



A bold voice for transportation workers

September 29, 2017

Mr. Tom Yedinak
Office of Budget and Policy
Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Private Investment Project Procedures
Docket No. FTA-2016-0008

Dear Mr. Yedinak

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to comment on the Federal Transit Administration's (FTA) notice of proposed rulemaking (NPRM) encouraging private sector participation and investment in transit capital projects. By way of Background, TTD consists of 32 affiliate unions in the transportation sector, including those who may be affected by increased private participation in the public transportation space.¹

We appreciate the agency's request for public comment on the proposed Private Investment Project Procedures (PIPP). Considering the needs facing our nation's infrastructure assets, it is clear that private participation is being given greater consideration in the finance and delivery of certain transportation projects. Ensuring that these agreements and investment decisions consider public interest concerns and appropriate protections for those who help design, build, operate and maintain them is of considerable importance.

Private sector participation in federal transit capital projects is not a new development. Recent developments, however, have refined the FTA's interest in private sector participation. Specifically, section 20013(b)(1) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) asked that the agency identify any regulations or practices authorized under title 49 that may impede private participation or investment in these projects. That provision requests the FTA to utilize the Federal Highway Administration's SEP-15 process for identifying impediments.

¹ Attached is a list of affiliates.



TTD believes that P3s can have a role in the delivery of certain transit capital projects. However, we believe that P3s – including private investment and private participation in the design, building, operations, and maintenance – for transit capital projects have real limitations that the FTA must consider in the developing the PIPP.

The SEP-15 process, which serves as a template for subpart B of the PIPP, creates a framework for FTA to waive or modify requirements and regulations to further private participation. However, we would note that Congress expressly forbids the FTA from waiving any law under title 49. This includes Buy America requirements and worker protections. Specifically, section 20013 affirmatively states that *“nothing in this subsection may be construed to allow the Secretary to waive any requirement under section 5333 of title 49 [emphasis added].”* The clarity of this mandate, which the notice appropriately cites for purposes of the PIPP, also applies to the *Expedited Project Delivery for Capital Investment Grants (CIG) Pilot Program* referenced in the notice as continued evidence of federal interest in private sector participation. Whatever the federal appetite is for P3s or private investment in transit projects, the continued application of federal worker protections is clear and consistent.

While supporting private sector participation is the purpose of this notice, it is important that FTA acknowledge important limitations related to transferring the operations and maintenance functions (O&M) to private providers. When public control of transit service delivery is handed over to the private sector, there can be differences that exist between the goals of private bondholders and equity partners and the service needs of the riding public and the workers who run these systems. In particular, operations and maintenance functions are unique components of transit procurement delivery models in which the private sector has limited experience or expertise, private incentives can be at odds with the goals of public transit policy, the public bears considerable primary risk and financial hazard, and the private P3 partners often derive savings through diminished worker wages and benefits.

To the latter point, the federal government has supplied substantial evidence that a primary feature of how private partners reduce savings is not through innovative efficiencies or life cycle cost reductions, but diminished worker wages and benefits. In 2013 the GAO found that savings from contracting out transit O&M services accrues “primarily as a result of private transit labor consistently earning lower wages and fewer benefits compared to similar public sector employees.² And for P3s more broadly, a January 2012 Congressional Budget Office report concluded that “much of the reduction in costs for the projects” that move to “a public-private partnership structure appears to have come from lower labor costs.”³

² Transit agencies use of contracting to provide services. GAO-13-782, pg. 22. September 2013.

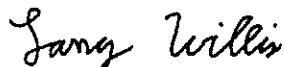
³ Congressional budget office. Using public private partnerships to carry out highway projects, pg.22. January 2012

This should not come as a surprise to FTA. In December 2007, the agency’s “Report to Congress on the Costs Benefits, and Efficiencies of Public Private Partnerships for Fixed Guideway Capital Projects” found that a primary obstacle to “attracting equity investment...is the fact that most transit projects are revenue negative,” which limits the private partners ability to repay capital costs. Given that the FTA acknowledges there is little room for public transportation to be a revenue generating enterprise, private sector interest in O&M may hinge primarily on the private partners ability to reduce wages and benefits. We note that this objective would run counter notice’s goal of protecting the “public interest.” The 2009 GAO report cited in this notice as spurring the FTA to help project sponsors with P3s maintains that “transit agency employees” are a part of a public interest calculation.⁴

This is not to say that the private sector has no role in the delivery of transit projects. In fact, quite the contrary. The private sector has, and always will, play an important role. However, P3s and private investment can neither be a substitute for a robust federal partner nor be designed and implemented to harm workers.

We appreciate the opportunity to comment on this important notice, and we hope our comments will be taken into consideration and that the Private Investment Project Procedures uphold workers’ rights and consider a balanced approach to the imposition of P3s and private investment in transit capital projects.

Sincerely,



Larry Willis
President

⁴ Federal project approval barriers to greater private sector role and dot could enhance efforts to assist project sponsors. GAO-70-19, pg. 10. October 2009



Transportation Trades Department, AFL-CIO
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TTD MEMBER UNIONS

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
SMART-Transportation Division
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)

These 32 labor organizations are members of and represented by the TTD

