



September 16, 2014

The Honorable John J. "Jimmy" Duncan, Jr., Chairman
The Honorable Michael Capuano, Ranking Member
Special Panel on Public-Private Partnerships (P3s)
The House Committee on Transportation and Infrastructure
2105 Rayburn House Building
Washington, DC 20515

RE: P3 policy recommendations for removing barriers and protecting the private sector, including small businesses, and taxpayer funds.

Dear Chairman Duncan and Ranking Member Capuano:

The Business Coalition for Fair Competition (BCFC) is a national coalition of businesses, associations, taxpayer organizations, and think tanks that are committed to reducing all forms of unfair government created, sponsored, and provided competition with the private sector. BCFC believes the free enterprise system is the most productive and efficient provider of commercial goods and services and strongly supports the Federal government utilizing the private sector for such products and services to the maximum extent possible.

We are pleased to provide comments and offer our recommendations to assist your Special Panel on Public-Private Partnerships (P3s) which is tasked with examining the use of and opportunities for P3s across all modes of transportation, economic development, public buildings, water, and maritime infrastructure.

BCFC was one of 29 organizations to cosign a broad based coalition [letter](#) of 29 national and regional business, taxpayer and free market organizations that urged Congress to reject a provision in the Senate version of the 2012 Highway Bill (MAP-21) which would have reduced levels of highway formula funding for states that utilize P3s. BCFC has also engaged with the following Congressional Caucuses to help advocate usage of P3s to help satisfy partnering opportunities to meet the public need with the private sector capacity: Yellow Pages Caucus; P3 Caucus; and the Job Creators Caucus. Several members of your panel specifically, and the Full Committee, are represented within these Caucuses.

Government officials have recognized that properly structured and executed P3s can produce a win-win solution for the public and private sectors. P3s have become an important tool to finance and deliver public projects and basic services. With current and future public funding challenges at all levels of government, P3s offer the promise of delivering high-quality public projects and basic services in a timely and cost-effective way. If structured and executed correctly, P3s provide up-front capital for public projects and basic services that may not be otherwise accomplished.

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Infrastructure P3s combine design, construction, financing and/or operations and maintenance (O&M) in delivery of assets, while leveraging private capital. P3s are not a panacea. Private finance may help close a funding gap, and P3 project delivery is likely to deliver more projects for a given dollar of revenue, but P3s do not eliminate all risks or possibilities for conflict or claims. The same challenges that face a publicly funded project can also occur on a P3.

While a P3 infrastructure project may be managed by a private sector entity, the completed project is for the benefit and welfare of the public and can revert to an asset of the government at some future point. Thus, the formulation of federal policy on the use of P3 projects to address infrastructure and transportation needs should involve careful consideration of security arrangements on such projects. The federal government long has employed the time-tested mechanism of surety bond requirements in the form of performance and payment bonds to ensure that only qualified companies perform construction services intended for public benefit and that certain subcontractors and materials suppliers are afforded payment remedies in the event of nonpayment. Given the important role surety bonds have on federal infrastructure projects, BCFC encourages your panel to consider the importance of including performance and payment bond requirements in your P3 policy recommendations.

One additional end product to P3s can be reducing unfair government competition with and duplication of the private sector, including small businesses. Government should not be a competitor in commercial markets. Unfair government competition is antithetical to a successful free market and unfair to American taxpayers and shareholders of private sector business, who are forced to compete with publicly-funded government entities. Unlike publicly-funded functions providing goods and services, private sector operators and service providers must cover their fully allocated (operating and capital) costs when pricing contracts and services allowing for equitable competition. BCFC believes that public dollars should be used in the most efficient way possible and not as a tool to disenfranchise, undercut and potentially shutter private businesses. P3s reduce long-term public costs and the risk associated with construction (including cost overruns) and financing, all of which we believe to be taxpayer-friendly benefits.

In order to empower the private sector, BCFC respectfully urges your panel to encourage, incentivize and remove barriers to such innovative financing arrangements. With a nearly \$1 trillion annual deficit and a \$17.8 trillion national debt, the Nation should encourage and enhance the use of P3s. Legislative and regulatory provisions that prohibit, impede, interfere, obstruct, encumber, or delay the use of P3s, or other similar options to use private financing and capacity to help fund public projects and basic services should be avoided and repealed. We recommend inclusion of policies and legislation to assure that the U.S. Government supports, rather than impedes, growth in the private sector.

Sincerely,



John M. Palatiello, President
Business Coalition for Fair Competition (BCFC)

Additional Resources

The House Committee on Transportation and Infrastructure:

P3 Panel Hearing: Public-Private Partnerships and Federal Real Estate – December 13, 2013

<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=364582>;

P3 Panel Hearing: Case Studies in Public-Private Partnerships –February 11, 2014

http://transportation.house.gov/uploadedfiles/2014-02-11-full_committee_roundtable_ssm.pdf;

P3 Panel Hearing: Public-Private Partnerships for Water Supply and Treatment – March 25, 2014

http://transportation.house.gov/uploadedfiles/2014-03-25-p3_panel_ssm.pdf;

P3 Panel Hearing: The State Experience with Public-Private Partnerships –April 30, 2014

<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=377504>;

P3 Panel Hearing: Opportunities for Aviation and Public Private Partnerships –May 20, 2014

<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=379986>;

P3 Panel Hearing: Innovative Approaches to Delivering Public Buildings –June 10, 2014

<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=383496>;

P3 Panel Hearing: Ways the Financial Community Can Invest in Infrastructure Using Public-Private Partnerships –June 16, 2014

<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=384126>; and

P3 Panel Hearing: Public Private Partnerships for America’s Waterways and Ports – July 10, 2014

http://transportation.house.gov/uploadedfiles/2014-07-10-p3_panel_ssm.pdf

Broad-based coalition letter supporting P3s for 2012 Highway Bill (MAP-21)

www.governmentcompetition.org/uploads/Coalition_letter_P3s_to_Highway_Bill_Conferrees_6-7-2012_.pdf

The Associated Builders and Contractors (ABC) in close consultation with the National Council on Public-Private Partnerships (NCP3P)

www.abc.org/EducationTraining/AcademyPages/tabid/340/entryid/1184/Default.aspx and

www.ncppp.org/wp-content/uploads/2013/03/WhitePaper2012-FinalWeb.pdf;

The Associated General Contractors (AGC)

www.agc.org/cs/Additional_Financing_Sources;

The Construction Industry Round Table (CIRT)

www.cirt.org/page-565800;

The American Road & Transportation Builders Association (ARTBA)

www.artba.org/highways/

The Association for the Improvement of American Infrastructure (AIAI)

<http://aiiai-infra.info/legislative.html>);

The National Asphalt Pavement Association (NAPA)

www.asphaltpavement.org/index.php?option=com_content&view=article&id=832&Itemid=100157);

National Association of Waterfront Employers (NAWE)

http://transportation.house.gov/uploadedfiles/2014-07-10-p3_panel_ssm.pdf

National Electrical Contractors Association (NECA)

www.necanet.org/docs/default-source/position-papers/require-federal-agencies-to-contract-with-the-private-sector-for-construction-services-whenever-practicable.pdf?sfvrsn=0

The Fuel Cell & Hydrogen Energy Association (FCHEA)

www.fchea.org/core/import/PDFs/factsheets/FCEV_Fact_Sheet.pdf