



U.S. Department
of Transportation
**Federal Highway
Administration**

Office of the Administrator

1200 New Jersey Avenue, SE.
Washington, DC 20590

July 31, 2008

In Reply Refer To:
HOA-3

Mr. Larry L. "Butch" Brown
Executive Director
Mississippi Department of Transportation
401 North West Street
Jackson, MS 39201

Dear Mr. Brown:

The Federal Highway Administration (FHWA) has completed its review of the Mississippi Department of Transportation's (MDOT) Amended Special Experimental Project No. 15 (SEP-15) Application for waivers of the Transportation Infrastructure Finance and Innovation Act (TIFIA) program procedures for the Airport Parkway Project in Jackson, Mississippi, (Project) that was submitted to the FHWA Mississippi Division Office (Division Office) on July 2. The Division Office forwarded the SEP-15 Application to the SEP-15 Steering Committee, which coordinated the review of the proposed TIFIA waivers with the TIFIA Joint Program Office (JPO); Office of Infrastructure; Office of Planning, Environment, and Realty; Office of Policy and Governmental Affairs; Office of Chief Counsel; Office of the Chief Financial Officer; and the Division Office. Based on the comments provided by these offices, the SEP-15 Steering Committee recommended, and I concur, that the Project be accepted for administration under SEP-15. The FHWA's response to each of the proposed experimental features for the TIFIA waivers is discussed below.

The FHWA's acceptance of the SEP-15 Application for administration under the SEP-15 program does not constitute approval of the Project for TIFIA credit assistance, which assistance is subject in all respects to complying with TIFIA requirements and terms and conditions acceptable to the U.S. Department of Transportation (DOT) before a commitment of funds can be made. If you wish to proceed with the TIFIA waivers under the SEP-15 program, our next major action will be to work with you to draft an Early Development Agreement (EDA). The EDA will contain parameters to guide such key elements as the TIFIA application requirements, terms and conditions for conditional approval, the provision of detailed term sheets, specific TIFIA requirements to be addressed in MDOT's procurement for the Project, meetings with the pre-qualified proposers, and timelines. The EDA will also identify the performance measures that will be used to evaluate the success of the TIFIA experimental features.

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Background

The Airport Parkway Project would be the first time MDOT has initiated a procurement for the construction, financing, operation, and maintenance of a toll road in the State of Mississippi. The project consists of developing, constructing, financing, operating, and maintaining a new, 12-mile toll road located just east of downtown Jackson, Mississippi, and extending eastward to the suburbs of Jackson and the Jackson International Airport. The Project will be developed under State law authorizing the Mississippi Transportation Commission to enter into a contract with a private entity, pursuant to a best-value procurement process, to construct, finance, operate, maintain, and charge user fees for the Project. A final environmental impact statement (EIS) for a non-tolled version of the Project was completed, and a Record of Decision was issued by FHWA on November 30, 1999. Due to the addition of a toll as a financial strategy, as well as more than 3 years having passed since the most recent Federal action, MDOT is currently performing a re-evaluation of the EIS. The re-evaluation is expected to be complete in August.

The MDOT has initiated the procurement process by issuing a request for qualifications on June 2 with the intent of developing a shortlist of qualified proposers (Short-listed Proposers). Following shortlisting, MDOT intends to issue a request for proposals (RFP) to the Short-listed Proposers. To promote maximum competition and ensure best value for the public, the RFP will require each Short-listed Proposer to have the essential and material terms of its loan and equity commitments finalized and conditional loan and equity commitments in hand as of the RFP due date.

To encourage price competition in the procurement for the Project, MDOT would like for the proposers' anticipated use of TIFIA credit assistance to become part of the competition. However, MDOT recognizes that it would be unduly burdensome for the TIFIA JPO to process separate TIFIA credit assistance applications for each proposer during the proposal preparation period, when, ultimately MDOT will award only one proposer a contract for the Project.

The MDOT would like each pre-qualified proposer to have full and equal access to the TIFIA JPO through the solicitation process. Specifically, MDOT seeks to allow its SEP-15 Application to serve as the TIFIA Letter of Interest and TIFIA application on behalf of any proposer wishing to include TIFIA credit assistance as part of its proposed financial plan for the Project. Through an RFP, MDOT will notify the proposers of the opportunity to meet one-on-one with the TIFIA JPO to present their financial plans, together with supporting documentation, and negotiate a conditional term sheet prior to the proposers submitting proposals. Each potential proposer that elects to use TIFIA credit assistance, must identify the amount, as well as the terms and conditions, of available TIFIA credit assistance prior to making a financial offer to MDOT. The proposed experimental process would allow MDOT to compare the value to the State of each financial proposal, and assure that the winning concessionaire could execute all financing documents within approximately 60-days after award. The proposers will be required to submit firm, fixed price offers to MDOT that would not otherwise be possible without use of the experimental features proposed in MDOT's SEP-15 Application.

The current TIFIA loan process begins when a private developer submits an application for Federal credit assistance to the TIFIA JPO after its selection by the public owner. Working with this single applicant, the TIFIA JPO evaluates the application and, if approved, issues a term sheet, negotiates detailed terms and conditions, and executes a TIFIA credit agreement.

Waiting for the selection process to conclude prior to accepting an application from the winning concessionaire would add substantial time and uncertainty to MDOT's proposed procurement process, and could possibly result in precluding access to TIFIA credit assistance. By reducing the risk to the proposers that TIFIA credit assistance may not be available or secured in a timely fashion, MDOT believes that proposers will be encouraged to submit more detailed and complete financial proposals that do not price this risk. The end result should be more competitive financial packages that translate into a reduced need for public funding. Furthermore, the TIFIA JPO will not have to negotiate full credit agreements with multiple potential borrowers. Thus, MDOT expects the SEP-15 experiment proposed herein will produce time savings and innovation in project development and financing.

The FHWA concurs with you that the proposed TIFIA experiment will serve several goals, including: (1) Expediting delivery of transportation facilities; (2) maximizing the use of public-private partnerships and private equity; and (3) encouraging flexible, innovative and alternative approaches to project financing. Given the growing interest in advancing major projects as private concessions, an experiment with an alternative TIFIA loan process would provide valuable information to assist DOT in reconfiguring the TIFIA program to accommodate non-traditional project procurement and financing schemes.

Experimental Features

The MDOT requests the right to supplement its SEP-15 Application to seek approval of other experimental features relating to the Project, including features related to the design and construction of the Project.

Experimental Feature 1: The MDOT requests that its SEP-15 Application be considered the Letter of Interest for the Project. Under the proposed procurement process, MDOT will be the initial applicant for TIFIA credit assistance.

Experimental Feature 1a: Waiver of Information Relating to Final Project Sponsor.

Experimental Feature 1b: Waiver of Proposed Plan of Finance.

Purpose: The MDOT requests a waiver of information required to be submitted in the Letter of Interest because such information is not available at this stage of the MDOT procurement process.

Deviation from FHWA Requirement(s): The proposed experimental features deviate from the requirements of the 2007 TIFIA Program Guide (TIFIA Program Guide), Chapter 4, Section 4-1, Initial Submission: Letter of Interest. The SEP-15 Application does not include items of information that should be submitted in a Letter of Interest including background information on the project sponsor and the proposed sources and uses of funds for the project, including the type of credit assistance sought from DOT.

FHWA Response: The Letter of Interest serves three purposes. First, it familiarizes DOT with the basic parameters of the project and its sponsor. Second, it permits DOT to ensure that the project meets the eligibility requirements for TIFIA credit assistance. Third, it allows DOT to refer the project to a modal agency (i.e., FHWA, Federal Transit Administration, Federal

Railroad Administration, or an inter-agency working group) to assist the sponsor with its application for credit assistance.

The FHWA understands that MDOT will not be able to submit a complete Letter of Interest with all of the information required by the TIFIA Program Guide. However, the SEP-15 Application includes sufficient information to allow the TIFIA JPO to assess whether the Project meets the basic eligibility criteria for TIFIA credit assistance. The MDOT will keep the TIFIA JPO informed of key project information as it becomes available. The MDOT also will seek input from prospective proposers concerning plan of finance information such as project cost and revenue estimates.

Experimental Feature 2: The MDOT requests that the SEP-15 Application together with the preliminary financial model prepared by J.P. Morgan Securities and the Level 2 Traffic and Revenue Study prepared by URS be considered MDOT's application for TIFIA credit assistance for the Project. In connection with submission of a TIFIA application, MDOT requests two waivers.

Experimental Feature 2a: Waiver of Information Relating to the Final Project Sponsor.

Purpose: Under current TIFIA procedures, an application for TIFIA credit assistance is submitted after the completion of the procurement process. However, MDOT does not possess information about the final sponsors for the Project because the TIFIA application will precede final selection of the Project sponsor.

Deviation from FHWA Requirement(s): The proposed experimental feature deviates from 49 C.F.R. § 80.7 which requires applicants for TIFIA credit assistance to submit an application to the DOT for approval by the Secretary. This experimental feature also deviates from requirements in the TIFIA Program Guide, Chapter 4, Section 4-2 – Application Sections A and E. Specifically, information on where and how to contact the project sponsor, and the organizational structure, experience, and legal authority of the ultimate project sponsor will not be available at the time the TIFIA application is submitted to the TIFIA JPO.

FHWA Response: The FHWA accepts this experimental feature. The MDOT will be required to submit the nonrefundable application fee of \$30,000 for the Project. The EDA will require that the MDOT's RFP include information and certifications from the proposers that address all applicable TIFIA requirements. As the procurement process proceeds, MDOT will keep the TIFIA JPO informed concerning the prospective proposers and their qualifications, organizational structure, and legal authority to carry out the activities described in the SEP-15 Application.

Experimental Feature 2b: Waiver of Requirement to Submit a Detailed Financial Plan, Preliminary Rating Opinion, and other Financing Documents.

Purpose: The MDOT is not able to provide the TIFIA JPO with required financial information in the SEP-15 Application because its submission precedes MDOT's receipt of the proposers' detailed financial plans and the final concession award.

Deviation from FHWA Requirement(s): This experimental feature deviates from

49 C.F.R. § 80.7(b) which requires a TIFIA applicant to provide current financial information concerning both the project and the applicant. A project sponsor must submit a detailed financial plan and proposed terms with its application pursuant to Section 4-2 of the TIFIA Program Guide - Application Section D. In addition, as specified in Section 4-2 of the TIFIA Program Guide – Application Section B, an application for TIFIA credit assistance must include comprehensive information on the project, including a project description, schedule, information on required permits and approvals, a project management and compliance monitoring plan, and a description of project operations and maintenance. Also, pursuant to 23 U.S.C. § 602(b)(2)(B), 49 C.F.R. §§ 80.11(a) and 80.15(b), and the TIFIA Program Guide, Chapter 3, Section 3-5, a project applicant is required to provide a preliminary rating opinion letter from at least one rating agency indicating that the project’s senior obligations have the potential to achieve an investment grade rating.

FHWA Response: The FHWA accepts MDOT’s request for a waiver regarding a project compliance monitoring plan and operations and maintenance description provided MDOT’s RFP requires proposers to submit these documents. However, MDOT must ultimately demonstrate that the Project meets eligibility and project selection criteria as set forth in 23 U.S.C. § 602(a) and (b)(2)(A).

Prior to execution of the EDA, in lieu of a comprehensive application, the MDOT shall submit a pro forma plan of finance for the Project together with the financial model prepared by J.P. Morgan Securities and the Level 2 Traffic and Revenue Study prepared by URS Corporation. The MDOT will brief the TIFIA JPO on the Project and the pro forma financial plan at a meeting in Washington, DC. The TIFIA JPO will review the model and Traffic and Revenue Study to determine the financial viability of the Project and the Project’s ability to support the repayment of the TIFIA credit assistance proposed in the pro forma financial plan. This review is intended to give the TIFIA JPO a sense of the detailed financing plans the project sponsor may submit to the TIFIA JPO for consideration. The TIFIA JPO will document its assessment by providing MDOT with a written notice that the Project is eligible for TIFIA credit assistance. This experiment is intended to demonstrate the benefit of creating a “Plan of Finance” review and approval process that efficiently moves a project forward for further consideration for TIFIA credit assistance before the TIFIA JPO directly negotiates a TIFIA term sheet with a Short-listed proposer. This variance does not waive the requirement that the DOT Credit Council and Secretary of Transportation must ultimately approve any conditional and final TIFIA credit assistance provided for the Project.

The MDOT may defer providing a preliminary rating opinion letter, conditioned on MDOT demonstrating that the Project’s financing can be structured such that the senior obligations have the potential to achieve an investment grade rating. Sufficient information must be provided to enable the DOT to determine the maximum amount of TIFIA credit assistance based on eligible Project costs and the likelihood that Project revenues will repay the TIFIA and other debt obligations with the requested financing terms. In approving the waivers, it is understood that DOT will adhere to the same credit standards applied to any project seeking assistance. The Short-listed Proposers must provide a preliminary rating opinion letter to the TIFIA JPO indicating their senior lien debt has the potential to achieve an investment grade rating at the time that they present their plans of finance and meet one-on-one with the TIFIA JPO. The proposer selected by MDOT as a result of the procurement process, if their financial proposal included TIFIA credit assistance, will submit to the TIFIA JPO an investment grade letter for their senior

lien debt 14 days prior to financial close. Further, the selected proposer must meet all TIFIA requirements and provide a model demonstrating that the terms the proposer negotiated with the TIFIA JPO in the conditional term sheet are met.

The procedures for reviewing and protecting confidential information will be addressed in the EDA.

Experimental Feature 3: Request for issuance of conditional project selection; for TIFIA to meet one-on-one with the pre-qualified proposers and issue a conditional term sheet.

Purpose: The MDOT expects the selected proposer to complete its financing arrangements within approximately 60-days after award. The MDOT requests the TIFIA JPO to meet individually with the pre-qualified proposers to negotiate a term sheet for TIFIA credit assistance, based on the proposers' financial plans. The MDOT requests that the TIFIA JPO negotiate and execute a conditional term sheet for TIFIA credit assistance with each pre-qualified proposer interested in pursuing such assistance no later than 15-days before the proposal due date stated in the RFP. Pre-qualified proposers could then base their final proposal on the substantially negotiated credit terms with the TIFIA JPO.

Deviation from FHWA Requirement(s): Proposed Experimental Feature 3 deviates from certain term sheet prerequisites specified in Chapter 6, Section 6-1 of the TIFIA Program Guide. This proposed experimental feature deviates from current policy regarding issuance of a conditional term sheet. The TIFIA regulations published in 1999 specifically provided for issuance of a conditional term sheet, if certain requirements had not been met. However, subsequent Federal Register notices of funding availability and the TIFIA Program Guide in Section 6.1 have narrowed the circumstances that would necessitate a conditional commitment.

FHWA Response: On an exception basis, DOT has issued conditional term sheets as a means to administratively reserve funds for a specific project, subject to meeting specified conditions by a certain date. Budget authority is not legally obligated until conditions are met. The FHWA accepts proceeding with conditional project selection and conditional term sheets for the Project, subject to approval by the DOT Credit Council and the Secretary of Transportation. The conditional term sheet would include the terms and conditions offered to each competing entity. This would enable proposers to factor TIFIA credit assistance into their financial plans with the assurance that a credit agreement could be executed shortly (i.e., within 90 days) after the MDOT selection. The conditional term sheet will require the successful proposer to reimburse DOT for credit processing costs (outside financial and legal consultant costs) in connection with the evaluation of the proposals, negotiation of final terms, and execution of the TIFIA credit agreement.

The acceptance of Experimental Feature 3 is predicated on the pre-qualified proposers' adherence to all TIFIA program requirements, including the provision of the financial model, the preliminary rating letter, traffic and revenue studies, and any terms and conditions which may be pre-negotiated with MDOT. The procedures for reviewing and protecting confidential information will be addressed in the EDA.

The TIFIA JPO would not participate in MDOT's review of the proposal submissions. If TIFIA credit assistance is sought by the winning concessionaire, the TIFIA JPO would then negotiate the final credit agreement after MDOT's selection.

Proposed Performance Measures and Reports

You propose to evaluate and report on the experimental features of the TIFIA program waiver as follows:

1. Time Savings.

You propose the following to measure time savings: (1) Compare the actual schedule for receiving TIFIA credit approval and execution of a credit agreement based on a traditional approval process; (2) evaluate the effect of the experiment on the receipt of final proposals and financial close; and (3) attempt to quantify the value of the streamlined TIFIA credit approval approach described herein.

2. Innovation in Financing.

You propose to analyze the financing structures and methods developed in connection with the Project and how those structures and methods compare to historical experience with project financing structures and methods for comparable projects. As part of this analysis and comparison, MDOT will particularly focus upon the levels of financing and project risk shifted to the private sector and strategies employed to minimize the public sector's risk, while utilizing performance based measures.

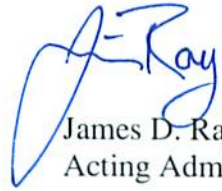
3. Reports.

You anticipate filing an Evaluation Report within 180 days after the award of a concession for the Project. The report will include a preliminary analysis of the Concession Agreement procurement. This report will: (1) Describe the process used to select the developer; (2) identify any reaction by the industry to use of the TIFIA approval process as described herein; (3) document major innovations contained in the proposals received; and (4) discuss any major problems or issues that have occurred and how they were resolved. This report will provide an overall evaluation of the role of the TIFIA approval process in the procurement of proposals and the execution of the final Concession Agreement for the Project.

The proposed performance measures and reports described in the SEP-15 Application will be reviewed during the development of the EDA and incorporated into a Project timeline.

I have asked Ms. Margo Sheridan, FHWA Acting Chief Financial Officer, and Mr. Andrew Hughes, Division Administrator for the FHWA Mississippi Division Office, to serve as the co-facilitators for the SEP-15 for TIFIA Credit Program Waivers. Ms. Sheridan and Mr. Hughes will establish an FHWA interdisciplinary team to work with you to develop the provisions of the EDA.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Ray". The signature is stylized with a large initial "J" and a cursive "Ray".

James D. Ray
Acting Administrator