

## GATEWAY PROGRAM DEVELOPMENT CORPORATION

September 15, 2017

Matthew J. Welbes  
Executive Director, Federal Transit Administration  
1200 New Jersey Ave SE  
Washington, DC 20590

### **Docket No. FTA-2016-0008: Private Investment Project Procedures - Notice of Proposed Rulemaking and Request for Comments**

Dear Executive Director Welbes,

On behalf of the Gateway Program Development Corporation (“GDC”), we appreciate the opportunity to submit comments on the Federal Transit Administration’s (“FTA”) Notice of Proposed Rulemaking and Request for Comments, issued July 31, 2017, regarding Private Investment Project Procedures (“PIPP”). GDC commends FTA on the important steps it has undertaken to expedite project delivery and support building infrastructure smarter, faster, and in more innovative ways.

GDC was established in 2016 to oversee and deliver the Gateway Program (“Program”), working with federal and local partner agencies. The Program, one of the most urgent and complex infrastructure programs in the United States, would improve current services, add resiliency, and create new capacity for a critical section of the Northeast Corridor (“NEC”) – the most heavily used passenger rail line in the country. The 10-mile stretch of the NEC between Newark, New Jersey, and New York City handles approximately 450 trains per day and over 200,000 daily NJ TRANSIT and Amtrak passengers, and directly serves Pennsylvania Station New York (“PSNY”), the busiest rail station in America.

The Program will be delivered in multiple independent phases. GDC’s current focus is on Phase 1 (“Phase 1”), which includes the Portal North Bridge Project, the Hudson Tunnel Project and completion of the Hudson Yards Concrete Casing. Phase 1 is vital to the functioning of the NEC, and addresses single points of failure that can have catastrophic impacts to the region’s economy and environment. Future phases of the Program include the replacement of the Sawtooth Bridges in New Jersey and the expansion of PSNY, Newark Penn Station, and Secaucus Junction. Efficient and effective project management and delivery strategies are critical to the delivery of the Gateway Program in a timely and cost effective manner.

In June 2016, the Program’s Phase 1 projects were accepted into the Project Development Phase of the FTA’s Capital Investment Grant (“CIG”) Program. GDC, together with Amtrak, NJ TRANSIT, and the Port Authority of New York and New Jersey (“PANYNJ”) (collectively the “Project Partners”), continue to work closely with United States Department of Transportation (“USDOT”)

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and FTA staff on advancing Phase 1 through the CIG program phases. GDC also entered into USDOT's Emerging Projects Program in January 2017, through an agreement between GDC and USDOT's Build America Bureau ("BAB") covering Phase 1 projects. This agreement established a framework for the provision of heightened technical assistance on applying for and obtaining low-cost federal financing from the Transportation Infrastructure Finance and Innovation Act ("TIFIA") and Railroad Rehabilitation and Improvement Financing ("RRIF") programs. Furthermore, GDC has begun to seek the best of private sector expertise and innovation to deliver Phase 1 on time and on budget by issuing a Request for Information in August 2017 to inform procurement and delivery methods, to include design, construction, and financing solutions.

GDC supports the proposed rulemaking since it aligns with our goal of leveraging private sector expertise and capital, in order to deliver these projects and their associated benefits to the commuting public. Below are recommendations to improve or refine certain elements based on GDC's experience working on multiple funding and finance activities for Phase 1 of the Program.

### **1. Private Investment Project Procedures (§650.11)**

**GDC recommends that the FTA allow recipients to supplement applications with additional modification or waiver requests as they arise.**

As currently written, the proposed rule limits applications to one request per project. While GDC understands that resources and time are required to review applications, we believe that there should be continuing opportunities for multiple entities involved in the implementation of a project to submit requests to modify or waive existing FTA requirements as the project advances.

Our experience working with USDOT on grant and loan submittals has been helpful in developing project funding and financing plans. As projects evolved, USDOT staff provided constructive guidance to help us navigate the processes and find opportunities to streamline steps and ensure project success. Feedback received has also helped shape and improve our approach to delivering these projects. Based on this experience, in order to encourage maximum flexibility and private sector participation, GDC suggests that USDOT allow additional submittals as opportunities are identified. Additionally, since GDC may receive support from multiple entities, such as NJ TRANSIT and the PANYNJ, it is important to allow more than one potential recipient of funding, rather than a sole recipient, to request a modification or waiver on behalf of the project.

In order to expedite the review of these subsequent requests, GDC suggests that applicants not be required to include duplicative information previously submitted as part of the initial application in adherence with §650.31 (b). The subsequent applications should only be required to include any updates to information submitted previously as well as information pertinent to the specific waiver request.

**GDC recommends that the rejection of an application, in whole or in part, not preclude the recipient(s) from submitting subsequent applications for different waivers or modifications pertaining to the same project.**

To truly maximize the potential benefits of this rule, denied requests for specific modifications and waivers should not cause the overall project to be ineligible for future applications. Section §650.11 (a) should be modified to narrow the restriction on applications to those specific elements that have previously been denied.

**GDC recommends that the FTA accept applications with information available to the applicant at the time of submittal.**

Section §650.31 (b) of the proposed rule should be amended to recognize that the availability of certain information is dependent on a project's stage of development. GDC suggests adding language to §650.31 (b) that recognizes that an initial application should all information *to the extent it is available at the time of the application's submission*.

## **2. Lessons Learned Report (§650.21)**

**GDC recommends that all determinations on waivers, including both approvals and denials, as well as any supporting justification materials, as well as any reports, be made publically available by FTA in order to ensure the development of best practices.**

GDC firmly believes in the value of learning from the experiences of other major transportation projects, from both the private sector and from our sister transportation entities. In order to share innovative project delivery techniques across current projects and ensure accountability, transparency, and the development of best practices, we recommend that the FTA make all determinations on waivers, including both approvals and denials, as well as any supporting justification materials publically available online. The public posting of waiver determinations would also help prospective applicants craft a successful application and leverage PIPP for their own projects, further reducing impediments to public-private partnerships and private investment in public transportation capital projects. Additionally, we believe that transparency and accountability in the modification or waiver request process will further protect the public interest and any public investment in the proposed Federally-assisted public transportation capital project.

## **3. Application Process (§650.31)**

**GDC believes that evidence of committed financing, as defined by the Capital Investment Grant Program, might be premature at the time of a waiver application. As such, GDC recommends modifying §650.31(b)(8) to include "funds committed *and/or proposed*."**

To support innovative and creative funding and financing initiatives, GDC recommends that waiver applicants should be asked to identify both committed and/or proposed funds. This is

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especially important since the waiver requests may be identifying impediments to obtaining certain funding commitments.

By identifying proposed funds as well as committed funds, projects will have an opportunity to better define the financial plan and leverage local self-help once the public-private partnership or public sector investment is formally engaged. Requiring evidence of committed financing may be premature at the time of a waiver application because a waiver application can be submitted at any point in a project's lifecycle and may occur prior to when evidence of committed financing is required within the funding program's requirements.

### **GDC recommends application notification deadlines to ensure an expedited review process.**

One perceived barrier cited in FTA's research was the perception that the timing for obtaining public funding was incompatible with the timing of private financing schedules. To support private sector participation in public projects, and to encourage increased project management flexibility and timely project implementation, GDC recommends the following application notification deadlines be included in §650.31 (c):

- i. Notice of Incomplete Application
  - i. 30 days after receipt of application
- ii. Notice of Request for Additional Information
  - i. 30 days after receipt of application
- iii. Notice of Complete Application Received
  - i. 30 days after receipt of application OR receipt of response to Notice of Incomplete Application or Notice of Request for Additional Information
- iv. Notice of Approval, Denial, or Partial Approval
  - i. 45 days after Notice of Complete Application Received

GDC recommends in §650.31 (d) that a recipient may resubmit an application with additional information to address the FTA's reasons for denial or partial approval within 14 days of the Notice of Denial or Partial Approval. We believe FTA should provide a final decision within 30 days of this resubmittal.

A lengthy review process may result in the modification or waiver to be less impactful for the project than originally intended. Since public-private partnerships require significant and complex negotiations, it is important that the PIPP process be as transparent and expedited as possible. GDC believes that an expedited review process of waivers, as well as concurrent and timely review of all FTA documents submitted for approval and project advancement is important in allocating resources effectively and maintaining project schedule. Furthermore, project advancement and oversight processes should reflect the fast-tracked nature of working with the private sector and the ability to review and process documents in a manner consistent with project and market requirements.

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We greatly appreciate the opportunity to share our recommendations and ideas. We look forward to our continued partnership with USDOT, FTA and BAB, in working to identify and utilize innovative project management and delivery methods to advance these critical projects as quickly and efficiently as possible. Please contact Francis Sacr, GDC Interim Finance Director, at 212-435-5812 or [fsacr@panynj.gov](mailto:fsacr@panynj.gov) for any questions or clarifications about these recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard H. Bagger".

Richard H. Bagger  
Chairman  
Gateway Program Development Corporation