

Chapter 4: Application Process

This chapter describes the process to apply for TIFIA credit assistance. The DOT welcomes informal consultations with prospective applicants at any time. TIFIA staff contact information is on the inside front cover of this Program Guide.

Section 4-1

Solicitation for Letters of Interest

All projects wishing to apply for TIFIA credit assistance must first submit a Letter of Interest in order to be eligible to receive an invitation from the DOT to submit a formal application.¹³⁴ The submission of Letters of Interest will be conducted on a rolling basis by the DOT.¹³⁵ All TIFIA credit assistance will be awarded based on a project's merits and its satisfaction of the eligibility requirements discussed above. When new funding is available, the DOT will issue a NOFA in the Federal Register. In addition to publication in the Federal Register, the NOFA (and other program information) will be posted on the TIFIA web site, located at: <http://www.fhwa.dot.gov/ipd/tifia>.

Section 4-2

Initial Submission: Letter of Interest

MAP-21 establishes a process for applying for TIFIA credit assistance that begins with the submission of a Letter of Interest and determination of eligibility.¹³⁶ Project sponsors must submit a Letter of Interest that: (i) describes the project and the location, purpose, and cost of the project, (ii) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor, (iii) provides a status of environmental review, and (iv) provides information regarding satisfaction the eligibility requirements of the TIFIA Program.¹³⁷ The DOT template for the required Letter of Interest for the specified Federal fiscal year can be found on the TIFIA website, which can be found at: www.fhwa.dot.gov/ipd/tifia/guidance_applications/tifia_applications.htm. The form has been expanded to address the TIFIA eligibility requirements, and it identifies the specific information that must be provided to the DOT. Potential applicants must submit detailed Letters of Interest so the DOT can review creditworthiness and the other TIFIA statutory eligibility requirements detailed in Chapter 5. The DOT requests that project sponsors submit the Letter of Interest by attaching it via email to TIFIACredit@dot.gov.

In order to maximize the credit assistance available for rural infrastructure projects, the DOT will establish a date by which rural infrastructure projects requesting the reduced interest rate should submit their Letters of Interest for review and evaluation by the DOT. The applicable date for each fiscal year will be posted on the TIFIA website, commencing with the date for

¹³⁴ 23 U.S.C. §602(a)(1)(A).

¹³⁵ 23 U.S.C. §602(b)(1). However, as described below, the TIFIA Program will establish a date by which Letters of Interest for rural infrastructure projects should be submitted. The date for these submissions will be provided on the TIFIA website.

¹³⁶ 23 U.S.C. §602(a)(1).

¹³⁷ 23 U.S.C. §601(a)(6).

FY 2014 submissions. This will ensure that the DOT is able to optimize its deployment of credit assistance for rural infrastructure projects in each fiscal year.¹³⁸

The eligibility criteria require a determination by the DOT that: (i) the project is creditworthy;¹³⁹ (ii) Federal credit assistance (a) would foster (if appropriate) partnerships that attract public and private investment for the project,¹⁴⁰ (b) would enable the project to proceed at an earlier date than the project would otherwise be able to proceed or would reduce lifecycle costs (including debt service costs) of the project,¹⁴¹ and (c) would reduce the contribution of Federal grant assistance for the project;¹⁴² and (iii) the applicant has demonstrated that the construction contracting process for the project can commence no more than 90 days after the execution of a TIFIA credit instrument.¹⁴³

A technical review team drawn from agencies throughout the Department (*e.g.*, FHWA, FRA, FTA, MARAD, and OST) will review the Letter of Interest upon receipt by the DOT. This team will conduct an initial review of the Letter of Interest to determine whether the project meets the threshold requirements for TIFIA participation, including whether any major statutory, regulatory, or timing issues exist that would require modifications to the project's intended plan of finance or prevent the project from receiving TIFIA credit assistance. The DOT may contact project sponsors for clarification of specific information included in the Letter of Interest or for additional information to supplement the Letter of Interest and complete the DOT's eligibility determination. Project sponsors will be notified by the DOT if it is determined that their projects are not eligible or if the DOT is unable to continue reviewing their Letter of Interest until eligibility requirements are addressed. All requested material must be received by the DOT before the DOT can proceed with its in-depth review of a project's creditworthiness.

After concluding its initial review of the Letter of Interest and upon making a determination that the project is reasonably likely to satisfy all of the eligibility requirements of the TIFIA Program, the DOT will conduct an in-depth creditworthiness review of the project sponsor and the proposed revenue stream. In connection with this review, the DOT will request that the project sponsor provide a preliminary rating opinion letter, a feasibility study (as applicable), and a fully functional Microsoft Excel-based financial model. At this time, the project sponsor will also be required to submit \$100,000 to the DOT in order to continue the review process. These funds will be used to reimburse the DOT for costs incurred for services provided by the DOT's outside financial and, as and when necessary, legal advisors in connection with the review of the TIFIA Letter of Interest and, in the event the project sponsor is invited to submit an application, the review of the project sponsor's application, and the negotiation of the TIFIA transaction documents. After the \$100,000 has been

¹³⁸ As noted above, 23 U.S.C. §608(a)(3)(A) limits TIFIA budget authority available for rural infrastructure projects receiving the reduced interest rate to not more than 10 percent of the total TIFIA budget authority in any fiscal year. In addition, the TIFIA Program must make funds set aside for rural infrastructure projects available to projects not receiving the reduced interest rate after June 1 of each fiscal year pursuant to 23 U.S.C. §608(a)(3)(B).

¹³⁹ 23 U.S.C. §602(a)(2).

¹⁴⁰ 23 U.S.C. §602(a)(9)(A).

¹⁴¹ 23 U.S.C. §602(a)(9)(B).

¹⁴² 23 U.S.C. §602(a)(9)(C).

¹⁴³ 23 U.S.C. §602(a)(10).

received, the DOT will engage an independent financial advisor to prepare a report and recommendation to the DOT. The DOT may also engage an independent legal advisor and other advisors to help complete its review of a project's eligibility. For projects seeking more than \$1 billion in TIFIA credit assistance, two financial advisors will be hired to produce independent financial evaluations and recommendations to the DOT. The DOT will not complete its creditworthiness review until the project sponsor has provided all requested information and materials, including a preliminary rating opinion letter, and the \$100,000 necessary to enable the DOT to engage its outside financial and, as and when necessary, legal advisors.

In the context of a public-private partnership, where multiple bidders may be competing for a concession such that the obligor has not yet been identified, the procuring agency must submit the project's Letter of Interest on behalf of the eventual obligor.¹⁴⁴ The DOT will not consider Letters of Interest that have not obtained the legal rights to develop the project.¹⁴⁵ However, as noted in Section 3-3 above, the DOT can assist procuring agencies in integrating the TIFIA application process with the procurement process. In these circumstances, the DOT may negotiate a preliminary indicative term sheet with the procuring agency that sets forth the general intent of the DOT, which the procuring agency may provide to potential bidders.

Components

The Letter of Interest should describe the project and the proposed financial plan, identify the proposed TIFIA borrower, detail how the TIFIA statutory eligibility requirements are met, and discuss the benefits of the proposed project and its use of TIFIA credit assistance. The letter should also summarize the project's status in the environmental review process.

- **Project Description.** The letter should describe the project, including its location, purpose (including quantitative or qualitative details on public benefits the project will achieve), design features, estimated capital cost, development schedule, and other relevant descriptions of the project.¹⁴⁶
- **Proposed Plan of Finance.** The project sponsor should detail the plan of finance in sufficient detail to assist the DOT in its creditworthiness assessment.¹⁴⁷ The letter should include the proposed sources and uses of funds for the project, a proposed flow of funds of the proceeds that will be used to satisfy repayment of TIFIA credit assistance as well as any other project obligations, and state the type and amount of credit assistance to be sought from the DOT, including whether the project sponsor is requesting a master credit agreement. A potential applicant may combine more than one type of TIFIA credit assistance (secured loan, guaranteed loan, line of credit) for a single project in the same Letter of Interest, provided that the total amount of requested credit assistance does not exceed the relevant percent of reasonably anticipated eligible project costs, as detailed in

¹⁴⁴ 23 U.S.C. §602(a)(1)(A), (a)(8).

¹⁴⁵ 23 U.S.C. §602(a)(10).

¹⁴⁶ 23 U.S.C. §601(a)(6)(A).

¹⁴⁷ 23 U.S.C. §601(a)(6)(B).

Chapter 2 of this Program Guide. In both the Letter of Interest and in the subsequent application, the project sponsor should propose a single financing structure representing the most likely scenario. The DOT may ask applicants to develop alternative scenarios, as necessary. If the project sponsor has requested TIFIA credit assistance in excess of 33 percent of reasonably anticipated eligible project costs, the project sponsor should provide a rationale for the amount of TIFIA credit assistance requested. The letter should also explain the flexibility in the financial plan to finance the project with a reduced percentage of TIFIA credit assistance. The discussion of proposed financing should also identify the source(s) of revenue or other security that would be pledged to the TIFIA credit instrument. Additionally, the letter should address the status of any revenue feasibility study.

- Environmental Review. The letter should summarize the status of the project's environmental review, and it should state specifically whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or whether a draft Environmental Impact Statement has been circulated.¹⁴⁸
- Satisfaction of TIFIA Eligibility Requirements. The letter should provide information regarding satisfaction the eligibility requirements of the TIFIA Program (see Chapter 5).¹⁴⁹ The letter must demonstrate how the project satisfies applicable creditworthiness standards and must include proposed indicative terms sought for the TIFIA credit assistance (including proposed lien position, amortization schedule, and debt service coverage ratios) (see Section 5-1 for additional discussion regarding creditworthiness requirements). In addition, the letter must demonstrate that the project satisfies the following eligibility criteria: (i) TIFIA credit assistance (a) would foster (if appropriate) partnerships that attract public and private investment for the project, (b) would enable the project to proceed at an earlier date than the project would otherwise be able to proceed or would reduce lifecycle costs of the project, and (c) would reduce the contribution of Federal grant assistance for the project; and (ii) the construction contracting process for the project can commence no more than 90 days after the execution of a TIFIA credit instrument.
- Proposed Participants. The letter should describe the proposed borrower's organizational structure, identify the entity that will serve as the applicant, identify if the applicant and borrower will be the same entity, list significant members of the project team, describe the proposed borrower's relationship to subsidiaries or affiliates, if any, and provide a web site link where additional information can be found. A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. Although the public agency would not become the TIFIA borrower, nor even have yet identified the TIFIA applicant, it must provide information sufficient for the DOT to evaluate the project against the TIFIA program objectives. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project. If the potential applicant is seeking a secured loan at the reduced, rural interest rate, the letter should also detail how the project meets MAP-21's definition

¹⁴⁸ 23 U.S.C. §601(a)(6)(C).

¹⁴⁹ 23 U.S.C. §601(a)(6)(D).

of a rural infrastructure project,¹⁵⁰ as well as whether the project is located outside of an urbanized area (as defined under title 23).¹⁵¹

- **Planning.** The letter should explain whether the project is consistent with the Federally-required long-range transportation plan and transportation improvement program, and whether the project has been included in the state's long-range transportation plan and the approved STIP.
- **Schedule.** The letter should detail the timetable for requesting TIFIA credit assistance, demonstrate that the application could be prepared within a short timeframe, and explain any potential factors that could impact the timetable. The letter should include the project's anticipated procurement and construction contracting scheduling (including the anticipated dates for bidder selection and contract execution), the schedule for finalization of the feasibility study (where applicable), and the timeline for achieving financial close.
- **Contact Information.** The letter should identify a key contact person with whom all communication should flow.
- **Additional Information.** The letter should provide the additional information requested in the Letter of Interest form, including certification as to no delinquency or default on any Federal debt or debarment from participation in any Federal programs,¹⁵² and any other relevant information that could affect the development and financing of the project, such as community support, pending legislation, or litigation.

When preparing the Letter of Interest, applicants must utilize the format provided on the TIFIA web site. In cases where there are differences between the guidance in this document and the guidance on the web site form, the web site form will govern and project sponsors should conform their responses to the form.

Oral Presentation

Following the initial eligibility review of the Letter of Interest and receipt of a preliminary rating opinion letter and the \$100,000, the DOT will request that the potential applicant gives an oral presentation to the DOT, followed by a question and answer session. In addition to the DOT technical review team and its advisors, other officials, including members of the DOT Credit Council, may attend the presentation. This presentation is intended to clarify the potential applicant's proposed development plans for the project, including the financing structure, and to resolve other issues relating to the Letter of Interest. The structure and content of the presentation will be discussed with each potential applicant at the time of the request. At the presentation, the DOT may require the potential applicant to provide additional information, including clarifications regarding cash flows, sources and uses, and/or other issues.

¹⁵⁰ See 23 U.S.C. §601(a)(15).

¹⁵¹ 23 U.S.C. §101(a)(34).

¹⁵² Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013).

Section 4-3

Application

After concluding its review of each Letter of Interest (including both the initial eligibility determination and an in-depth review of the creditworthiness of the project) and related information submitted by potential applicants, along with the independent financial analysis report from the DOT's independent financial advisor, and after the project sponsor's oral presentation, the DOT will invite sponsors of eligible projects to submit complete applications. Upon receiving an invitation from the DOT, the applicant may submit an application. The application form for the current fiscal year required to request TIFIA credit assistance is available on the TIFIA web site, which can be found at: http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/tifia_applications.htm.

In accordance with MAP-21, the DOT must inform each applicant whether its application is complete, or if not complete, identify additional materials needed for completion within 30 days of receiving the application.¹⁵³ No later than 60 days after issuing such notice, the applicant will be notified whether the application is approved or disapproved.¹⁵⁴

An invitation to submit an application for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation, based on all of the TIFIA statutory evaluation criteria, and the successful negotiation of terms and conditions acceptable to the Secretary.

Components

The TIFIA application is divided into the following sections:

- **Application Checklist.** The second page of the application form provides a useful checklist detailing the requirements of the application submission, including the page limits for each section, the number of copies required, and the application fee amount.
- **Section A.** Information on where and how to contact the applicant.
- **Section B.** Project information, including a description of the project and project purpose, the type and amount of TIFIA credit assistance requested, cost estimates, a project management and compliance monitoring plan, and a description of project operations and maintenance plans. If the applicant has been invited to apply for consideration as a rural infrastructure project, a description of how the project meets the MAP-21 definition of a rural infrastructure project, as well as whether the project is located outside of an urbanized area (as defined under title 23),¹⁵⁵ should be included in this section. If the applicant is requesting a master credit agreement, the timing and amount of each credit instrument to be provided thereunder should be described in this section.

¹⁵³ 23 U.S.C. §602(d)(1).

¹⁵⁴ 23 U.S.C. §602(d)(2).

¹⁵⁵ 23 U.S.C. §101(a)(34).

- Section C. A narrative in which the applicant explains the extent to which the proposed project satisfies the TIFIA eligibility requirements (see Chapter 5) as well as a project schedule and information on required approvals and permits.
- Section D. A detailed financial plan, including estimated project costs and activity breakdowns, sources and uses of funds, cash flow pro forma, supplementary narratives on borrowed funds and revenue sources, proposed terms for the requested TIFIA credit instrument, and risk and mitigation strategies. The applicant also must provide the DOT with executable electronic copies of all materials in this section as well as the Exhibit VII cash flow pro forma (*i.e.*, files cannot be “values” or PDF files, and all spreadsheet documents should be operational). If the applicant is requesting a waiver of TIFIA’s nonsubordination requirements, a description of how the applicant meets the MAP-21 requirements for such a waiver should be included in this section.¹⁵⁶
- Section E. Information on the applicant’s organizational structure, experience, and its legal authority to carry out the activities described in the application.
- Section F. Certifications of compliance with TIFIA statutory requirements and other requirements common to all Federal credit programs, including certification as to no delinquency or default on any Federal debt or debarment from participation in any Federal program.

The application form also requires an applicant to submit 12 supplementary exhibits. These exhibits include a map of the project, existing financing documents (if any), the required preliminary rating opinion letter, revenue and cost projections, cash flow pro forma, supporting documentation regarding the applicant’s legal status, an organizational chart, and audited financial statements.

Submission

The applicant must submit one original copy of the complete application package with all supporting exhibits and related documentation. In addition, the applicant must submit five additional hard copies of the completed application form, without attachments, and a computer diskette (CD) containing electronic versions of the entire application with attachments as well as separate files for Section D (Financial Plan) and Exhibit VII (Cash Flow Pro Forma) – executable electronic files, not in PDF or “values” format.

¹⁵⁶ 23 U.S.C. §§603(b)(6)(B) and 604(b)(8)(B).

Charges

The DOT requires TIFIA participants to reimburse the Federal Government for its out-of-pocket costs for its outside legal counsel and financial advisors needed to review an applicant's Letter of Interest and application, and to negotiate and close the credit agreement.¹⁵⁷ These charges are not considered as eligible project costs.¹⁵⁸

- (1) Upon request by the DOT, project sponsors must pay the DOT in the amount of \$100,000 as part of the Letter of Interest review process, which amount is not refundable. These funds enable the DOT to hire outside financial and, as and when necessary, legal advisors as part of the Letter of Interest review process. For projects with multiple sponsors that may be pursuing different loans and/or credit structures, the DOT will require each entity to submit \$100,000 upon request during the review of the Letter of Interest. In addition, each party would be responsible for the final cost of the individual evaluation (including review by both the DOT's financial and legal advisors).
- (2) A transaction (credit processing) fee, typically between \$300,000 and \$400,000, for projects selected to receive assistance. This fee may be higher, depending on the complexity of the project's financing structure and the extent of related loan documents, such as the intercreditor agreement, compliance agreements, equity funding agreements, etc. For successful applicants, the initial \$100,000 paid by the project sponsor(s) as well as any additional costs reimbursed prior to financial close will be credited toward final payment of the transaction (credit processing) fee, to be assessed at financial close or shortly thereafter. The transaction (credit processing) fee and the initial \$100,000 together are equal to the actual costs incurred by the DOT in connection with the review a Letter of Interest and application, negotiation and execution of the credit agreement(s), and confirmation of satisfaction of all funding requirements of those agreements. These amounts reimburse the Federal Government for out-of-pocket costs for its outside legal counsel and financial advisors needed to review the Letter of Interest and application and negotiate and close the credit agreement. For projects seeking more than \$1 billion in TIFIA credit assistance, two financial advisors will be hired to produce independent financial analyses and recommendations acceptable in form and content to the DOT. The costs of the additional financial advisor will be included in the total transaction (credit processing) fee assessed on the proposed borrower. **By submitting a Letter of Interest, the proposed borrower acknowledges that it is responsible for payment of this fee regardless of whether the credit agreement is executed.**
- (3) An annual servicing fee, indexed to inflation, of approximately \$12,500 for each credit instrument approved, due by November 15 each year. The servicing fee will be collected based on the DOT's out-of-pocket costs to administer the credit instruments, including accounting, collections, document maintenance, and financial reporting.

¹⁵⁷ See 23 U.S.C. §§603(b)(7), (e)(2), 604(b)(9), and 605(b).

¹⁵⁸ 49 C.F.R. §80.17(b).

- (4) Project monitoring fees are charged to borrowers in cases where the DOT incurs costs in connection with monitoring the performance of a project, the enforcement of credit agreement provisions, amendments to the credit agreement and related documents, and other performance-related activities. The DOT includes a provision requiring the borrower to reimburse the DOT for such costs in each TIFIA credit agreement.

The DOT periodically will announce in the Federal Register changes to the types and amounts of fees for applicants and program participants, and in some cases may provide more current information than this Program Guide. Applicants should be sure to check the Federal Register for the most current information.

Multi-Sponsor Projects

An application for a project located in or sponsored by more than one state or other entity must be submitted to the DOT by a single state or entity. Multiple-party applicants need to designate a single borrower for purposes of applying for, receiving, and repaying TIFIA credit assistance.¹⁵⁹

¹⁵⁹ 49 C.F.R. §80.7(c).

