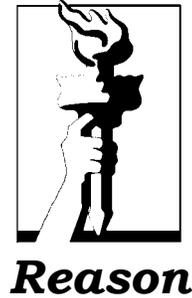


**Statement of  
Dr. Adrian Moore  
Vice President  
Reason Foundation  
Before the  
Subcommittee on Energy Policy, Natural Resources  
and Regulatory Affairs  
Committee on Government Reform  
United States House of Representatives  
May 18, 2004**



## **Introduction**

Current law and the Administration's policies are clearly aimed at expanding the competitive and private provision of services that are not inherently governmental. In the transportation sector, while there is a great deal of experience with private sector participation in providing a wide range of services, we have fallen fall short of taking full advantage of it.

The opportunities for private sector participation in transportation services runs a wide range. In many cases government agencies compete with private service providers or have forced private providers out of the market in order to maximize revenue for government services. In such instances the market would provide transportation services if government competition or regulation were removed.

In many more instances, the best opportunity to involve the private sector is via a public-private partnership. There is a vast range of such opportunities from the building of new infrastructure, to maintaining existing infrastructure, and the operation of existing services.

And, in some cases, there may be no economically or operationally viable role for the private sector and full responsibility must rest on a government agency.

By not capitalizing on all opportunities to involve the private sector we are increasing the costs of transportation services, limiting their flexibility, stifling innovation, and creating a static system to the detriment of taxpayers and travelers.

I would like to focus on the results of and opportunities for private sector participation in transport services, with special focus on urban transit, new roads, and maintaining existing roads.

### **Private Participation in Transit Services**

If bread on supermarket shelves were moldy and increasingly expensive, we'd expect fewer people to buy bread. When faced with paying more for a worse product, it's not surprising that more customers simply refuse to buy the product. We should be similarly unsurprised to discover that—after years of fare increases and degraded service—transit ridership continues to fall.

Between 1960 and 2000, transit's share of work trips fell from over 12 percent to under 5. And while ridership falls, costs rise—not just for bus riders, but for taxpayers, too. Again, between 1960 and 2000, federal transit subsidies nearly tripled and total government subsidies ballooned to over 7 times 1960 levels. In other words, taxpayers—whether they use transit or not—have clearly endured their own kind of fare hike. Why do costs continue to rise as transit serves an ever-shrinking slice of America? Moreover, transit's remaining customers often receive poor service.

Some blame the bus itself, and there's no doubt the lowly bus suffers from an image problem. Decades of slow, spotty, unpleasant and unpredictable service have earned the bus the reputation as the transportation option of last resort. Of course the cause-and-effect behind the bus' fall may blur. As fewer people ride the bus, transit agencies anxious to control costs may reduce service even more. Ridership continues to fall, while a service that wasn't great in the first place degrades even further.

Some argue that the bus is simply too unappealing to attract a sizeable number of patrons. It's this perception that leads many transit agencies to pursue other transit modes, such as light rail. Light rail, they say, is hip and appealing while the bus is simply lowly.

But the research tells us there's nothing inherently lowly about the bus. For example, a 2001 GAO report notes:

*While transit officials noted a public bias toward light rail, research has found that riders have no preference for rail over bus when service characteristics are equal.<sup>1</sup>*

Moreover, rider surveys reveal that patrons have straightforward requests for improved service, and these requests have little to do with a bias against the bus. Bus patrons simply want more routes, and faster, more frequent, more reliable service.

Others look at the dismal state of public transit and say the problem is much bigger than the bus. They say the problem is that transit has largely outlived its usefulness. After all, in most any society where wealth increases, private auto ownership and suburbanization will likely follow. Public transit simply lacks the speed, flexibility and convenience to be relevant in modern America.

Those who hold this view have a point. And we must be realistic about how much public transit can contribute to American's transportation needs. After all, transit simply cannot compete with the car in terms of speed, flexibility and convenience. And auto ownership has become prevalent even among transit's primary clientele—the poor. Three-fourths of households earning less than \$20,000 have at least one car.<sup>2</sup>

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<sup>1</sup> General Accounting Office, "Bus Rapid Transit Shows Promise," Washington, D.C.: GAO Report 01-948, September 2001.

<sup>2</sup> John Pucher and John L. Renne, *Socioeconomics of Urban Travel: Evidence from the 2001 NHTS*, *Transportation Quarterly*, Vol. 57, No.3, Summer 2003.

Still, millions of Americans do rely on transit to get them to work, to school and to other appointments. So if we agree that the problem isn't the bus itself, and that transit is still relevant for millions of Americans—what does account for transit's woes?

From the point of view of the bus rider, the problem is customer service. Let's remember what ridership surveys tell us. Bus patrons have very straightforward requests: more routes, and faster, more frequent, more reliable service. From the point of view of the taxpayer, the problem lies with incentives. Our current system lacks the incentives to emphasize cost containment.

So what could satisfy both the transit patron and the taxpayer? Often the answer is private sector participation.

Whenever we consider doing something new, whether it's buying a car or privatizing a transit system, we should always do our homework. One way to allay fears about doing something new is to examine the experience of those who have gone before us. Are these people satisfied with their decision? Transit private sector participation—specifically competitive contracting—enjoys very high satisfaction rates. A recent Transportation Research Board survey notes that—when asked if they had to do it over again—roughly 80 percent of transit managers who chose contracting say they would stick with it a second time.<sup>3</sup> Eighty-percent, what elected official wouldn't dream of such approval ratings!

That 80 percent approval rating is even more impressive when you consider who these transit managers are. They aren't cheerleaders for private sector participation. They aren't executives from firms who might benefit from increased private sector participation. They are public employees who needed a way to improve service and cut costs. They're pleased with private sector participation simply because it works.

Consider the following:<sup>4</sup>

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<sup>3</sup> Transportation Research Board, "Contracting for Bus and Demand-Responsive Transit Services: A Survey of U.S. Practice and Experience," Special Report 258, 2001.

<sup>4</sup> E.S. Savas and E.J. McMahon, *Competitive Contracting of Bus Service: A Better Deal for Riders and Taxpayer*, Civic Report No. 30, New York: The Manhattan Institute, November 2002.

- In the US and Europe, competitive contracting has reduced operating costs from 20 to 51 percent, with savings of about 35 percent being the norm.
- Competitive contracting cut bus operating costs by 26 percent in Houston.
- By over 30 percent in San Diego
- By 46 percent in Denver.
- Moreover, in all cases contracts protected public transit employees from losing their jobs.

Moreover, improved service often accompanies lower costs. After decades of subsidies, outside money has become more important to agencies than revenue from fares. And as in any service, when customer patronage is detached from revenue, customer service falters. However, since companies bid for the right to serve bus patrons, competitive contracting can bring customer service back to transit.

The question is often asked: “Which transit services can be privatized?” The most obvious answer is the bus service itself, but that’s just the beginning. Here is a sample of some more:

- Accounting
- Construction management
- Customer information
- Human relations
- Emissions testing
- Equipment maintenance
- IT
- Printing
- Risk management
- Web site design and management

I could go on and on, but instead of doing that let’s agree that the question should be turned on its head. We need not ask, “Which transit services can be privatized?” but rather, “Which cannot?”

Foothill Transit in Los Angeles shows the validity of our new question. The agency has essentially no employees. A management company handles all the central office functions and oversees the contract transit operators. The results: As of 2000, the Foothills buses were operating at a unit cost 42 percent lower than that of LA County Metro's publicly operated lines.<sup>5</sup>

Of course, private sector participation is not an all or nothing proposition. An agency may decide to privatize some functions and keep others in-house, and certainly these decisions will vary from agency to agency.

Moreover, we must take care to understand why private sector participation works. The key distinction isn't so much private vs. public, but competition vs. monopoly. Private transit operators that are shielded from competition have show that they will become inefficient, while public agencies exposed to competition have improved efficiency. Competition prods service providers to offer an appealing product, and local oversight ensures the fulfillment of performance measures.

Transit exists first to serve those who have no other transportation alternatives. Welfare researchers of all ideological stripes agree that one of the best ways to spur upward economic mobility is to improve physical mobility. When the transit dependent poor and handicapped have better access to education and employment, they are better able to pull themselves up the economic ladder and realize greater personal fulfillment. In other words, the bus can serve a very important role, and private sector participation can help it become the best it can be.

## **Private Sector Participation in Providing New Roads**

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<sup>5</sup> Ibid

Americans waste \$70 billion each year stuck in traffic, according to the latest annual mobility report from the Texas Transportation Institute. Yet this huge cost suggests an entrepreneurial opportunity. The Reason Public Policy Institute first suggested in 1988 that the private sector could build supplemental congestion-relief lanes, using electronic toll collection to charge market prices so as to keep the lanes free flowing even at the busiest of rush hours. The first such lanes were developed in Orange County, California under a private franchise awarded in 1991 under California's AB 680 public-private partnership legislation. Opened to traffic in December 1995 in the median of SR-91, the "91 Express Lanes" demonstrated that electronic variable pricing works superbly to keep traffic flowing smoothly. And the toll revenues proved sufficient to pay for the construction, operation, and maintenance of the new lanes.

Because the 91 Express Lanes were built where high-occupancy vehicle (HOV) lanes had originally been planned, the franchise agreement required that the private franchisee permit three-person carpools to use the lanes at no charge. The concept of limited-access lanes to which one could gain access either by meeting an occupancy requirement or by paying a toll was dubbed High Occupancy Toll (HOT) lanes in a 1993 Reason paper. HOT lanes can be created either via new construction or by converting existing, underutilized HOV lanes into HOT lanes. The next three HOT lane projects to emerge in the 1990s—on I-15 in San Diego and on I-10 and US-290 in Houston—were all HOV conversions. A private firm was hired to manage the I-15 Express Lanes, illustrating another role for the private sector.

The early years of the 21<sup>st</sup> century have seen a proliferation of proposals for more congestion-relief lanes in congested urban areas. Denver and Minneapolis are converting existing HOV lanes to HOT lanes, with private-sector management. The Virginia DOT has received private-sector proposals to add two HOT lanes in each direction to the southwest quadrant of the Washington Beltway (I-495) and to add HOT lanes to I-95 approaching the Beltway and the Shirley Highway (I-395) within the Beltway. In Maryland, the State Highway Authority has requested the private sector to advise it on the feasibility of private projects to add Express Toll Lanes to the Maryland portion of the Capital Beltway (I-495), the Baltimore Beltway (I-695), and several other major highways in the area. Denver is reviewing unsolicited proposals for new

HOT or express toll lanes on two major freeways, and a private firm has proposed adding tolled express lanes to the 27-mile Airport Freeway between Dallas and Houston.

### HOT/BRT Lanes & Networks

There can be real synergy between HOT or express toll lanes and bus rapid transit (BRT). The BRT concept has attracted much recent attention as a way of achieving service quality akin to that of rail transit, but at much lower capital cost thanks to the ability of buses to use already existing infrastructure. However, for the long-haul portions of express bus service, BRT proponents much prefer exclusive busways, in order to guarantee reliable high-speed service (giving BRT a speed advantage over driving). But except in very rare cases (where one or two buses per minute can be justified), an exclusive busway is enormously wasteful of the costly exclusive right of way. Some time-saving can be achieved by operating express buses in HOV lanes (as in Houston and on the El Monte Busway in Los Angeles), but since successful HOV lanes fill up with traffic, the speed and reliability gains for buses are not sustainable long-term.

A much better solution is to operate BRT service on HOT lanes, as proposed in Reason's 2003 report. Electronic market pricing can ensure that the number of vehicles per lane per hour is limited to an amount compatible with free-flow conditions (typically no more than 1,700 vehicles/lane/hour). Hence, the HOT lane becomes a "virtual exclusive busway"—from the transit operator's perspective, it obtains the service quality of an exclusive busway, but does not have to pay for it, thanks to the premium tolls paid by the automobiles that share the use of these lanes.

A number of metro areas are currently studying the possible creation of a network of such managed lanes, serving as both congestion-relievers for drivers and as BRT infrastructure. They include Dallas, Houston, Miami, Minneapolis-St. Paul, Phoenix, and the greater Washington, DC area. All the states involved have public-private partnership laws in place, which would permit such projects to be done under their auspices.

## New Toll Roads

Many of America's fastest-growing metro areas have created toll road authorities over the last decade or two, since conventional highway funding sources and allocation processes were seen as not likely to provide sufficient funding to keep pace with their growth. These areas include Dallas, Denver, Houston, Miami, Orange County (CA), Orlando, and Tampa. These are all public-sector agencies, though some have contracted with private firms for functions such as electronic toll collection.

But the fiscal stress of the last several years has seen a renewed interest in private toll roads in fast-growing states. Both Colorado and North Carolina recently created state toll agencies, which will use the private sector to develop and operate new toll roads. Texas has enacted the most wide-ranging set of toll-road policies, empowering both the state-level Texas Turnpike Authority and regional mobility authorities to engage in developing new toll roads via public-private partnerships. Under Texas law, these projects can be carried out with a mix of conventional (gas tax) and toll funding. Georgia and Mississippi are the most recent states to enact toll road public-private partnership laws, bringing the total of such enabling laws to 21, encompassing nearly all the fast-growing states in the union.<sup>6</sup>

The newest toll road project in California broke new ground in U.S. toll road finance, departing significantly from the conventional model in which close to 100% of the capital cost is raised in the form of debt. A major disadvantage of this approach, for stand-alone, start-up toll roads, is that debt service must be paid on schedule, regardless of how well or poorly traffic is doing during the early ("ramp-up") years of the toll road. But the SR-125 toll road in San Diego was financed in 2003 via the method pioneered in Australia. About 25% of the capital cost is equity put in by the private franchise holder; 50% is bank loans that must be repaid within 10 years; and the balance is a subordinated loan from the federal government under the TIFIA program, with an extended repayment period. Hence, in the high-risk early years, only half of the usual amount of debt must be serviced, providing an important cushion in the event of lower-than-expected traffic. The company intends to replace the bank debt with long-term toll revenue bonds, but can

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<sup>6</sup> *Public Works Financing* keeps a running list of these projects.

select an opportune time to do so during the 10-year life of the bank loans. This financing model is more flexible and inherently lower-risk for start-up toll road projects.

### Toll Truckways

Another type of specialized toll project is new lanes designed for exclusive use by trucks. Such lanes would be designed with heavy-duty, longer-lived pavement, less-steep grades, etc. to better match the physical features of heavy trucks. They would also be separated from general-purpose lanes by concrete barriers, increasing highway safety by reducing the likelihood of often-deadly car-truck collisions.

Historically, the trucking industry has staunchly opposed tolls and toll roads, considering it “double taxation” to pay both tolls and fuel taxes on the same highway. But one concept of toll truckway has won significant support in trucking circles. This is Reason’s proposal that long double- and triple-trailer rigs be allowed to operate on such barrier-separated lanes in states where they are otherwise forbidden by federal law. These larger rigs can in many cases allow a rig to haul double the payload at very little increase in operating cost, making it worth the operator’s while to pay a fairly hefty toll to gain these savings.

Three toll truckway projects are in various stages of consideration as of spring 2004. Furthest along is a private-sector proposal to add two toll truck lanes in each direction over the entire 325-mile length of I-81 in Virginia, at a cost of \$7 billion (most of it private bonds backed by toll revenues). Because this proposal does not provide for the more productive double and triple trailers, the trucking industry has opposed it. But truckway projects in California and Texas, though at an earlier stage, appear to have trucking industry support. The Southern California Association of Governments has included in their new 2030 long-range plan a \$16 billion system of toll truckways to link the ports of Los Angeles and Long Beach with the Inland Empire and Barstow. Its financing plan is based on the high toll rates justified by the operation of double and triple-trailer rigs. And as part of its Trans Texas Corridors program, the Texas Department of Transportation is reviewing unsolicited proposals for a new north-south corridor the length of the state, parallel to I-35, whose first component would be toll truckways.

## **Private Sector Participation in Road Maintenance**

There is an increasing demand for our nations roads and highways. When measured by vehicle miles traveled, it has doubled in the past 25 years—some 2.7 million miles were traveled in 2000.<sup>7</sup> However, new construction has not kept pace. Total road capacity, again measured in miles, has increased a mere 1.5 percent in the same time frame.<sup>8</sup> Even more astounding though, dollars spent on maintenance (constant dollars) have increased less than 20 percent in the past two decades.<sup>9</sup>

Since our nation's reliance on the road network is unlikely to dissipate any time in the near future, governments at every level need to ensure that the current system operates to the highest extent possible. Maintenance is critical to ensure a reliable and safe transportation network. However, tax dollars are already stretched thin between maintenance and new construction. Unfortunately, over the years preventative maintenance has taken a back seat to new construction—in the long run, this proposition will be a losing one.

Governments are faced with the problem of doing more with less. Private sector participation offers a solution to improve quality (do more) and save money (with less).

### Achieving Cost Savings

Achieving cost savings is a leading driver behind privatizing road and highway maintenance. When cost savings has been a motivation there is evidence of significant cost savings. For example, Florida's private sector participation initiatives generated cost savings between 15 and 20 percent.<sup>10</sup>

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<sup>7</sup> Infrastructure Corporation of America, [www.ica-onramp.com](http://www.ica-onramp.com)

<sup>8</sup> *Ibid.*, p. 2.

<sup>9</sup> *Ibid.*, p. 2.

<sup>10</sup> Bill Albaugh, Director of Highway Operations, Florida Department of Transportation, interview with authors, July 2002.

### Improving Efficiency

Seeking to gain the “maximum utility from tax dollars”<sup>11</sup> some contracting agencies have privatized to improve overall system efficiency—achieved through competition and specialization.<sup>12</sup> Study after study shows that a competitive system is more efficient and effective than traditional single provider systems. For example when Massachusetts turned to private sector participation, nearly half of the contracts were won by employee groups who were being forced to compete. For the first time efficiency and effectiveness was introduced system-wide, producing tremendous improvements. The state was able to lower labor inputs and receive greater productivity, and this freed up additional resources that could be shifted to other needs.

### Improving Quality

With the increased private responsibility inherent in private sector participation, there is increased incentive to produce high-quality work and to ensure high performance. One of the most important determining factors for the awarding of contracts is past performance, and delivering a low-quality product could prevent the contractor from procuring future work. In Florida the contractor is “performing at better levels and the quality is at least the same if not superior.”<sup>13</sup>

### Case Studies

#### *Massachusetts*

In the early 1990s, Massachusetts launched a pilot project, contracting for all routine highway maintenance in Essex County.<sup>14</sup> The contract was quantity based—the state DOT continued to determine what work would be done and paid only for those specified tasks. The contract greatly improved highway conditions, delivering considerably more work for the same amount of money. The contract has saved \$2.5 million annually.<sup>15</sup> According to a Kennedy School analysis, the contractor was 21 percent more cost-effective than the state had been.

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<sup>11</sup> Adolfo Lucero, Deputy Secretary, New Mexico Department of Transportation, interview with authors, July 2002.

<sup>12</sup> Jack Traylor, President, Traylor & Sons, interview with authors, July 2002.

<sup>13</sup> Bill Albaugh, interview with authors, July 2002.

<sup>14</sup> Charles Kostro, Deputy Commissioner, Massachusetts Highway Department, interview with authors, June 2002.

<sup>15</sup> Ibid.

On the heels of the pilot project's success, the DOT expanded the program to the entire eastern part of the state in 1993. Private firms and existing employees bid on seven contracts—private firms won four, public employees three. With the three union victories, the DOT was able to keep layoffs down to 150 people. The seven contracts save the state \$7.5 million the first year and delivered \$10 million more in additional services.<sup>16</sup> Since the DOT pays only for services it specifies and the contracts made the firms and employees more productive, both sides won by getting more work done. The new highway maintenance system brought other improvements as well, as competition changed in-house management practices and workers' compensation claims fell 60 percent, overtime decreased 70 percent, and sick leave decreased 50 percent.<sup>17</sup>

The expanded program went so well that in 1996, the DOT moved to competitive contracting of highway maintenance statewide. It offered 14 contracts; public employees and private firms won half of each. In 1998, the DOT rebid the contracts, and is currently reviewing 5 additional contracts, with no media attention—it has become just a way of doing business. The bottom line for the DOT is that between 1991 and 1999, the annual highway maintenance budget fell from \$40 million to \$25 million while the amount of maintenance performed grew.

### *Virginia*

A few years ago, the Virginia legislature passed the Public and Private Transportation Act (PPTA) mandating that the state DOT evaluate alternative proposals to maintain and reconstruction of roads. PPTA goals were simple: to improve efficiency and save valuable tax dollars.

In 1997 VMS Inc, a highway construction and maintenance firm based in Virginia, was awarded a total asset management VDOT maintenance contract. The initial contract was for six years with a value of \$131.6 million covering 251 miles of interstate. VMS maintains state highways in urban Richmond, rural West Virginia, and the southwest part of the state.

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<sup>16</sup> Ibid.

<sup>17</sup> Based on a presentation by Charles Kostro at the AASHTO workshop "Contract Maintenance: Closing the Gap," Nashville, Tennessee, September 20-22 1999.

VMS is responsible for determining how they will maintain the road i.e., what type of materials, techniques, and procedures they will use. The contract requires VMS to maintain all fencing, mowing, snow plowing, pothole repair, cracking, and striping along the 251 miles of highway, to standards established by VDOT and VMS during contract negotiations. VDOT relies on a team of engineers and consultants set the standards, but they aggressively work with VMS since the product quality and liability are transferred to the contractor.

*VDOT uses the same engineers and consultants to monitor the performance of VMS. An annual audit is conducted and a report card is issued describing VMS's progress toward the contract goals. Savings from competitive contracting were identified as \$23 million over five years using standard methodology and actual cost data.<sup>18</sup> A second analysis performed by Virginia Tech found savings from contracting out of between \$16 and \$23 million, or 12 percent.<sup>19</sup> Finally, the contractor completed an analysis showing contracting out saved Virginia taxpayers nearly \$8,000 per lane mile of maintenance.<sup>20</sup> Recently, VDOT exercised a five-year contract extension, evidence of their satisfaction with the product.*

### *Florida*

In each of the contracts the state administers annually, the state has saved several million dollars over what it would have cost under the state monopoly system. According to “Asset Management Program Summary,” a report published by the Florida Department of Transportation in November 2003, the state has saved \$83.7 million, or 15.3 percent throughout the life of the contracts.<sup>21</sup> Furthermore, an additional six contract awards for highway maintenance are planned in the next fiscal year (FY 2004). By July 2008, Florida expects to

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<sup>18</sup> Virginia Joint Legislative Audit and Review Commission, “Review of VDOT’s Administration of the Interstate Asset Management Contract,” Richmond, Virginia, October 2003, p. iv. Available at <http://jlarc.state.va.us/reports/rpt259.pdf>

<sup>19</sup> *ibid.*, p. 12

<sup>20</sup> *ibid.*, p. 48.

<sup>21</sup> Florida Department of Transportation, Asset Management Program, November 2003, available at: <http://www.dot.state.fl.us/statemaintenanceoffice/Asset%20Management%20Program%20November%202003.pdf>

have 28 active asset management contracts. At the local level, the two major toll operators in Orlando and Miami also successfully contract out road maintenance.<sup>22</sup>

FDOT has experimented with several types of contracts that vary in length, magnitude, and quality. The parallels among all of these contracts are significant cost savings, private-sector reliability, enhanced safety for motorists, and improved maintenance conditions. The results and relationship that these two institutions have enjoyed in outsourcing road maintenance should be focal points for all considering this policy move.

### *District of Columbia*

In 1998, The District of Columbia Department of Public Works (DC DPW/DDOT) and the Federal Highway Administration (FHWA) sought to establish a performance-based contract for the National Highway System (NHS). The contract covers 344 lane-miles, 2950 catch basins, seven miles of drainage ditches, 450,000 feet of curb and gutter, 109 bridge structures, 4 major tunnels, and traffic and weather control.<sup>23</sup> The DC project engineer monitors the contract using public surveys and monthly field inspections. Ratings of good, fair, and poor are given in relation to performance criteria including rideability, cracking, skid, public satisfaction, and other factors.<sup>24</sup> Payment includes incentives for performance and depends on compliance with the performance measures. The 5-year \$60 million contract was awarded on a best-value selection<sup>25</sup> The project (The DC Street Initiative) is the largest transportation investment in DDOT's history and is also the first time that the FHWA has joined with a DOT on a program to preserve transportation assets.

The contract was awarded in 2000 to VMS who is responsible for rehabilitation and maintenance of 75 miles of major streets and highways in the District.

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<sup>22</sup> International Road Federation, Symposium on Road Maintenance Contracting, Orlando, Florida. October 21-22, 2003.

<sup>23</sup> James Sorenson, Senior Construction and Preservation Engineer, Office of Asset Management, Federal Highway Administration, *Performance-Based Asset Preservation for the District of Columbia National Highway System* (Washington D.C., 1999), p. 5.

<sup>24</sup> *Ibid.*, p. 7.

<sup>25</sup> "value" is a function of projected costs, product history, management, company experience, and technical approach.

Since the contract was let, DC has seen major improvements in the quality of their roads. In the first year, performance was the low 80's (out of 100).<sup>26</sup> This improvement is in part attributable to the specialization through subcontracting to smaller companies or companies that VMS creates for an area of maintenance. VMS has positively affected the neighborhood with new job hiring, community service participation, and subcontracting.<sup>27</sup> The DC government team is specifically satisfied with the progress on tunnels, which were dilapidated prior to the contract, snow removal, and emergency responses.<sup>28</sup> Overall, DDOT, FHWA, the DC public, and VMS are satisfied with the project in that the assets are generally in better condition than they were two years ago.<sup>29</sup>

## **Conclusion and Recommendations**

The success of existing private sector participation in transportation services highlights the potential benefits for the vast majority of transportation projects and services in which no private sector participation is sought.

The overarching recommendation is that DOT follow existing law that clearly requires the aggressive pursuit of private sector participation in transportation services wherever real benefits can be realized. That includes not only direct federal projects, but also more importantly more vigorous oversight of state and local analysis of opportunities for private sector participation in federal funded projects and services.

### Recommendations with regard to infrastructure

Prior to the 1990s, a major federal impediment to private-sector involvement in highways was the federal ban on the use of tolls on federally aided highways (except for those grandfathered in, such as the Pennsylvania Turnpike and the New York Thruway). That policy has been liberalized, beginning with ISTEA in 1991 and then TEA-21 in 1997. The latter permitted tolling even on urban Interstates, if the Federal Highway Administration as part of its Value Pricing Pilot Program selected the projects. The Administration proposed to mainstream this permission

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<sup>26</sup> Edward Sheldahl, Field Operations Engineer, Office of Asset Management, Federal Highway Administration, interview with authors, July 2002.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

in its 2003 SAFETEA bill, but the conference committee as of the time of this writing had not completed the final reauthorization bill. However, both House and Senate bills included 50-state provisions permitting congestion-relief toll lanes to be added to Interstates, suggesting much broader scope for tolling and public-private partnerships (at least in those states with PPP enabling legislation). In addition, both bills liberalized the basis for converting HOV lanes to HOT lanes.

There are still areas where federal policy appears in need of improvement, despite the advances likely to be included in the 2004 reauthorization.

*New Starts and HOT/BRT.* Although BRT on HOT networks is one of the most promising ideas in transportation, current federal transit policy does not create a level playing field between rail and BRT/HOT networks when it comes to Federal Transit Administration New Starts funding. As things stand, a BRT project on a fixed guideway can be funded if it is a dedicated busway. That would appear to mean an exclusive busway. This language needs to be clarified to include the “virtual exclusive busway” concept made possible by a HOT/BRT project.

*Value Pricing.* As this is written, only the Senate bill would continue an office within FHWA to assist state DOTs and Metropolitan Planning Organizations with the often difficult process of launching projects such as HOT lanes, by providing seed money grants for pre-project studies and funding post-implementation evaluations. These functions have been crucial to the growing interest in value pricing, but it is too soon to eliminate this catalytic assistance.

*LCV Freeze.* Although the House bill would permit states to add truck-only lanes to Interstates, it is silent on the crucial value-added issue of permitting the use of Longer Combination Vehicles (doubles and triples) on such new lanes. The obstacle is the federal freeze on truck sizes and weights enacted as part of ISTEA in 1991. In order for toll truckways to be a win-win proposition, higher-productivity trucking must be part of the package.

*Private Activity Bonds.* Public-private partnerships for toll roads have been relatively few, since the federal tax codes discriminates against the private sector when it comes to financing toll

roads. Public-sector toll agencies can issue tax-exempt toll revenue bonds, but a private franchisee can issue only taxable toll revenue bonds, at significantly higher interest rates (and hence higher debt-service costs). Both houses passed tax measures in 1999 to permit private toll firms to issue tax-exempt bonds for such projects, but the underlying tax bill was vetoed. Currently, the Senate reauthorization bill includes an Administration-backed provision authorizing such bonds, but it failed in the House because Davis-Bacon provisions were included. This reform is worth enacting, even if Davis-Bacon is part of the deal, since most of the large projects that would be likely to use these bonds would already have some degree of federal involvement and be subject to Davis-Bacon anyway.

### Recommendations with Regard to Services

Private sector participation in transportation services will either take the form of market provision or of provision under contract with a government agency in a public-private partnership.

Government transportation services should not be allowed to compete with private services, nor should state or local governments ban or restrict private services to reduce competition with government services. This is most common in urban transit system typically created with federal funding.

As long as federal funds are not used for operation of state and local systems, federal policy is not concerned with how private sector participation is used in operation of those systems. However, I would hope the spirit of smart use of private sector participation would penetrate down to those services as well.