

# P3 Update: TIFIA Program Developments

*by Jake Falk in Washington, and Doug Fried and Chadron Edwards in New York*

## The federal government's expanded TIFIA program is processing loans for US transportation projects. Is it meeting the expectations of the P3 industry?

The US government program that provides direct loans for transportation projects (TIFIA - the Transportation Infrastructure Finance and Innovation Act program) recently reached financial close on its first loan using the new and much increased budget provided by Congress last summer through the Moving Ahead for Progress in the 21st Century Act (MAP-21). The loan closed less than a year after MAP-21 became law, marking progress for the TIFIA program which now has up to \$17 billion of funds to loan.

Nevertheless, the developers, investors and public agencies involved in public-private partnerships (P3s) for US transportation projects, which incorporate greater private sector involvement in project financing and delivery than traditional projects, remain cautious in their approach to TIFIA. The P3 industry is taking a close look at the full list of projects requesting TIFIA assistance and evaluating TIFIA's ability to get P3s to financial close quickly. TIFIA's first loan using its new budget authority was for a project financed by the public sector, not for a P3, and TIFIA was not involved in the first major P3 for a US transportation project to reach financial close in 2013, the East End Crossing project connecting Indiana and Kentucky. (See the background note at the end of this P3 Update for more information about TIFIA and MAP-21.)

## TIFIA Pipeline

The revitalized TIFIA program is up and running.

In July 25th testimony before the US Senate Committee on Environment and Public Works, US Secretary of Transportation Anthony Foxx said there are currently 25 projects in the TIFIA pipeline, equivalent to approximately two thirds of the total number of projects financed by TIFIA since its inception in 1999. Secretary Foxx reported that the US Department of Transportation (USDOT) has hired 10 new employees to help manage the program, including attorneys and financial spe-

cialists, and announced that USDOT would be repositioning the TIFIA program within the Office of the Secretary to streamline program management. The testimony highlighted efforts to increase transparency and improve the loan process and also recognized work still to be done.

The TIFIA program recently posted several new resources on its website. An updated TIFIA guide, which explains how the program is administered, is available at [http://www.fhwa.dot.gov/ipd/tifia/guidance\\_applications/program\\_guide.htm](http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/program_guide.htm). In addition, new templates of a TIFIA term sheet and a TIFIA loan agreement are available at [http://www.fhwa.dot.gov/ipd/tifia/guidance\\_applications/form\\_documents.htm](http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/form_documents.htm), and an enhanced chart highlighting each project's position in the TIFIA process, from submission of an initial letter of interest through execution of a credit agreement, is available at [http://www.fhwa.dot.gov/ipd/tifia/letters\\_interest\\_applications/tifia\\_review\\_process\\_chart.htm](http://www.fhwa.dot.gov/ipd/tifia/letters_interest_applications/tifia_review_process_chart.htm).

These resources provide added transparency to the TIFIA process. The revised templates may help get loans executed more quickly, but this will probably depend on the extent to which the templates reflect terms and conditions that will be acceptable in the P3 market and how much negotiation will be necessary to close any particular project loan. How quickly the loans can close will probably also depend on the extent to which precedent from prior TIFIA transactions may, where appropriate, be used for new transactions, particularly with respect to the business terms of the TIFIA loans.

These developments are noteworthy and good news for the transportation industry as a whole, but it remains to be seen how much the revitalized TIFIA program will facilitate P3s, which are a unique subset of the projects advancing under the new MAP-21 process.

## First P3s

Four P3s are currently progressing under TIFIA's new MAP-21 process.

Eight of the 31 projects that have submitted letters of interest for TIFIA assistance since MAP-21

*/ continued page 2*

## TIFIA Update

*continued from page 1*

passed are P3s, but only four of these P3s are included in the 17 projects that have advanced to the second stage of the MAP-21 TIFIA review process, the in-depth creditworthiness review that is the stage at which the amount of resources TIFIA devotes to the project increase. The four are the I-77 HOT Lanes project in North Carolina, the SH-288 project in Texas, the Portsmouth Bypass project in Ohio, and the I-4 Ultimate project in Florida. These four P3 projects are still in the competitive bidding stage and are not currently expected to reach financial close in 2013. While there are other P3s that may close TIFIA loans in 2013 using TIFIA funds committed before MAP-21 passed, these four are still progressing through the new MAP-21 process.

Of note, the first major P3 to reach financial close in 2013, the East End Crossing project connecting Indiana and Kentucky over the Ohio River, did not use TIFIA in its financing structure, relying instead on private activity bonds and equity investments. While the East End Crossing project may not be representative — most transportation P3s in the United States are currently pursuing TIFIA — the decision not to pursue a TIFIA loan for this project (after a letter of interest was submitted in September 2012) raises questions about the possibility that other P3s will leave TIFIA out of their financing plans.

With traditional public projects, the procuring agency will be the borrower and can move straight into discussions with TIFIA about loan structures. In contrast, P3s typically have a two-step process. The procuring agency generally works with TIFIA until a preferred bidder is selected, and the preferred bidder then works directly with TIFIA to finalize the loan. TIFIA and its P3 partners need efficient mechanisms to transition from work done with procuring agencies in the early parts of the review process (including reviews of forecasted financial plans) to implementation of loan structures that reflect the preferred bidders' proposed plans, and that allow the procuring agency and the preferred bidder to meet the deadlines agreed to for financial close.

The increased visibility of TIFIA, and the Secretary's focus on streamlining and improving the loan process, should help continue to make TIFIA more efficient and effective for P3s. TIFIA is implementing changes to its process in real time, as it executes loans, and the process will continue to evolve as P3s advance under MAP-21. In the long-term, whether P3s will play a prominent role in the TIFIA program may be determined, in large part, by how many projects state and local governments choose to deliver as P3s. However, as an important incentive to encourage innovative financing approaches, including P3s, TIFIA should continue to evolve to support these projects.

TIFIA has made progress during its first year under the new MAP-21 framework, but the second year may be more telling about the program's ability to facilitate broader use of P3s for transportation projects in the United States.

### Background Note:

In July 2012, Congress passed legislation called the Moving Ahead for Progress in the 21st Century Act or "MAP-21" that, among other things, increased the funding available for the US Department of Transportation to provide loans for highway, transit and other surface transportation projects under the TIFIA program. The TIFIA program expects to lend up to \$17 billion in fiscal years 2013 and 2014 at favorable rates and with flexible terms. (The government uses a September 30 fiscal year.) Since 1999, the TIFIA program has provided more than \$11 billion in loans and loan guarantees to eligible surface transportation projects with total project costs of almost \$44 billion.

TIFIA's first loan using MAP-21 funds was a \$99 million loan to support the City of Chicago's efforts to complete the Riverwalk Expansion project as part of the reconstruction of Wacker Drive. The loan reached financial close on June 12, 2013. A complete list of projects that have submitted letters of interest for TIFIA loans under MAP-21 is available at [http://www.fhwa.dot.gov/ipd/tifia/letters\\_interest\\_applications/letters\\_submitted\\_2013.htm](http://www.fhwa.dot.gov/ipd/tifia/letters_interest_applications/letters_submitted_2013.htm). ©

August 5, 2013