

Ensure TIFIA-Financed Projects Maintain Payment and Performance Protections

Since its launch in 1998, the Transportation Infrastructure Finance and Innovation Act (TIFIA) has financed 72 diverse infrastructure projects representing over \$102 billion in infrastructure investment across the country. To ensure the federal investment in such projects is protected, TIFIA should be modernized to include the same payment and performance security requirements that protect all other federal infrastructure funding.

Federal funds are at the same risk no matter the construction delivery method

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1140 19th Street NW, Suite 500 ■ Washington, DC 20036
ph (202) 463-0600 ■ e Information@Surety.org

Why congress needs to act to revise TIFIA now

- P3s (Public-Private Partnerships) have become a more common financing and construction delivery method used by state departments of transportation.
- P3s were not contemplated when TIFIA was first enacted, so TIFIA did not need to address surety bonds, which are required by law under all traditional (non-P3) construction delivery methods.
- TIFIA-financed P3 projects are large infrastructure projects with significant federal assets at stake.
- Bonding protects taxpayer dollars, ensures project completion, supports economic growth, and protects local small business subcontractors.
- Surety bonds are just as important for TIFIA-financed projects as other federally funded projects.
- The proposed amendment is needed to clarify that performance and payment security is required to protect the public interest, regardless of construction delivery method.

The government and public have the same interest in completed projects and payments to local subcontractors and suppliers, regardless of the construction delivery method

- Construction is a risky business, and for over 90 years, the federal and state Miller Acts have protected against the risk of loss by requiring payment and performance bonds.
- The risks of the contractor's default, nonpayment to subcontractors and suppliers, and the increased completion costs are the same no matter the construction delivery method.

P3 bonding is not consistent under current law and practice

- Bonding on P3 TIFIA projects has been inconsistent.
- State laws usually require bonding for P3s, but in some states, the enabling P3 law did not address the requirement directly and bonding has not been required.

Precedent exists for bonding non-federal projects using federal funds

- OMB regulations require all federal agencies to protect federal assets in awarding grants.
- Federal agencies can accept the bonding policy and amounts of the non-federal grant recipient if sufficient, and if not, performance and payment bonds for 100% of the contract price are required.
- The Small Business Administration has long required bonding for its 7(a) loans backing construction projects.

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