

Mayer Brown, Nossaman Seal \$677M Ohio River Bridge Bonds

By **Liz Hoffman**

Law360, New York (April 01, 2013, 3:57 PM ET) -- A consortium of three infrastructure companies on Thursday closed a \$677 million issuance of private activity bonds — the biggest ever for a road, rail or bridge project — to push a long-awaited Ohio River bridge across the financial finish line.

The Indiana Finance Authority issued the tax-exempt bonds on behalf of WVB East End Partners LLC, the private development group behind the East End Crossing, which will span the Ohio River between Louisville, Ky., and southern Indiana. It is one of three bridges planned for the area at a total cost of \$2.6 billion, and the first to close on its debt.

The bonds, which squeaked into investment-grade territory with a BBB rating with stable outlook from Standard & Poor's, will cover the bulk of the \$763 million in estimated construction costs for the East End bridge. The rest is coming in about \$78 million in equity from WVB, a joint venture of Germany's Bilfinger SE, France's Vinci SA and The Walsh Group Ltd., a Chicago-based construction firm.

The debt consists of a \$445 million long-term tranche, secured by the annual payments, and a smaller tranche secured by the milestone payments.

The project, which includes a 1,680-foot tunnel and a 2,500-foot cabled bridge, will recoup its costs from the Indiana Department of Transportation in two ways: about \$392 million as it hits certain milestones over its 3½-year construction period and annual payments once it goes into service, likely sometime in 2016. The annual payments are on an availability basis, which means WVB gets paid simply for making the bridge available to drivers, not based on any toll revenues or traffic numbers.

Last week's financing is the biggest private activity bond offering ever for a surface transportation asset under a 2005 federal law that set the bar for eligible projects, as well as the first issuance of availability payment-backed PABs for a bridge project. PABs are issued by a public entity — in this case, the Indiana Finance Authority — on behalf of a developer, usually in connection with a public-private partnership.

It is also the first public-private partnership availability project debt rated by S&P, the agency said. Availability projects tend to be safer than demand-based projects, which can struggle when traffic falls below expectations. The Ohio River bridge will have a toll, but WVB isn't responsible for collecting the tolls and its payments aren't tied to toll revenues. That, along with a debt service cushion of at least 1.27 times cash flow, earned East End its investment-grade rating, according to an S&P note.

WVB, advised by Mayer Brown LLP, won the contract in late 2012, beating out five other bidding groups backed by infrastructure leaders like Cintra SA, the Spanish toll road giant, and Fluor Enterprises Inc. Competitive bids brought the project costs down by 23 percent and shaved nine months off the original schedule, according to Indiana transportation officials.

Law firms with a bidder in the race included Freshfields Bruckhaus Deringer LLP for Fluor, Acciona SA and Meridiam Infrastructure; Allen & Overy LLP for InfraRed Capital Partners Ltd., Balfour Beatty Capital and Kiewit Development Co.; and White & Case LLP for Cintra and Samsung C&T, Engineering & Construction America Inc.

The financial close came the day before President Barack Obama unveiled a new financing tools to encourage private investment in public infrastructure.

Speaking in Miami, where construction is underway on the Port of Miami tunnel, the president launched his Partnership to Rebuild America, which calls for a \$4 billion expansion for federal loan programs, changes to foreign investment rules and a broader definition of the kinds of projects that can be financed with PABs. He also renewed his call for a \$10 billion National Infrastructure Bank, though its prospects in Congress remain grim.

“East End Crossing [is] exactly the innovative public-private partnership envisioned by the administration,” said David Narefsky, a Mayer Brown partner who advised WVB.

The Ohio River Bridges Project includes work on three Ohio River bridges: the East End crossing, a new bridge to carry northbound Interstate 65 traffic and a revamped Kennedy Bridge to carry southbound I-65 traffic. The joint project was beset by environmental and historic preservation lawsuits, which were eventually settled in January.

WVB is represented by a Mayer Brown LLP team that includes partners David Narefsky, Joseph Seliga, Joanna Horsnail, John Lawlor, George Miller and counsel Richard Ziegler. Scotiabank is its financial adviser, and Deutsche Bank National Trust Co. is serving as bond trustee.

The Indiana Finance Authority is represented by Nossaman LLP partners Corey Boock, Barney Allison and Margo Bennett and associate John Smolen.

--Editing by Katherine Rautenberg.

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