Federal-Aid Funding and Availability Payments

Innovative Program Delivery

Transportation Finance Innovations

Quick Facts

- Availability payments are a form of P3 that involves risk transfer without necessarily involving tolls.
- The private sector receives availability payments over the concession term (usually greater than 30 years) in exchange for constructing, operating, and maintaining a facility at a certain performance level.
- If standards are not met, payments can be reduced or eliminated.
- The private sector takes on most of the risks of design, construction, financing, operation, and maintenance.
- The public sector takes on the long-term obligation of making payments.

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U.S. Department of Transportation
Federal Highway Administration

THE FEDERAL Highway Administration (FHWA) recently implemented a policy that will allow State Departments of Transportation (DOTs) to use Federal-aid funds in innovative long-term contracts with private developers. In such agreements, the State grants exclusive rights (a "concession") to a developer—concessionaire—who assumes responsibility for the highway's construction, operations, and upkeep. Such contracts often allow the concessionaire to collect tolls, but tolling may not prove suitable for every project. Instead, some States agree to regularly scheduled payments ("availability payments") that the concessionaire earns via its ability to make the highway available to the public at prescribed levels of service.

The new FHWA policy will allow those considering the availability payment public–private partnership (P3) delivery method to count on a level of Federal assistance comparable with that of a traditional public works project. Although San Francisco's Presidio Parkway was the first project in the country to use Federal-aid for availability payments, these new and expanded policy flexibilities will make it easier for other States to follow suit and take advantage of this form of innovative financing.

Background

- The availability payment concession option typically involves a comprehensive performance-based contract with a single private company that assumes all responsibilities—including design, build, finance, operate, and maintain (DBFOM)—for the highway for 30 years or longer.
- Availability payments, in lieu of toll revenues, can be used by State DOTs to attract private financing for long-term project concessions.
- Although common to long-term concession agreements in Canada, Europe, and Australia, availability payments comprise a recent innovation in the United States, where only three projects so far have advanced via availability payment concessions.
- The Presidio Parkway, the most recent availability payment concession, is the first with direct Federal-aid participation in availability payments.

Federal-Aid Participation

The subject policy allows (1) Federal-aid reimbursement for the profit (to include return on equity) found in availability payments and (2) Federal-aid participation in a unitary availability payment, as opposed to individual cost items.

- FHWA defines the performance-based concession agreement itself as the "project" in which it participates. In doing so, FHWA acknowledges a basic principle inherent in every private contract, namely the existence of profit. The profit (to include returns to private equity) in a project delivered via an availability payment concession will have the same eligibility for Federal-aid participation as the profit embedded in the bid prices found in a traditional project.

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The profit is considered "reasonable" because the availability payments are negotiated on a competitive basis and are intended to reflect the true cost to the State DOT of long-term ownership of that piece of highway infrastructure: its construction, active management of safety and service, and receipt in good condition at the end of the concession term.

- Each availability payment will be considered as a discrete and unitary cost; however, because the concessionaire will perform activities (such as operations and maintenance) in which Federal-aid cannot be used, FHWA will review the project's direct cost estimates and calculate a Federal participation ratio. Established up front, this rate remains fixed throughout the project, regardless of the concessionaire's actual costs.

FHWA Division Offices and State DOTs execute an advance construction project agreement, which allows long-term Federal-aid participation (subject to availability of funds, as the project is likely to remain open for 30 years or longer) without requiring an up-front obligation of the entire Federal share. As a condition of Federal-aid participation, the State DOT and the concessionaire agree to follow Federal regulations throughout the life of the project.

Benefits of Availability Payments

FHWA anticipates that State DOTs, facing fiscal constraints and engineering challenges in delivering major new infrastructure, will increasingly consider the availability payment concession as an alternative to traditional project delivery.

- States can choose to make regular, scheduled payments to the concessionaire over the term of the P3 agreement, virtually eliminating the "revenue risk" that often poses the greatest hurdle to attracting project investors.
- States compensate the concessionaire based on performance, as measured by delivery date, incident response, state of good repair, etc.
- Although larger payments may be scheduled in the early years, the long-term availability payment concession relieves much of the State's need for upfront capital.
- The availability payment schedule locks in the maximum public costs (and private revenues) over the project's lifespan.
- An availability payment concession model will spur innovation because the concessionaire will realize increased profits when it costs less to deliver a consistent level of performance. ■

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PROJECT DELIVERY

IPD's project delivery team covers cost estimate reviews, financial planning, and project management and assists FHWA Divisions with statutory requirements for major projects (e.g., cost estimate reviews, financial plans, and project management plans).

PROJECT FINANCE

IPD's project finance program focuses on alternative financing, including State Infrastructure Banks (SIBs), Grant Anticipation Revenue Vehicles (GARVEEs), and Build America Bonds (BABs).

PUBLIC–PRIVATE PARTNERSHIPS

IPD's P3 program covers alternative procurement and payment models (e.g., toll and availability payments), which can reduce cost, improve project quality, and provide additional financing options.

REVENUE

IPD's revenue program focuses on how governments can use innovation to generate revenue from transportation projects (e.g., value capture, developer mitigation fees, air rights, and road pricing).

TIFIA

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for significant projects. Many surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible to apply for assistance.

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