Commission Briefing Paper 4K-04

Evaluation of Methods to Engage Private Sector in MPO and State Planning Processes

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Introduction

This paper is part of a series of briefing papers to be prepared for the National Surface Transportation Policy and Revenue Study commission authorized in section 1909 of SAFETEA-LU. The papers are intended to synthesize the state-of-the-practice consensus on the issues that are relevant to the Commission's charge outlined in Section 1909, and will serve as background material in developing the analyses to be presented in the final report of the Commission.

This paper on Module IV, Task K-2, presents information on various methods to engage the private sector in Metropolitan Planning Organization (MPO) and State transportation planning processes.

Background and Key Findings

For over forty years, Congress has directed that Federally-funded transportation projects flow from transportation planning processes, based on "3-C" principles (continuous, cooperative, and comprehensive). Since enactment of the Intermodal Surface Transportation Efficiency Act of 1991, metropolitan and statewide transportation planning processes serve as the key forums for prioritized transportation decision-making inclusive of all modes.

- An effective and efficient transportation network is essential to economic growth, development, and well being;

- SAFETEA-LU reaffirms that representatives of the private sector should have the opportunity to comment on State and MPO transportation plans and programs and provides additional opportunities to participate in the financing of State and MPO transportation programs;

- Freight planning is becoming a standard element in State and MPO transportation planning through training, workshops, peer exchanges, examples of lessons learned and best practices, technical assistance and guidance;

- Transportation Management Area (TMA) certification reviews and Statewide Planning findings provide the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) an opportunity to encourage MPO's and State DOT's to comply with SAFETEA-LU's freight planning and private sector participation requirements;

- To engage the private sector in MPO and State Planning processes, agencies need to understand how public-private partnership fit into the planning process including such issues as early disclosure of the content of development agreements, sharing of financial information, planning justification and project prioritization for projects, unsolicited public-private partnerships, and use of revenue generated by public-private partnerships.

Transportation Planning Overview

The Federal-Aid Highway Act of 1962 first created the federal mandate for urban transportation planning in the United States, during a time in which urban areas were beginning to plan National Interstate and Defense Highway System routes through and around their areas. Through subsequent legislation, Congress has directed that Federally-funded highway and transit projects must flow from transportation planning processes, based on “3-C” principles (continuous, cooperative, and comprehensive). The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) introduced unprecedented focus and direction for strengthening transportation planning processes, including the establishment of a formalized statewide transportation planning process. ISTEA acknowledged the importance of the overall transportation system in providing mobility for people and goods, as well as connections to economic activity. In addition, ISTEA called for linkages between transportation planning and other societal goals such as system operation, maintenance, and management; human and natural environment; economic development; financing; and freight considerations.

Subsequent reauthorizing legislation, the Transportation Equity Act for the 21st Century (TEA-21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), have built upon the ISTEA theme for comprehensive transportation planning and decision-making. SAFETEA-LU reaffirms that representatives of the private sector should have the opportunity to comment on State and MPO transportation plans and programs and provides additional opportunities to participate in the financing of State and MPO transportation programs.

Private Sector Participation in the Development of State and MPO Transportation Plans and Programs

SAFETEA-LU reaffirms the requirement that States and MPO’s provide a reasonable opportunity to citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested person parties to comment on transportation plans and programs. Since the passage of ISTEA in 1991, increasing efforts have been made to engage the private sector in MPO and State planning and programming processes. Generally, these efforts are focused on engaging the private sector in planning for the movement of freight.

To better target investments in freight transportation systems to maintain efficiency and productivity and to strengthen the capacity to make decisions at States and MPO’s, Section 5204(h) of SAFETEA-LU established the Freight Planning and Capacity Building Program. This program supports efforts by States and MPO’s to coordinate with the freight industry to analyze their needs as part of the transportation planning process. Most MPOs and States are in the early stages of modifying their transportation planning process to include freight interests in a significant way.

One difficulty the public and private sector face on freight transportation planning is that they operate from different perspectives. Transportation is normally only one small element that influences a shipper (manufacturer, retail etc.) in decisions with regard to their overall business. Differing views of time create a point of friction between public sector transportation planners and the private sector (including carriers). The public sector talks about twenty-five year transportation plans and three to five year implementation programs. The private sector makes decisions in increments of weeks and months. Mutual benefits do occur when the two successfully come together for short, mid and long term decision making.

States and MPOs have implemented the SAFETEA-LU requirements for freight coordination in different ways. Many have created freight coordinator positions within their agency, some have assembled freight advisory groups to help develop the transportation plan and transportation improvement plan (TIP) and statewide transportation improvement program (STIP), and others have added representation from the freight industry directly on their policy and/or technical committees. All of them have extended invitations to the freight industry to participate in the transportation planning process through their public involvement processes.

FHWA is encouraging State DOT's and MPO's to undertake four sets of activities to engage the private sector in their transportation planning and programming efforts. While the private sector can initiate these activities, the law places the burden on the public sector to include the private sector. From the public sector perspective, these activities include:

1. Identifying local stakeholders;
2. Understanding the role of transportation in local businesses;
3. Including the private sector in the development of policies to advance freight projects;
4. Establishing a consistent set of mechanisms for interaction and feedback among the public and private sector such as a freight task group or an advisory committee that meets regularly and is charged with defining and prioritizing freight needs, identifying and prioritizing solutions, modifying planning documents, and addressing funding.

The methods that have successfully brought the public and private sector together are based on the ability of the State DOT and MPO to identify the mutual benefits of participating in the transportation planning and programming process. Defining mutual benefits has been a key component of every successful example. Both the Chicago and Delaware Valley Regional Planning Commissions were successful at engaging the private sector by identifying and advancing low cost improvements such as improving truck access to rail yards and sea ports that benefited the private sector.

The Delaware Valley Goods Movement Task Force supports freight mobility improvements in 9 counties, 4 cities, and 353 municipalities in Pennsylvania and New Jersey. In 2003, the Task Force influenced decision makers to obligate approximately $3 million from Congestion Mitigation and Air Quality funds for freight projects, including an automated marine terminal gate, truck rest facility, idling equipment, rail line extension, and transload and cross-dock facilities. Another successful example is the Florida Statewide Intermodal Transportation Advisory Council (SITAC). This is a private-public partnership focused on addressing the needs of Florida's intermodal freight transportation industry. Its early accomplishments include identification of the Florida Strategic Network and projects for fast-track status, development of recommendations for the 2020 Florida Statewide Intermodal Systems Plan, and establishment of a methodology to prioritize freight projects. The Baltimore, MD Freight Movement Task Force focuses on improving communications among public and private sector freight stakeholders; identifying short-term impediments to and recommending improvements for the efficient, effective, environmentally sensitive, and safe movement of freight; and providing input into the allocation of long-term transportation resources for freight. Some of its major accomplishments include the completion of a Truck Parking Study along the I-95 corridor in the Baltimore region, development of a new truck traffic-forecasting model, placement of new signage along major freight routes, and intersection improvements to help mitigate freight bottlenecks in the Baltimore region.

Private Sector Participation in Financing State and MPO Transportation Programs and Projects

SAFETEA-LU includes a number of provisions to stimulate private sector participation in the financing of transportation improvements. The innovative financing techniques make it easier for the private sector to enter into a partnership with the public sector to build transportation facilities. PPP's can provide additional sources of funding that may allow needed transportation projects to be built. They can save time and money through innovative ways to finance and construct transportation projects. They can be a means to more efficiently allocate risks between the public sector and the private sector. They may also provide a way to more effectively price current and future highways so that the public uses the highway more efficiently. These SAFETEA-LU provisions include:

Tolling

SAFETEA-LU provides States with increased flexibility to use tolling, not only to manage congestion, but also to finance infrastructure improvements. The following programs are available to States to toll on a pilot or demonstration basis –

- Under the Interstate System Construction Toll Pilot Program, the Secretary may permit a State or compact of States to collect tolls on an Interstate highway, bridge, or tunnel for the purpose of constructing Interstate highways. This program is limited to 3 projects in total (nationwide), and prohibits a participating State from entering into an agreement with a private person which would prevent the State from improving adjacent public roads to accommodate diverted traffic.

- The Interstate System Reconstruction and Rehabilitation Toll Pilot Program was established in the Transportation Equity Act for the 21st Century (TEA-21) to allow up to 3 Interstate tolling projects for the purpose of reconstructing or rehabilitating Interstate highway corridors that could not be adequately maintained or improved without the collection of tolls. SAFETEA-LU makes no revisions to the program, therefore it continues without change.

- The Value Pricing Pilot Program is continued to support the costs of implementing up to 15 variable pricing pilot programs nationwide to manage congestion and benefit air quality, energy use, and efficiency.

- The new Express Lanes Demonstration Program will allow a total of 15 demonstration projects through 2009 to permit tolling to manage high levels of congestion, reduce emissions in a nonattainment or maintenance area, or finance added Interstate lanes for the purpose of reducing congestion. A State, public authority, or public or private entity designated by a State may apply. Eligible toll facilities include existing toll facilities, existing High Occupancy Vehicle (HOV) facilities, and a newly created toll lane. Tolls charged on HOV facilities under this program must use pricing that varies according to time of day or level of traffic; for non-HOV, variable pricing is optional. Automatic toll collection is required, and the Secretary must promulgate a final rule specifying requirements, standards, or performance specifications to ensure interoperability within 180 days of enactment.

Innovative Finance

SAFETEA-LU includes the following provisions to enhance innovative financing and encourage private sector investment –

- Private Activity Bonds – SAFETEA-LU expands bonding authority for private activity bonds by adding highway facilities and surface freight transfer facilities to a list of other activities eligible for exempt facility bonds. Qualified projects, which must already be receiving Federal assistance, include surface transportation projects eligible under Title 23, international bridge or tunnel projects for which an international entity authorized under Federal or State law is responsible, and facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities related to the transfers). These bonds are not subject to the general annual volume cap for private activity bonds for State agencies and other issuers, but are subject to a separate National cap of $15 billion.

- Transportation Infrastructure Finance and Innovation Act (TIFIA) – The TIFIA program provides Federal credit assistance to nationally or regionally significant surface transportation projects, including highway, transit and rail. This program was established in TEA-21 to fill market gaps and leverage substantial private co-investment by providing projects with supplemental or subordinate debt. SAFETEA-LU authorizes a total of $610 million through 2009 to pay the subsidy cost (similar to a commercial bank’s loan reserve requirement) of supporting Federal credit under TIFIA. To encourage broader use of TIFIA financing, the threshold required for total project cost is lowered to $50 million ($15 million for ITS projects), and eligibility is expanded to include public freight rail facilities or private facilities providing public benefit for highway users, intermodal freight transfer facilities, access to such freight facilities and service improvements to such facilities including capital investment for Intelligent Transportation Systems (ITS).

- State Infrastructure Banks (SIBS) – SAFETEA-LU establishes a new SIB program which allows all States, including, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, to enter into cooperative agreements with the Secretary to establish infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for fiscal years 2005-2009. This program gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment.

- Toll Credits – SAFETEA-LU revised 23 USC 120(j) to permit toll credits to be earned for any toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce. Previously, toll credits could only be earned from expenditures of toll revenues on projects that were completed entirely without Federal funds.

Other Provisions

There are a variety of other SAFETEA-LU provisions that encourage greater private sector involvement in transportation infrastructure projects. These provisions include:

- Transit Public-Private Partnerships – Section 3011(c) of SAFETEA–LU authorizes the Secretary of Transportation to establish and implement a pilot program to demonstrate the advantages and disadvantages of public private partnerships for certain new fixed guideway capital projects. Section 3011(c) sets forth generally the terms and conditions of the Pilot Program. The Secretary is authorized to select up to three projects to participate in the Pilot Program. Project applicants must identify that the Project that has not entered into a full funding grant agreement or project construction grant agreement with FTA; a schedule and finance plan for the construction and operation of the Project; and an analysis of the costs, benefits and efficiencies of the proposed public-private partnership agreement. To be eligible, applicable State and local laws must permit public-private agreements for all phases of development, construction and operation of the project; the recipient is unable to advance the Project due to fiscal constraints; and the plan implementing the public-private partnership is justified.

- Design-Build – To encourage more projects to use design-build contracting, SAFETEA-LU eliminates the $50 million floor on the size of eligible contracts. Also, the DOT Secretary must issue revised regulations that will allow transportation agencies to proceed with certain actions prior to receipt of final NEPA approval. This change will encourage public-private partnerships by allowing private sector partners to be involved in the project definition process.

FHWA Initiatives to Partner with the Private Sector

FHWA has established Special Experimental Project 15 (SEP-15) – Public Private Partnerships (PPPs) to identify, for trial evaluation, new public-private partnership approaches to project delivery. It is anticipated that these new approaches will allow the efficient delivery of transportation projects without impairing FHWA's ability to carry out its stewardship responsibilities to protect both the environment and American taxpayers. SEP-15 addresses, but is not limited to, four major components of project delivery: contracting, compliance with environmental requirements, right-of-way acquisition, project finance, and elements of the transportation planning process. Projects approved under this program may include suggested changes to the FHWA's traditional project approval procedures and may require some modifications in the implementation of FHWA policy. Deviations from current Title 23 U.S.C. requirements and generally applicable FHWA regulations also may be involved.

Conclusion

Because of the newness of the use of public-private partnerships in the United States, some MPOs are uncertain how they would be coordinated with the traditional metropolitan transportation planning process. Some MPOs perceive that there is an issue with a lack of disclosure of the content of public-private partnership development agreements drafted between the State and private developers, an issue with a lack of coordination of public-private partnerships financial arrangements (which are proprietary) that the MPO needs to know about for the fiscal constraint demonstration on their Metropolitan Transportation Plan and TIP, and concern over what happens to revenues generated by public-private partnership. Since MPOs are uncertain, efforts need to be made to better identify how public-private partnerships fit into the overall transportation planning process. There are significant resources available to States and MPOs to help initiate private sector involvement in transportation planning. These resources include training, workshops, conferences, publications, peer exchanges, web sites, and research.

References

"SAFETEA—LU" Promotes Private Investment in Transportation Karen J. Hedlund, Nancy C. Smith, Nossaman, Guthner, Knox & Elliott, LLP August 1, 2005