

The Eye of the TIGER: \$526.944 Million Available in Grants for Road, Rail and Port Projects

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Overview

The Department of Transportation ("DOT") is once again making grant funds available for road, rail and port projects under the Grants for Transportation Investment Generating Economic Recovery Program, commonly known as "TIGER." \$1.5 billion in grants for capital projects was initially appropriated by Congress for TIGER in the American Recovery and Reinvestment Act of 2009 ("TIGER I"). Because of the success of the program, an additional \$600 million was appropriated this time for both capital *and* planning projects in the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 ("TIGER II"). Fifty-one capital projects were funded in TIGER I and an additional 42 capital projects-plus 33 planning projects-were funded in TIGER II. Now \$526.944 million is available for a new round of grants, as recently appropriated by Congress in the Full-Year Continuing Appropriations Act, 2011 ("TIGER III"). These funds will only be available for capital projects, but clients who either filed previous unsuccessful applications or have a new project that meets the selection criteria of the program (discussed further below) are urged to consider applying for this latest round of TIGER funds.

The Public Policy & Infrastructure Practice has monitored and provided counsel on this program since its inception, and we offer our analysis of the latest round of grants in this Client Alert. With the relevant October pre-application and application deadlines fast approaching, we urge clients to contact us on the steps necessary to crafting a competitive application for funds.

Eligibility, Local Share Requirements, Selection Criteria, Deadlines, etc.

Eligibility: According to the Interim Notice of Funding Availability published in the *Federal Register* (Vol. 76, No. 127), Eligible Applicants are state, local and tribal governments, transit agencies, port authorities, metropolitan planning organizations ("MPOs"), other political subdivisions of state or local governments, and multi-state or multi-jurisdictional groups applying through a lead applicant. Eligible Projects are (1) highway or bridge projects eligible under Title 23 of the U.S.C.; (2) public transportation projects eligible under Chapter 53 of Title 49 of the U.S.C.; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments.

The scope of TIGER is intended to be big and this is reflected in the grant size: they have a \$10 million floor (except in rural areas) and a \$200 million ceiling. Restrictions on grants include (1) no more than 25 percent of total funds may be awarded to projects in a single state; (2) \$140 million in grants must be used for projects in rural areas; and (3) each applicant may submit no more than three applications for consideration.

Funding will only be available for capital projects, unlike TIGER II. No funds will be available for projects related to planning projects only.

Local share requirements: The local match for a successful project can be as low as 20 percent, but "projects can increase their competitiveness by demonstrating significant non-Federal contributions" FR 38721. DOT officials have stressed in prior briefings on the TIGER program that projects will increase their viability in their eyes by including *as large a local share as possible*. The DOT notes, however, that it can fund up to 100 percent for projects in rural areas.

Selection Criteria: The DOT lists both primary and secondary selection criteria for the program.

The Primary Selection Criteria are:

- Long-Term Outcomes, including bringing transportation facilities and systems to a state of good repair; improving the economic competitiveness of the country (*i.e.*, long-term growth in productivity); fostering liveable communities; and supporting environmental sustainability

- Job Creation & Near-Term Economic Activity, focusing on projects that quickly create and preserve jobs and promote rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas

As part of this, the following is required: (1) a project schedule showing the project can begin quickly upon receipt of funds; (2) timeliness of all environmental and/or legislative approvals for project; (3) compliance with all relevant state and local requirements. A cost-benefit analysis is also required.

The Secondary Selection Criteria are:

- Innovation of the project
- Partnership among a broad range of participants and/or other public service efforts

Relevant deadlines: There are two relevant deadlines for the application process: the pre-application is due October 3, 2011 at 5 p.m. EDT and the application is due October 31, 2011 at 5 p.m. EDT. The pre-application must include all identifying information for the applicant and project, such as location, project type, total cost, total grant funds requested, and project schedule. The application must include the Standard Form 424, Application for Federal Assistance; Project Narrative, including all relevant project information, as well as discussion on how project meets TIGER selection criteria; and all information on environmental review as required by the National Environmental Policy Act ("NEPA").

Nearly 1,500 applications were made for funding under TIGER I and more than 1,000 applications were made for funding under TIGER II. While additional information can be found at the DOT's TIGER website at www.dot.gov/tiger/index.html, it is clear that the current round of TIGER funding will be equally popular. Clients are urged to work with the Public Policy & Infrastructure Practice to develop a competitive application that includes working with Members of Congress to obtain support.

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