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IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIPS FOR TRANSIT

STATUTORY AND REGULATORY PERSPECTIVES

National Council on Public Private Partnerships

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US MASS TRANSIT/RAIL PPP – AN IDEA WHOSE TIME HAS COME?

- Denver Fastracks—significant expansion of light rail throughout Denver metropolitan area;
- Chicago Airport Express -- infrastructure improvement tied to 2016 Olympic bid;
- LA MTA—subway and light rail expansion, with options from funding from regional sales tax;
- High Speed Rail—catalyzed by ARRA – and prior consideration of PPP mandated by Congress;

Types of Procurements Permitted--Can Transit Agency contract with private entities for a broad range of project development services?

- Are PPP projects exempt from standard low-bid procurement laws?

- Competitive RFQs and RFPs—potential need for transit agency to make early selection of “preferred bidder”
- Procurements based on terms other than/in addition to price

What limitations apply?

- Limited to a few “pilot” projects?
- Geographic restrictions?
- Is authority available for transit agency or limited to State DOT?   Need for DOT approval?
- Restrictions on “non-compete” agreements?
- Only solicited proposal or guidelines for unsolicited proposals as well?

Approval Process

- Special district and/or state approval?
- Statutory review committee?
- Prescribed evaluation criteria?
- Legislative approval of project?
- Legislative approval of terms of deal?
- Approval or veto by affected stakeholders?

Issues Re Farebox Revenues

- **Who has authority to establish fares?**
- **When/how can fares be changed?**
- **Must return on investment be limited?**
  - **How is ROI determined?**
- **Mass transit not likely to generate profit—and may be particularly well-suited to “availability payment” model**
- **Metro Chicago’s prior experience with commuter rail “purchase of service” agreements**

Other Legal/Policy Considerations

- Appropriation risk re annual/availability payments
- Property and local sales/excise tax exemption
- Condemnation/ Eminent Domain
- Requirements for public comment/review by regional planning organizations
- Ability to generate revenue from collateral sources

Other Legal/Policy Considerations

- Labor protection
- Payment and performance bonds?
- Compliance with State "Sunshine" laws
- Compliance with MBE-WBE requirements

Other Legal/Policy Considerations

- Sovereign immunity considerations
- Protection against subsequent legislative action
- Stipends to unsuccessful proposers

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