

RECENT DEVELOPMENTS IN PUBLIC-PRIVATE PARTNERSHIPS

**Partnerships in Transportation
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WHY PUBLIC-PRIVATE PARTNERSHIPS?

- **Increasing investment requirements**
 - **Aging infrastructure**
 - **Growing congestion**
 - **Increasing construction costs**
- **Mounting budget pressures**
 - **Revenue growth slowing**
 - **Voter resistance to tax increases**
- **Increasing needs for innovation to operate transportation systems more efficiently**

BENEFITS OF PPPS

- **Accelerate project start-up**
- **Accelerate project completion through concurrent activities**
- **Fix price early in design phase**
- **Guarantee completion date**
- **Designate single point of responsibility**
- **Allocate project risks among parties**
- **Provide life cycle cost efficiency**
- **Improve operational efficiency**
- **Enhance cost control and risk management**
- **Take advantage of each sector's strengths**

FHWA PPP INITIATIVES

- **Report to Congress, December 2004**
- **Workshops**
- **Model State Enabling Legislation**
- **Case Studies**
- **Capacity Building Program**
- **Web site www.fhwa.dot.gov/ppp**
- **SEP-15**

SPECIAL EXPERIMENTAL PROJECT 15 (SEP-15)

- **FHWA has authority to waive Title 23 requirements and regulations on a case-by-case basis**
- **SEP-14, which allows experimentation with innovative contracting techniques such as design-build, not broad enough for certain PPP proposals such as I-81 and Trans-Texas Corridor**
- **SEP-15 instituted in October 2004 to allow FHWA to experiment in four major areas of project delivery - contracting, right-of-way acquisition, project finance, and compliance with NEPA and other environmental requirements.**

SEP-15 GOALS

- **Increase project delivery flexibility**
- **Encourage innovation**
- **Improve timely project construction**
- **Promote public-private partnerships**
- **Identify current FHWA laws, regulations, and practices that inhibit greater use of public private partnerships (PPPs) and private investment in transportation improvements**
- **Evaluate procedures and approaches that address these impediments.**

SEP-15 STATUS

- **Approved Projects**
 - **Trans-Texas Corridor**
 - **Oregon Innovative Partnerships Program**
 - **Texas Open Road Tolling System**

SEP-15 EXPERIMENTAL FEATURES

- **Issue RFPs and sign preliminary agreements before NEPA process has been completed.**
- **Single solicitation for multiple projects**
- **Flexibility to clarify proposals**
- **Involve private sector in project development activities prior to NEPA ROD.**
- **Flexibility in competitive process and negotiating reasonable price for work**
- **Have extended warranties**
- **Allow payment for routine maintenance**

SAFETEA-LU PROVISIONS PERTAINING TO PPPs

- **Private Activity Bonds**
- **Enhanced ability to toll Interstate System**
- **Increased flexibility in design-build contracting**
- **Streamlined environmental process**
- **Improvements to innovative finance programs**

Private Activity Bonds

- **Qualified projects**
 - **Any surface transportation project receiving Title 23 funds**
 - **International bridge or tunnel projects**
 - **Intermodal facilities that receive Federal assistance under Title 23 or Title 49**
- **Projects subject to Davis-Bacon, Buy America, and other Federal-aid procurement requirements**

PRIVATE ACTIVITY BONDS

- **\$15 billion overall cap, but no annual limits**
- **Bonds exempt from state-wide caps that apply to other categories of private activity bonds**
- **The Secretary of Transportation has discretion to allocate funds among qualified highway or surface freight transfer facilities**

PRIVATE ACTIVITY BONDS

- **Access to lower-cost bond financing will allow greater private sector investment and risk taking in highway projects**
- **A private entity cannot directly issue Private Activity Bonds -- governmental entity must issue the bonds**

INCREASED TOLLING FLEXIBILITY

- **New Tolling Programs**
 - **Express Lanes Demonstration Program**
 - **Interstate Construction Toll Pilot Program**
- **Continuation of Existing Tolling Programs**
 - **Value Pricing Pilot Program**
 - **Interstate Reconstruction Toll Pilot Program**

EXPRESS LANES DEMONSTRATION PROGRAM

- **Limited to 15 projects during 2005-2009**
 - **Existing tolled facilities**
 - **Existing HOV facilities**
 - **Existing facilities that are modified to provide additional tolled lane capacity**
- **Program does not allow tolling of existing lanes except HOV lanes**
- **Tolls may be collected by public or private entities**

EXPRESS LANES DEMONSTRATION PROGRAM

- **Requirements**
 - **Variable tolls must be charged on HOV lanes, optional on other lanes**
 - **Tolls must be collected using non-cash payment technology**
 - **Secretary to develop standards for automated toll collection systems implemented under this program**

INTERSTATE CONSTRUCTION TOLL PILOT PROGRAM

- **Permit a State or interstate compact of States to collect tolls on a new highway, bridge or tunnel on the Interstate System for the purpose of constructing that facility**
- **Financing construction using tolls must be shown to be the “most efficient and economical way to advance the project”**

INTERSTATE CONSTRUCTION TOLL PILOT PROGRAM

- **Application must include Facility Management Plan**
 - **Plan for imposing tolls on the facility**
 - **Schedule and finance plan for constructing facility using toll revenues**
 - **The public transportation agency responsible for implementing and administering the pilot program**
 - **Description of whether consideration will be given to privatizing maintenance and operational aspects of the facility, while retaining legal and administrative control of the facility**

INTERSTATE CONSTRUCTION TOLL PILOT PROGRAM

- **Selection Criteria**
 - **Efficiency and economy of using tolls to finance the facility**
 - **Plan for implementing tolls and how interests of local, regional, and interstate travelers are met**
 - **Financial plan for using toll revenues to construct the facility**
 - **Plan for developing, managing, and maintaining automatic toll collection system**
 - **Preference given for public toll agency with demonstrated ability to construct, operate, and maintain toll system**

INTERSTATE CONSTRUCTION TOLL PILOT PROGRAM

- **Prohibits non-compete clauses that would prevent State from improving or expanding adjacent roads to address congestion, pavement wear, or safety problems resulting from traffic diverted from the toll facility.**

VALUE PRICING PILOT PROGRAM

- **No substantive changes in existing law**
- **Participation limited to 15 programs**
- **\$59 million over life of SAFETEA-LU**
- **\$3 million set aside for non-toll projects**
- **15 states currently in the VPPP program are:
California, Colorado, Florida, Georgia, Illinois,
Maryland, Minnesota, New Jersey, North
Carolina, Ohio, Oregon, Pennsylvania, Texas,
Virginia, and Washington**

INTERSTATE RECONSTRUCTION TOLL PILOT PROGRAM

- **No changes to program established under TEA-21**
- **Tolling allowed on up to 3 existing Interstate facilities to fund needed reconstruction or rehabilitation**
- **State must demonstrate that highway could not be maintained or improved without using tolls**

HOT LANES

- **States may permit single occupant vehicles to use HOV lanes if those vehicles are tolled**
- **Automatic toll collection must be used**
- **States may allow certain low-emission and energy efficient vehicles (hybrids) to pay no toll or reduced tolls on HOV lanes**
- **If operations of single occupant vehicles substantially degrades HOV facility performance, State must limit or discontinue operations of the single occupant vehicles**

DESIGN BUILD

- **\$50 million minimum removed for projects to be eligible for design-build contracting without special approval**
- **New regulations must be issued to allow requests for proposals, awards of design-build contracts, and notices to proceed with preliminary design work under design-build contracts before final NEPA approval**

STATUTE OF LIMITATIONS FOR FEDERAL APPROVALS

- **Any claim seeking judicial review of a permit, license or approval issued by a Federal agency for a highway or public transportation capital project must be filed within 180 days after the approval is published**
- **This substantially reduces risks from injunction that could stop project after construction has begun**
- **Extends beyond NEPA to include other federal approvals as well**

ENVIRONMENT AND PLANNING

- **Provides streamlined environmental approval process addressing agency coordination, public involvement, dispute resolution, and comment deadlines**
- **Establishes project delivery pilot program for the states of Alaska, Ohio, Oklahoma, Texas and California, under which all USDOT environmental responsibilities under NEPA and Section 4(f) can be delegated to the State DOTs**
- **All States eligible to obtain a delegation of environmental responsibilities for categorical exclusions**

TIFIA

- **Provides federal credit assistance to nationally or regionally significant surface transportation projects**
- **\$122 million per year for 2005-2009**
- **Eligibility threshold lowered to \$50 million (\$15 million for ITS projects)**
- **Types of financial assistance**
 - **Secured loans**
 - **Loan guarantees**
 - **Lines of credit**

TIFIA

- **Eligibility expanded to include**
 - **Public freight rail facilities**
 - **Private freight rail facilities providing public benefit for highway users**
 - **Intermodal freight transfer facilities**
 - **Access to freight rail or intermodal freight transfer facilities**
 - **Intercity passenger bus and rail facilities.**

TIFIA

- **TIFIA loans may now be used to refinance long-term project obligations or Federal credit instruments if such refinancing provides additional funding capacity for the completion, enhancement, or expansion of the project**
- **Public-private partnerships and other legal entities undertaking a project may directly apply for TIFIA assistance**

SIBS

- **All States may now transfer a limited amount of their Highway Trust Fund allocations to State infrastructure banks (SIBs)**
- **SIB loans can be used to help finance state transportation projects, but they now retain their character as federal funds**
- **Upon repayment, the SIB loans can be re-loaned to support other projects**
- **The amounts that a State may transfer to a SIB is limited generally to 10 percent of its annual highway, transit and rail apportionments under designated sections of titles 23 and 49**

HIGHWAYS FOR LIFE

- **Projects that use innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality**
- **Program can fund up to 20% of project costs or a maximum of \$5 million per project**
- **These funds can be used for non-Federal share of Federal-aid project costs**
- **Program limited to 15 projects per year between 2005 and 2009**

HIGHWAYS FOR LIFE

- **Secretary may make grants or enter into cooperative agreements to foster innovative technologies and facilities**
- **Establishes Highways for Life technology transfer program to share developments under this program with transportation community**
- **Stakeholder involvement process will be established to provide opportunity for input on pilot program**