbalance between available funding and public needs.

Within the highway sector, toll roads have been an attractive investment for private investors. Publicly-owned assets, most notably the Chicago Skyway and the Indiana Toll Road, have been leased or purchased through concession agreements with private investors that have brought billions of dollars to their former public sector owners. New toll collection technologies have further fueled the public interest in road tolling. As a result of these and other related developments, the role of public-private partnerships has been touted by many in both the public and private sectors as the answer to adding needed capacity while contributing long-term financial resources to public treasuries. At the same time, concerns have been raised about the advisability of concession agreements. In particular, depending on how such agreements are structured, they have come under increasing scrutiny as some contend that certain types of concessions may diminish public policy control in ways that are contrary to the public interest.

It is in this context that APTA's Task Force on Public-Private Partnerships undertook its charter to broadly examine the utility of financial and operational partnerships between the private sector and public transit authorities.

Public-Private Partnerships Defined

In its broadest context, a public-private partnership is a contractual arrangement between a public or governmental agency and a private entity that facilitates greater participation by the private entity in the delivery and operation of an infrastructure project, facility or service. Typically, within the transport sector, such an arrangement involves one or more aspects of the funding, financing, planning, design, construction, operation and maintenance of a transportation facility.

Within the commonly utilized context of financing and/or delivering projects, a public-private partnership is an approach or mechanism that is utilized to *move the funding process from a single strategy of governmental aid through grants to regional and local authorities, to a more diversified approach involving increased utilization of private capital markets.* In some cases – generally outside the United States – private firms have injected capital into the building and construction process of new and improved transit capital facilities, in anticipation of an acceptable level of return on investment which may be delivered through farebox revenues, public subsidies, and/or performance/availability payments. Of course, capital is only one of the requirements for success: good projects and good management are also necessary.

Within the transit industry, the Task Force broadened the definition of PPPs to include aspects of "contracting out," or other similar arrangements between a governmental transit provider and a private contractor, including the management and operation of services or facilities in which *the contractor undertakes a measurable risk with respect to issues within its control in providing such services*. Transit agencies have increasingly utilized these types of arrangements in order to procure new and expanded services. PPPs may be *project specific*, in the instance of developing a new type of service or constructing a rail line, or *systemwide*, in the instance of procuring new buses or bidding out all or defined portions of operations and maintenance.

Regardless of the precise definition, transit-related public-private partnerships all have in common one basic attribute: *The contractual arrangement underlying a PPP transfers certain risks and confers certain financial opportunities to the private partner, in exchange for which the public partner realizes a defined blend of lowered cost for prescribed services, improved service quality, efficient deployment of new technologies, innovative or cost-effective business practices, reduction of financial risk, and increased management expertise and depth.*

What Have Public Transit Authorities Done to Utilize Private Partnerships?

There have been a number of public-private partnerships in transit development and operation that provide a variety of instructive examples of cooperative arrangements. These partnerships fall into three broad categories: (1) project development with direct financial contribution from private sector participants; (2) project delivery and operation with shared risk among public and private participants; and (3) private investment in transit-supportive development.

In North America, there have been relatively few transit development programs that have utilized direct private financial contribution and/or asset ownership. In contrast, there are many locations throughout Europe, Asia, Australia and South America in which this model has been utilized extensively to bring new sources of capital and/or transfer public sector risk to private investors, developers and operators. The projects that have recently been named as demonstration programs under the U.S. Federal Transit Administration's *Public-Private Partnerships Pilot Program ("Penta-P")* represent the most innovative forms of private risk capital investment in current U.S. practice. These include Houston, where Metro has pursued private ownership of public transportation assets, and has entered into long-term lease agreements with private entities to build and operate rail and busway facilities; the Bay Area Rapid Transit District in California, which has invited participation and investment by the private sector into its new connection between Oakland Airport and the BART Coliseum Station; and in Denver, where the Regional Transportation District has determined that private investment in three new rail corridors will be undertaken using a design-build-operate maintain *("DBOM")* model including private investment*.*

There are many more examples of successful public-private partnerships in the delivery and operation of transit programs than those in which direct private capital has been invested at risk. At one end of the continuum are the design-build and DBOM projects in which public authorities have entertained bids from the private sector to design, build, operate and maintain systems and facilities without requesting direct financial investment. The Hudson-Bergen rail program in New Jersey is one example, and Tren Urbano in San Juan, Puerto Rico is another. In addition, many smaller transit operations have benefited from equipment-leasing programs and from contracting operations and maintenance to private firms.

In the United States and Canada, communities such as Portland, Vancouver, Charlotte, Toronto, Washington DC, San Diego, Miami, and Atlanta – among many others – have benefited from private participation in transit-oriented development (TOD). Virtually all

new rail transit systems, and many that have existed for years, are working closely with developers to assure that private investment in station areas and along rail and bus routes will benefit transit ridership. Additional examples of each of these three major areas of public-private partnership, as well as more details regarding the above undertakings, can be obtained through APTA's resources and/or other published materials.

A primary observation of the Task Force is that a broad range of opportunities exist for the public sector – local governments and transit authorities – to work constructively, creatively, and cost-efficiently with the private sector in carrying out the mission of providing public transportation. The variety of ways in which such partnerships can enhance the value of public transportation is still largely untapped in North America. The Task Force concluded that this potential should continue to be utilized, and expanded as prudent, for the mutual benefit of transit providers, private suppliers and operators, and the traveling public. Moreover, within the public transit domain, public-private partnerships can be constructed in ways that assure the public interest is enhanced.

Initial Policy Premises

Two key premises have been embraced by the Public-Private Partnership Task Force. The first is that PPPs will become a more acceptable and sustainable method of doing business with respect to infrastructure project and service delivery in the future. Within the highway industry, the power sector, the water delivery and treatment field, and at airports and marine ports, such private sector participation has become commonplace. In many locations around the world, including South America, Europe, Asia and Australia, the use of private capital and expertise to complement public sector skills and resources has become commonplace in the provision and operation of transportation facilities and services.

While PPP practices in the United States are not yet as pervasive as in other countries, even in the United States the private sector has played a key role in public transport from its earliest formative years, when public transportation was inherently more profit-making. Now that there is growing interest in PPPs in the United States and interested prospective private sector partners, it is important that the industry continue to understand and appreciate the circumstances where involvement of the private sector can enhance the overall public interest. Thus, the first objective put forth by the Task Force is:

> ***To assure that as the Congress, the Administration, and the states and localities continue to assess the merits of public-private partnerships in providing necessary transportation facilities and services, public transportation should be viewed as a key component of the modal mix. As legislation and policy that enable public-private partnerships become more prolific, public transportation must be adequately and effectively included.***

The second and equally critical objective for consideration is:

> ***To assure that reliance on private participation does not diminish the crucial and imperative role of federal, state and local governments in providing the resources and the leadership necessary to build, improve, operate and maintain sustainable public infrastructure in furtherance of public objectives.***

To summarize, the APTA Public-Private Partnership Task Force puts forth this overarching statement of policy:

> ***A variety of opportunities for partnership between public authorities and private organizations exist to further the public interest. However, such partnerships cannot substitute for the necessary and appropriate role of public policy, public oversight, and public resources in the provision of public transportation services.***

Furthermore, *policy control* – or, at a minimum, *policy oversight* – of project development and service provision in public transportation should remain with the public or governmental authority charged with providing service in the public's interest. Thus, PPP structures should strive to maximize the benefits of private participation and investment without ceding policy control and ownership of the asset. This is particularly true as it relates to selecting and pricing services, primarily to assure that public concerns such as environmental justice and economic parity remain a key aspect of the service objective.

Guiding Principles

Based on the policy objectives formulated by the Task Force, seven guiding principles for the industry with respect to public-private partnerships were developed. They are seen as a means of assuring that such partnerships protect both the public interest and provide commensurate benefit for private partners. Thus, these guidelines are proposed as a framework for assessing the efficacy of public-private partnerships for funding, financing, and delivering public transportation services and facilities.

Principle 1: Public-private partnerships are a tool in the transit toolbox. PPPs should be viewed as one of a number of techniques and mechanisms for funding, delivering and sustaining transit facilities and services. PPPs can be used successfully for a variety of purposes, including delivery of major projects, provision of cost-effective services, and utilization of contractual relationships to improve quality and timeliness of capital projects and services. However, PPPs should not be viewed as an ultimate funding solution in the absence of other resources, but as a complement to existing and traditional sources of funding for service expansion, modernization, and infrastructure investment.

Principle 2: Public-private partnerships should be structured to maintain the public interest. In the vast majority of circumstances, control and oversight of the public asset – the facilities and services provided to the public – must remain with an entity whose "client" is the public interest. Thus, the governmental or public entity that holds this responsibility must carefully evaluate the transfer of risk and concomitant transfer of control within a proposed public-private partnership to assure that these transfers bring commercial benefits and foster creative use of non-traditional resources, while maintaining sufficient control/oversight to assure the preservation and sustainability of the public interest.

Principle 3: Public-private partnerships should be utilized as a strategy to achieve public goals and support long-range regional plans. PPPs are often proposed and implemented as a means of implementing projects or selling/leasing assets in ways that do not directly support regional goals for multi-modal transport investment. There have been projects or asset sales done primarily because they *could* be done, not because such undertakings achieved outcomes that met a regional prioritization of transportation infrastructure investment. Thus, public transportation assets should not be sold simply for the sake of general revenue enhancement, especially if the generated revenues are used for purposes other than for improving transportation facilities and/or services.

Principle 4: Public-private partnerships are most effective in those cases where a long-term revenue stream can be assured. Some agencies believe that the private sector can be a viable *source* of funding when no tax or general revenues are available and no identifiable revenue stream exists. The reality, of course, is that the private sector can only be a useful partner in those cases where *financing* – as contrasted to *funding* – is the issue, or in those rare cases where capital invested at risk by a private partner has a strong probability of generating a long term return on that investment. In order for such a return to be generated, the *presence, predictability* and *stability* of a long-term revenue stream in mandatory.

Principle 5: Public-private partnerships should be based on constructive and beneficial sharing of risk. One of the key premises underlying public-private partnerships is the beneficial sharing of risks inherent in project development. This means that the public sector and private sector assume respectively those risks which each are best suited to accept. For example, a common risk allocation may be for the private sector to accept the risks inherent in the cost and timeliness of construction, while the public sector is more capable of accepting the risks associated with environmental clearance, public acceptance, and ridership/revenue for development of a capital project.

Principle 6: Public-private partnerships should be used constructively for increasing procurement flexibility and project effectiveness. There are many opportunities for maximizing the competitiveness and performance of capital or operating assets through creative utilization of private resources. Numerous examples exist in the literature that demonstrate significant cost and time savings owing to private contracting. However, in some states, PPP deployments are obstructed by procurement statutes that have not kept pace with the emergence of PPPs, inhibiting some agencies from PPP deployments. In addition, where life-cycle costs and benefits are considered, 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 PPPs can be a clearly positive action, presuming that tax revenue lost through such mechanisms is less than the direct federal investment necessary to achieve the same outcome through a traditional grant-in-aid approach.

Principle 7: Public-private partnerships for tolling and other forms of *congestion pricing* should be structured to increase transit usage. The concept of "high performance corridors" is gaining traction, particularly in light of energy saving and global climate change. Increasing the transit share should be a desirable objective in any undertaking to reduce congestion, improve air quality, and reduce dependency on foreign oil.

Making Public Transportation More Attractive to Private Investors: Recommended Actions

1. Federal policies that encourage public-private partnerships should be accompanied with tax incentives and other methods of favorable treatment that enhance the attractiveness of such private investment.

2. The private sector has been involved in a variety of roles in the provision of transit facilities and services, but most such roles do not involve "bringing money to the table". Conversely, tolls, road pricing and parking charges are ways to generate substantial revenue streams which can be leveraged efficiently by the private sector to increase the pool of revenue necessary to build and operate highways. However, to date, the most notable way to attract private money for transit development is through its connections with real estate. Information needs to come from developers as to how to make it attractive for private funds to be spent on transit lines and stations when such transit investments will benefit private development. Other methods of value capture and tax-increment financing should be studied and encouraged as methods of innovative finance.

3. Public transportation should be integrated into many toll road projects, and should be looked to as a key element of overall corridor mobility objectives. In addition to providing more travel options, integration of transit can significantly improve the operative performance of the corridor, especially at peak periods when transit services carry their heaviest loads. Accordingly, transit facilities and operations in *high performance corridors* serve a central role in many toll road projects, and therefore should be part of private financings that may stem from those projects.

4. The Federal Highway Administration's SEP-15 process (Special Experimental Project #15) allows FHWA to waive requirements and regulations when whenever such practices inhibit greater use of public-private partnerships and private investment in transportation improvements. A similar program should be created within the Federal Transit Administration as an outcome of the Public-Private Partnership Pilot Program ("Penta-P").

Recommendations: Next Steps

The Public-Private Partnerships Task Force seeks acceptance of the objectives, findings and principles summarized in this brief paper. It is recommended that upon acceptance or constructive modification by APTA's Executive Board and membership, the Task Force shall embark on the second phase of its mission. This phase would provide oversight of the creation of a knowledge bank on public-private partnerships in transit development for use by both members and business members of APTA. A portal in APTA's website dealing with PPPs should be created, with lessons learned throughout the world posted for direct reference by those contemplating the formation of a public-private partnership to improve the products and services offered in the public interest.