

Alert 10-098

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Global Regulatory Enforcement Alert

TIGER II Roars Again: Continuation of Stimulus Act Transportation Funding

The Department of Transportation has announced the availability of \$600 million in grants for capital investments in surface transportation infrastructure for projects that "will have a significant impact on the Nation; a metropolitan area; or a region" (Docket No. DOT-OST-2010-0076). This program is a continuation of a program begun under the "Recovery Act," known as the Transportation Investment Generating Economic Recovery ("TIGER") Discretionary Grant Program. Under TIGER, \$1.5 billion of grants were awarded in 2009. Congress appropriated \$600 million for TIGER, made some changes to the program for Fiscal Year 2010 in the *Consolidated Appropriations Act, 2010*, and the program is now known as the TIGER II Discretionary Grant program.

Pre-Application and Application Deadlines

The Department of Transportation ("DOT") is currently soliciting comments on the new program, but is also seeking pre-applications and final applications, by July 16, 2010 and August 23, 2010, respectively. This *Client Alert* provides information on the revised eligibility rules for applicants and projects; ranges for grant awards; and what is needed for a successful application.

The Public Policy & Infrastructure Practice has worked with a number of Reed Smith clients in crafting competitive applications for grant funding and complementary strategies to achieve funding, including obtaining support and assistance from Members of Congress. We remain available to assist in the preliminary notice and development of a competitive application for funds for this opportunity.

Who is Eligible to Apply for Funds?

The DOT notes that "Eligible Applicants" for TIGER II Discretionary Grants are "State and local governments, including U.S. territories, tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multijurisdictional groups applying through a single lead applicant (for multijurisdictional groups, each member of the group, including the lead applicant, must be an otherwise eligible applicant as defined in this paragraph)."

What Projects are Eligible to Receive Funding?

Eligible projects can include, but are not limited to:

- Highway or bridge projects eligible under title 23 of the United States Code
- Public transportation projects eligible under chapter 53 of title 49 of the United States Code

- Passenger and freight rail transportation projects
- Port infrastructure investments

Is a Match or Cost-Share Required?

Under the *Consolidated Appropriations Act*, TIGER II Discretionary Grants may be used for up to 80 percent of costs, indicating that projects may have as little as a 20 percent non-federal match. However, the DOT notes that Congress wants them to prioritize those projects that have a strong non-federal commitment. This indicates that projects with a greater than 20 percent non-federal match may receive preference in the application process. For projects in rural areas, as defined by the Census, grants may be used for up to 100 percent of costs; but again, the preference is for a strong non-federal match, wherever possible.

Grant Awards

Under the *Consolidated Appropriations Act*, Congress required that TIGER II Discretionary Grants may not be less than \$10 million and not greater than \$200 million. However, for rural areas, as defined under the Census, the minimum grant size is reduced to \$1 million. Further, Congress required that not less than \$140 million of the \$600 million in overall funding must go to projects located in rural areas. Finally, no more than 25 percent of funds shall be awarded to projects in any one state.

In addition, up to \$150 million under the program can be used as funds for financing transportation projects, under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program. TIFIA is an existing program that provides "direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance" (www.fhwa.dot.gov/ipd/tifia). Applicants for TIGER II Discretionary Grants can apply for this financing instead of a grant, or alternatively, apply for both simultaneously.

Pre-application Contents

In addition to information about the applicant, a successful pre-application requires the following information:

- Project type, i.e., highway; transit; rail; port, multimodal; bicycle and pedestrian; or planning activity related to one of the above
- Project description
- Cost
An indication as to whether TIFIA financing is requested
- Whether the project is in a rural area
- Whether the project is in an "Economically Distressed Area" (defined in Selection Criteria below)
- Whether the project is complying with environmental review requirements under the National Environmental Policy Act ("NEPA")
- Whether the local match, when applicable, is confirmed

Application Contents

- Standard Form 424, Application for Federal Assistance (which must be included with all grant applications)
- Project Narrative, including: description, map of project, "challenges the project aims to address," grant funds and sources/uses of project funds, and all parties to project. Project narrative should not exceed 25 pages in length.

Selection Criteria

The DOT divides selection criteria for grants into "Primary" and "Secondary" criteria.

Primary criteria includes:

- Long-term outcomes, such as: State of Good Repair of the project; Contribution to the

Nation's Economic Competitiveness; Contribution to the Nation's Livability,
Environmental Sustainability, and Safety

- Job Creation & Economic Stimulus

Secondary criteria includes:

- Innovation strategies to pursue long-term outcomes
- Partnership among a "broad range of participants and/or integration of transportation with other public service efforts"

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