Public Works Financing

Published monthly since 1988
by William G. Reinhardt, Editor/Publisher
Westfield, NJ

www.PWFinance.net
PWFinance@aol.com

Reprinted from January 2013/July 2013

TIFIA: "It's Put Up or Shut Up Time" (7/13 p. 23)

Unexpectedly cordial hearings July 24 on FHWA's slow-moving TIFIA loan program ended with a promise from Sen. Barbara Boxer (D-Calif.) to draft a letter to US DOT Secretary Anthony Foxx detailing experts' suggestions for saving the P3-critical financial engineering tool.

Boxer, who chairs the Senate Environment and Public Works Committee (EPW), is understood to be angry that LA Metro and 30 other transportation agencies waiting for loans have not been invited to apply. "We've got to get those deals out the door so we can get those jobs," she told Foxx.

TIFIA faces the probability of losing political support in the MAP-21 reauthorization a year from now unless deal flow increases substantially. "It's put up or shut up time," says David Napoliello, the EPW Committee's Majority Senior Policy Advisor.

USDOT's Credit Council has approved only one new loan under what was mandated by Congress to be an expedited process in MAP 21. That $99-million loan was for Riverwalk in Chicago.

Foxx promised a better result. "My instructions to my staff are to get to "yes" on every project that comes in," he said.

Of 31 letters of interest (LOIs) under review, 25 projects are moving through the credit approval process, says Foxx, and six of them will be approved by year-end.

Observers are hopeful but not optimistic. Foxx says TIFIA will have 30 staff by year end. But adding bodies won't speed approvals, says a consultant advising two public agency applicants. Managers of the TIFIA office are placing inexperienced hirees from other federal agencies into leadership positions handling due diligence on specific projects. Without training, the discovery process hits the wall quickly, he says.

Texas DOT's TIFIA application for its Grand Parkway in Houston was made in August 2012. The $2.8-billion financing went ahead this month without TIFIA, using $840 million in notes instead of the TIFIA loan. The hope is that the notes will be replaced with a TIFIA loan at some point.

TIFIA missed the financial close of the East End Crossing project, an availability pay credit of the Indiana Finance Authority.

Due diligence has stalled on TIFIA loans sought by LA Metro for two major rail projects in Los Angeles backed by Measure R sales tax proceeds.

The same is true for the Metrorail extension from Washington, D.C., to Dulles Airport, which first applied for a TIFIA loan in 2007.

The Riverside County Transportation Authority (RCTC) financed its SR91 managed lanes project using a TIFIA loan as part of its capital structure. But RCTC had submitted three LOIs over the past five years before getting Credit Council approval under pre-MAP 21 rules. Further, TIFIA loan officers didn't finalize their SR 91 term sheet until late in the process, leaving RCTC with a take-it-or-leave it proposition at the financial close.

Also testifying at Boxer's hearing were James Bass, CFO of Texas DOT; Arthur Leahy, CEO of LA Metro; James Roberts, President/CEO of Granite Construction (representing the Associated General Contractors); DJ Gribbin, managing director Macquarie Capital Advisors; and Geoffrey Yarema, a partner at Nossaman, LLP.

Yarema's wish list captured the group's suggestions for accelerating TIFIA's approval process: (a) streamlining the pre-application process, (b) enhancing bidding competition with earlier TIFIA commitments to public sponsors, (c) accelerating financial closing, (d) preserving TIFIA's value proposition to maintain flexible loan terms, (e) enhancing transparency, (f) processing higher quality credits more quickly and efficiently, and (g) implementing the authorization of loans up to 49% of eligible project costs, as approved by MAP-21.

A year in the making, the TIFIA Program Office's new program guidance sets the maximum loan amount at 33%. n

Moving TIFIA Upstairs Holds Peril and Promise (7/13 p. 23)

Included in DOT Secretary Foxx's printed testimony but not mentioned at Senator Barbara Boxer's hearing is USDOT's intention to move the TIFIA Joint Program Office from FHWA to the Office of the Secretary of Transportation (OST). Foxx was prodded twice by Boxer to mention the change of management, but the Secretary talked past it.

Foxx's written testimony cited a need to create a "more streamlined management approach" to address increasingly large and complex loan requests.

Congressional staffers say moving TIFIA from Federal Highways to OST's intermodal programs office would result in a change of jurisdiction for TIFIA to the Senate Commerce Committee, a move Boxer surely would oppose. The Obama Administration has worked closely with Commerce to advance other White House programs.

US Deputy Secretary of Transportation John Porcari, in response to a question from PWF at ARTBA's P3 conference, said he thought moving TIFIA to OST could be accomplished administratively.

[It can, says a federal budget expert. Normally, moving program funding authority from FHWA to OST would require approval of appropriators. But OST is seeking approval to set up a reimbursable account whereby OST would manage TIFIA with FHWA funds.]

Porcari, who chairs the Credit Council that approves PAB allocations, TIFIA and RRIF loans, also said locating TIFIA in OST would allow more input from projects' political supporters.

A P3 banker with long experience in Washington says the right kind of political involvement at the OST level might expedite loan approvals by providing political cover to TIFIA's shell-shocked career staff.

TIFIA staff now have so many layers of oversight that "they don't know who their boss is," he says. Criticism from Congress and OMB over the SR 125 bankruptcy and constant reminders from the White House to avoid another Solyndra fiasco have made loan officers and their overseers at OMB very conservative, he says.

Prospective borrowers say the current dynamic has resulted in new TIFIA loan terms being almost as conservative as senior debt. That defeats the purpose of the program, they say, which is to offer gap financing at flexible terms to projects that might not otherwise gain access to the capital markets at affordable rates. All of the benefits of that approach in previous loans have been passed on to taxpayers and users.

The practical impacts remain to be seen.

"They're catching hell for not getting things moving and they think they can streamline things by putting it [TIFIA] in OST," says a former USDOT executive. "But I've never seen OST administer anything well."

A former career staffer at USDOT says, "I'm betting the OST continues to work thru FHWA to get TIFIA money, award contracts, manage the website, etc. I expect the only real change, for now, will be that reporting lines will run straight to the Secretary's office rather than thru the FHWA Administrator and his underlings."

He adds that "while the move to OST might inspire Commerce to take a greater interest in the program, it is very likely that EPW [Boxer] will maintain primary oversight."

TIFIA: A $41-Billion Jobs Program Going Nowhere, Yet (1/1/13, p. 1)

States are roaring ahead, spending a lot of money and making procurement commitments based on the assumption that outgoing DOT Secretary Ray LaHood meant what he told Public Works Financing (PWF) after passage of MAP-21 last July—"We get it. Our job is to put people to work."

All of the new money in the two-year federal transportation bill, MAP-21, is in the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. Congress increased TIFIA's lending capability from about $1 billion last year to almost $7 billion this year and $10 billion in fiscal 2014. Depending on how much credit support is given to each project, the low-interest subordinated TIFIA loans provided by USDOT could support as much as $50 billion in new transit and highway projects in the next few years.

The response from transportation agencies has been overwhelming. Seven letters of interest (LOIs) for projects worth $8 billion have been submitted to USDOT in the past two months. A total of 28 new loan requests for projects worth $41 billion from 24 different cities, regional agencies and state DOTs have been submitted since loan requests were invited last August (see p. 12).

But all of the loan requests are backed up at the initial LOI stage, which means none of the project sponsors has been officially invited to apply for a loan. In the past, it has taken over a year from that point for TIFIA to complete its due diligence and actually sign a loan.

As reported by Politico: "DOT is working to review the letters of interest" on a timeline that makes sense for that project," the official said, adding that the department is working "closely" with sponsors to "resolve financial structuring, project scope, procurement, legislative, regulatory and environmental issues."

That's far different from what a TIFIA consultant tells PWF: "It appears that USDOT will continue to pick winners and losers based primarily on political considerations and its views on what projects are most meritorious from DOT policy and political perspectives. They won't do this overtly, but rather by delaying projects at the LOI stage via repetitive requests for more information, stonewalling, etc.—like they are doing now."

Politics

MAP-21 requires an up or down decision on loan requests 60 days after an LOI has been reviewed. To give itself more time and control, however, the Office of the Secretary of Transportation (OST) has added the requirement for a preliminary rating opinion letter as part of the LOI process. This inclusion of a financial plan analysis triggers a review of projects at the OST level in the middle of the approval process, and at any point further along in the loan underwriting process.

The early and continuing political involvement by OST slows down the underwriting at the staff level. When the TIFIA program staff's work can be overruled at any point in the process, it reduces a sense of urgency, they say.

OST was involved in TIFIA decisions during the Bush Administration too. As demand outstripped loan authority in 2007 and 2008, P3 project LOIs were given priority over public projects as a matter of policy. There was relatively little demand from government borrowers, however, so the pro-P3 policy didn't crowd out many projects.

Now, with TIFIA's financial resources so much greater under MAP-21, the political involvement has moved higher up the food chain. Outgoing Transportation Secretary Ray LaHood, the only Republican in President Obama's first-term cabinet, is said to have operated OST like a congressional office, with staff directed to pursue executive earmarks for favored projects. No replacement for LaHood had been named at press time.

49% Hurdle

Because Congress said they could, many TIFIA loan applicants are seeking federal credit support for 49% of eligible project costs vs. the 33% maximum that was previously in effect. OST's policy, however, requires applicants to provide a strong justification for a 49% loan—the rationale being that allowing 49% loans would use up too much of TIFIA's credit capacity on too few projects. Chris Bertram, the agency's former CFO, first announced that policy last July in an interview with Public Works Financing.

(In seeking to understand the rationale for requiring heightened justification for requests for 49% loans, one frustrated CFO of a state DOT asks: "If the USDOT wants to pursue this policy in an effort to make TIFIA assistance apply to more projects, why didn't Congress just lower the 33% limit?")

Backlog projects approved at 33% before MAP-21 are moving ahead. Loans for light-rail lines in Dallas and Los Angeles, for I-95 HOT lanes in Virginia, and for the

Presidio Parkway in San Francisco all closed in the past year. Goethals Bridge, also at 33%, is set for financial close in a few months (see p. 4).

Bertram, who directed the TIFIA program at OST, left the agency in December to be chief of staff to Bill Schuster, chairman of the House Transportation and Infrastructure Committee. Clare C. Dougherty, who Betram hired last summer from OMB to help him manage the TIFIA program, also joined Schuster's staff last month.

Betram's replacement at OST has not been named. Rather, Sylvia Garcia, Bertram's young Deputy Assistant Secretary for Management and Budget, is overseeing TIFIA now. She started at USDOT about two years ago and had already taken on much of Bertram's work. Now with TIFIA too, she is described as "massively overwhelmed."

Beltway Thinking

Inside-the-beltway thinking also plays a role in states' anxiety over TIFIA. There has been a note on TIFIA's website for months saying: "The TIFIA Program Guide, application form and related materials are all currently under review and being revised to reflect MAP-21 changes. Please check the site regularly for updated information."

The attitude inside the TIFIA program office is that updating the rules is not that urgent because they can make a loan under the old rules. The attitude in some states is that they need the guidance because they want to do everything right to firm up a place in line for a loan.

The Notice of Funding Availability for TIFIA loans issued by FHWA on July 27 did not address MAP-21's Master Credit Agreements, under which more than one project could receive a loan commitment under a single agreement. LA Metro, which lobbied Sen. Barbara Boxer (D-CA) to win that provision, is still looking for guidance. "When will the TIFIA program guide and new application form be updated and available for review?" it pleads in letter to TIFIA on Aug. 31.

Staffing Issues

Bertram told Public Works Financing last summer that at full throttle he'd need a staff of 30 to manage the much larger TIFIA program under MAP-21. That is more than three times current staffing. Since last July, two new staff have been hired—a lawyer and banker/analyst—with another banker coming on board soon. An assistant for TIFIA program director Duane Callender also is being considered.

Given the federal government's slow hiring process, a P3 banker suggests eliminating one layer of the approval bureaucracy by moving the TIFIA program office from FHWA to the Office of the Secretary of Transportation (OST).

Others want USDOT to borrow federal underwriters from the Dept. of Energy's (DOE) windpower program to work in the TIFIA office. DOE's loan guarantee program began four years ago and has 30 projects in its portfolio that the agency claims are generating $55 billion in economic investment.

(TIFIA was first authorized in 1999 and reauthorized in 2005. Twenty-five projects have received $8.7 billion in low-interest subordinated loans in that time, with $33.1 billion in total project cost.)

Finally, TIFIA has a stable of experienced legal and financial advisors that it now engages relatively late in the process, once policy choices are made. They could be brought in sooner.

None of these ideas are being implemented at this point.

Deal Flow

Big picture, the TIFIA program office is working through its backlog of pre-MAP-21 projects still awaiting financial close (Goethals, SR520 in Seattle, the West Side subway extenstion in Manhattan). For new projects, unobligated funds from fy 2013 can be rolled into 2014 so there probably will be enough loan authority to support many of the creditworthy MAP-21 projects lined up now—if USDOT can find a way to speed up the process. Some projects—Pittsburgh's Southern Beltway, for example, have no visible signs of financial support—and will fall of the list.

The TIFIA sequestration issue is a non-problem. To ensure that the new money gets spent, Congress required that the program's unobligated balance be redistributed to states if 75% of the fy 2013 credit authority is not obligated by March 2014. That sounds ominous but the federal obligation process will allow USDOT to meet that requirement fairly easily because it can obligate TIFIA loan authority during the LOI phase, as soon as indicative credit ratings are in hand, thus avoiding the TIFIA cliff.

Private Activity Bonds (PABs) may be a constraint if deal flow accelerates. PABs in combination with TIFIA loans have provided the debt financing for six major P3 projects since 2008. About $6.5 billion in PABs loan authority remains from $15 billion Congress authorized eight years ago. If new capacity is needed, it would have to be authorized by the House Ways and Means Committee.

(See p. 12 for all new LOI submissions. For details of projects that have received TIFIA loans plus other examples of innovative project delivery, see FHWA's excellent website http://www.fhwa.dot.gov/ipd/project_profiles/) n