American Road & Transportation Builders Association

Policy Recommendations
Public Private Partnerships (P3s)
June 2014

The increasing involvement of the private sector in the financing and delivery of transportation improvement projects over the last 25 years has been a welcome and much-needed addition to the overall effort to improve the nation's surface transportation network. Public private partnerships (P3s) offer not only a source of supplementary resources for transportation facilities, but also the entrepreneurial power of the private sector to improve efficiency in managing these endeavors.

ARTBA members have decades of experience across the broad range of transportation P3s. For nearly a quarter century, these practitioners – which include public officials, concessionaires, contractors, planning and design firms, legal counsel and others – have collaborated through ARTBA's P3 Division to develop and recommend P3-related policy initiatives on the federal level. ARTBA remains an ardent supporter of P3s and federal policy reforms to increase their role in supplementing core public sector transportation investments. We also continue to work closely with the U.S. Department of Transportation (U.S. DOT) and its agencies, including the Federal Highway Administration (FHWA), in implementing P3 provisions that are already part of federal law.

In the recent past, the federal surface transportation reauthorization process has been an important means of proposing and adopting these reforms. Accordingly, ARTBA recommends the next reauthorization bill include the following P3-related priorities:

Continue Growing the TIFIA Program to Meet Demand

The Transportation Infrastructure Finance and Innovation Act (TIFIA) Program provides federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. Each dollar of federal funds can provide up to $10 in TIFIA credit assistance and support up to $30 in transportation infrastructure investment. Other recent estimates suggest even greater leverage and value for those federal dollars.

Over its 16-year history, the TIFIA program has provided credit assistance totaling over $17 billion for nearly 50 projects. These projects have been valued at almost $64 billion. Consistent with this steady and growing demand, the Moving Ahead for Progress in the 21st Century Act (MAP-21) increased funds allocated for TIFIA from the previous annual level of $122 million to $750 million in FY2013 and $1 billion in FY2014.

Given the continued challenges of increasing investment for the core surface transportation programs at the federal, state and local levels in order to meet system needs, TIFIA financing will likely remain in great demand, particularly for major projects. ARTBA has analyzed the "deal flow" for current and potential P3 transportation projects. As of early 2014, about 31 such projects were underway or close to being so, valued at over $35 billion. Assuming each of these project owners applied for TIFIA financing to cover 33 percent of their respective project costs, the program would need to provide about $1.2 billion in funding (which is more than the $1 billion allocated for the entire TIFIA program in FY 2014) to generate enough credit assistance just to cover this current wave of projects.

Moreover, ARTBA has identified a second group of P3 projects which would likely be eligible for TIFIA and are further back in the pipeline. There are 38 of these projects, valued at almost $66 billion, for which TIFIA could provide about $2.2 billion in funding, in turn generating 33 percent in credit assistance. Again, as a point of reference, this funding is more than twice the allocation ($1 billion) in the current fiscal year for the entire TIFIA program.

Accordingly, ARTBA strongly supports continued growth in TIFIA funding to meet this demand. We note at least one current reauthorization proposal which would cut the program by 25 percent and also enable up to 10 percent of TIFIA funds to be used for capitalization of state infrastructure banks. However, given the huge difference TIFIA has made in shaping the nation's transportation infrastructure system over the past 17 years, and the potential for many more such projects in the near future, ARTBA believes – at a minimum – the TIFIA program should grow commensurate with the overall federal highway program.

With this growth should come additional improvements and reforms to the TIFIA program and its administration:

- ARTBA supports increases in administrative funding for TIFIA in order to add needed personnel and expertise necessitated by more program funding, inquiries, applications and transactions.

- U.S. DOT should continuously improve the TIFIA program's transparency. This includes timely and detailed information on pending letters of interest (LOIs) and applications, which enables project owners to intelligently project TIFIA availability when developing financing plans. Information on rejected applications should be routinely available as well, as a means of educating project owners and the P3 community on U.S. DOT's currently-preferred attributes for such applications.

- The TIFIA application process should be further streamlined and clarified where necessary. As an example, the pre-application and creditworthiness review should not be overly-burdened with detail, as this can unnecessarily elongate the process. There should also be better clarification as to which lending decisions will be made at the LOI stage or through meetings of the U.S. DOT's Credit Council when it evaluates applications.

- According to U.S. DOT, "TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments." Consistent with this value proposition, U.S. DOT should prioritize flexibility in its TIFIA loan terms to reflect current market conditions and incentivize the use of TIFIA as a financing option. At the same time, Congress has already provided U.S. DOT with several program safeguards intended to protect the public interest. Rather than devising overly-restrictive loan terms for that purpose, the department should utilize these safeguards as appropriate.

Lift the Cap on the Use of PABs for Highway Projects

Private Activity Bonds (PABs) are debt instruments issued by state or local governments whose proceeds are used to construct projects with significant private involvement. PABs help provide private developers and operators with access to tax-exempt interest rates, significantly lowering the cost of capital and enhancing investment prospects. They have become a key funding option for P3-related transportation improvement projects.

Certain highway and freight transfer facility projects have been eligible for financing through PABs since 2005. However, there is a statutory $15 billion limit on PABs issued for this purpose. To ensure continued deal-flow of P3 projects and viability of this financing option, ARTBA supports removing this cap completely.

Closer examination shows that the $15 billion limit will likely be exhausted in the near future. One of the most recent estimates indicates $3.8 billion in PABs has been spent, another $5.5 billion has been allocated, and $5.2 billion will be needed for projected deal-flow within the next year or two, totaling $14.5 billion of that $15 billion limit.

Looking again at ARTBA's analysis of current and potential P3 projects (as referenced in the TIFIA discussion above), the 31 such projects now underway would be eligible for as much as $18 billion in funding from PABs. The 38 potential projects in the next stage suggest another $34 billion in potential use of PABs.

No matter which estimate one utilizes, it is clear that the demand for PABs in surface transportation infrastructure projects will soon exceed the limit. At best, this will result in severely-limited financing options for this continuous pipeline of transportation infrastructure projects. At worst, many of these projects will not be able to move forward at all.

It is very important to note that other forms of transportation infrastructure which are eligible for PABs – including airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities – have no such statutory caps whatsoever. Clearly, highway projects should be on a par with those from the other modes and not be subject to an arbitrary limit on the allocations of PABs. For all these reasons, ARTBA recommends removing the highway/freight facility cap entirely.

Enable Greater Tolling Flexibility to Supplement Limited Federal Resources

Toll financing is a means of addressing the specific mobility challenges of certain areas. To ensure that viable toll-funded road and bridge projects can proceed, the next reauthorization bill should allow states maximum flexibility to use toll financing to meet their transportation needs, including the tolling of existing portions of the Interstate system. The first priority use of toll revenues should be to operate, maintain and improve the tolled facility. Toll revenues must be explicitly prohibited from being diverted to non-transportation purposes.

To ensure the smooth flow of traffic on tolled roadways, states should be strongly encouraged to utilize automated collection mechanisms for tolls. A nationally consistent infrastructure for the collection of tolls would be appropriate. This would assure each state that out-of-state drivers are contributing the same tolls as in-state drivers, without having to create extra manned tollbooths.

ARTBA supports current reauthorization proposals which would eliminate the prohibition on tolling existing portions of the Interstate Highway System and allow variable tolls on existing highways, bridges or tunnels for congestion management purposes.

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