HERBERT SMITH FREEHILLS

Summary of the Proposed Biden Infrastructure Plan

The American Jobs Plan

April 16, 2021

Introduction

Overview

This is an overview of the recent proposals made by United States President Joseph R. Biden Jr. and his administration concerning approximately $2.3 trillion in government funds to be devoted to infrastructure-related projects in the US, referred to as the Biden Infrastructure Plan, or formally, the “American Jobs Plan” (the “**Plan**”), and particularly how the Plan may present opportunities for foreign contractors and investors.

Initial Proposals

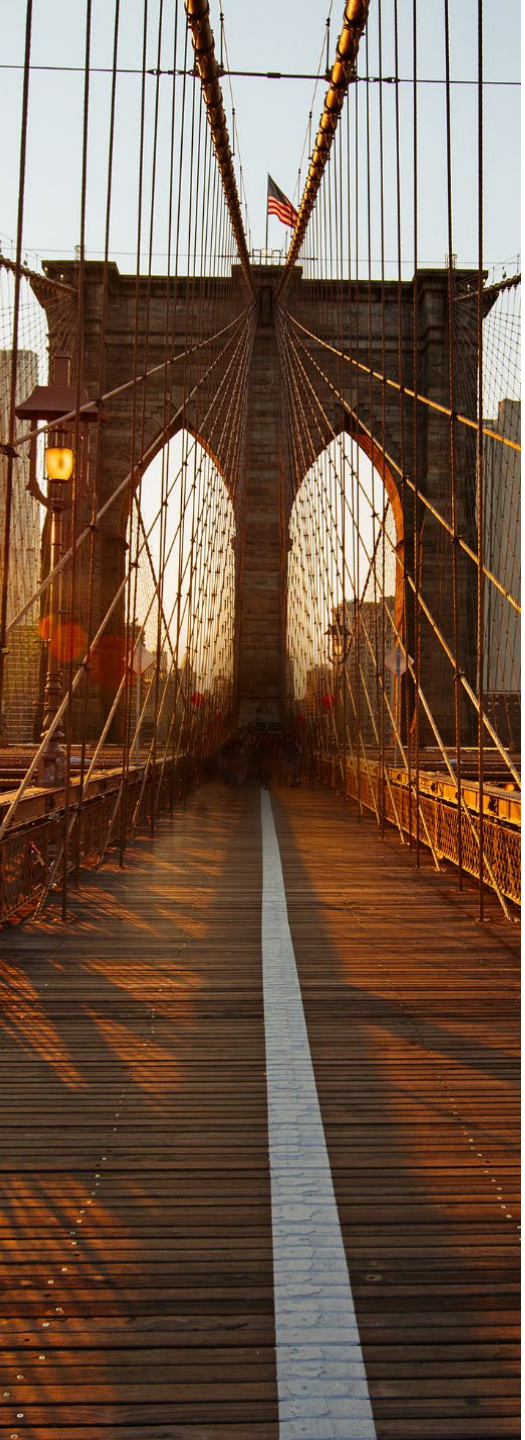
As the Plan is merely a proposed policy at this stage—not even specific proposed legislation—and since the Plan is somewhat controversial and opposed by a number in the business community, as well as members of Congress, it is quite possible that it will change in significant ways before being implemented. What we discuss here is what has been announced by the Biden administration regarding its intentions for the Plan.

Opportunities

In sum, the Plan, if passed in a form similar to the version recently proposed, appears to present significant opportunities for foreign contractors and investors.

Although there are aspects of the Plan which are focused on enhancing US manufacturing capability, such as electric battery initiatives, the majority of the Plan seems not to discriminate between the participation of US versus foreign companies in bidding for and carrying out the projects being envisioned.

This is in line with longstanding US practice of awarding significant amounts of government contracts to non-US companies.



Anticipated structure

Areas of investment

The Plan contains several areas of primary investment, which would take place over eight years.

These include funds devoted to transportation, manufacturing, renewables, housing, research and development, water systems and broadband networks, and education, as discussed in more detail below.

At this stage, specific projects have not been identified. The Plan references some metrics, such as "the ten most economically significant bridges in the country in need of reconstruction," and "the worst 10,000 smaller bridges," but at this stage there is no pipeline listing particular projects.

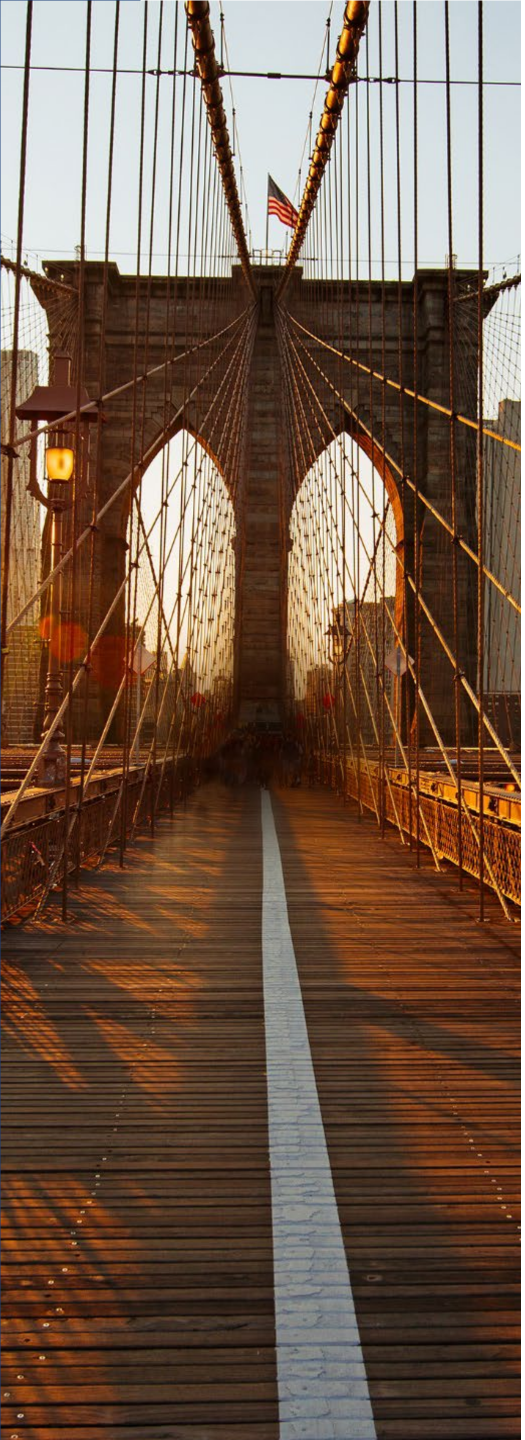
For more detail, see "FACT SHEET: The American Jobs Plan," The White House, 2021-03-31, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/).

Transportation

The plan envisions $621 billion of spending on transportation infrastructure, including $115 billion to improve roads and bridges, $85 billion to modernize public transportation, $80 billion for railways in the US, billions of dollars to improve airports, waterways, and ports, as well as $174 billion in electric vehicle incentives, including to spur the construction of 500,000 electric vehicle charging stations.

Manufacturing

$300 billion for manufacturing investments, which would target semiconductor manufacturing and research, spur job growth in medical manufacturing and biosecurity, including $46 billion to enable the domestic manufacture of electric vehicles and charging ports, nuclear reactors and fuel, and $52 billion slated for domestic manufacturers focusing on supporting rural manufacturing and clean energy.



Anticipated structure

Renewables

$100 billion to build a more resilient electric transmission system, tax credits for clean energy generation and storage, and requiring all federal buildings to operate on clean power. The Plan also calls for plugging orphaned oil and gas wells and cleaning up abandoned mines.

Housing

$213 billion to maintain, preserve, and construct two million affordable and energy efficient homes.

Research & development

$180 billion, including $50 billion for the National Science Foundation to develop programs focusing on semiconductors, advanced computing and communications technology, energy technologies, and biotechnology.

Water Systems and Broadband Networks.

$111 billion for modernizing drinking water, wastewater, and storm water systems (of which $45 billion is intended to replace all lead water pipe in the US), and $100 billion to increase access to broadband internet in rural areas.

Education.

$137 billion to build and upgrade public schools, community colleges, and childcare facilities.

Funding

To fund the Plan, the Biden administration has proposed several measures to increase revenues from corporate taxation, including an increase in the corporate tax rate from 21% to 28%.

Reception

Opposition

Many Republicans in Congress, alongside pro-business groups, have spoken out against the Plan, pointing to its significant cost and the concomitant increases in corporate tax burdens.

Legislative process

Although Democrats are expected to use a legislative tool called Budget Reconciliation, which would allow them to pass the proposal in the US Senate with the simple majority they currently have, there are also divisions among the moderate and progressive wings of the party as to the allocation of funds in the Plan. Thus, much uncertainty remains about its future.

Timing

It is also difficult to predict the timing of the Plan becoming law—assuming it does—though some estimate that, at the earliest, it could be enacted in the late summer of 2021.

Opportunities for non-U.S. infrastructure partners

No preclusion

While the Plan is of course aimed at improving infrastructure within the US, and states that part of the motivation to create it was to improve US competition with China and other foreign nations, the Plan as currently articulated does not generally appear to preclude foreign companies from bidding on, and securing, contracts arising from these policies and incentives.

Exceptions

There are some exceptions to this which do seem to be focused on US production and labor, such as $52 billion earmarked for domestic manufacturers of clean energy in rural regions of the US, funds for initiatives to support labor unions and providers of in-home care for older and disabled Americans, as well as incentives for companies to manufacture electric vehicle batteries in the US. But in general, there does not appear to be any anticipated requirement that the projects be implemented by US companies.

Continued procurement policy approach

This is in line with typical practice of US government procurement, whereby foreign firms participate actively. Most US government agencies welcome bids from any firm that is qualified to compete for the contract, irrespective of whether they are based in the US or a foreign country.

The US Government Accountability Office (GAO) recently reported that in 2010 the US reported $837 billion in foreign procurement—about twice the amount of opportunities for foreign firms provided by the five largest members of the WTO Government Procurement Agreement (GPA) combined (the European Union, Japan, South Korea, Norway, and Canada). This is despite the fact that total US procurement is less than that of these other five parties combined.

Opportunities for non-U.S. infrastructure partners

Current intentions

In this context, with limited exceptions, there appears to be nothing about the Plan which would particularly hinder non-US companies from securing contracts and incentives arising out of it, though of course further limitations could be imposed at some point as specific legislation is drafted and revised—especially if substantial political compromises are required for passage.

Opportunities

At present, however, we believe the Plan as currently formulated represents a significant opportunity for both US and non-US businesses who operate in the sectors targeted for investment.

We would thus recommend monitoring its progression closely with the expectation that some version of the Plan will likely be implemented within the next year or so, resulting in substantial benefits to businesses broadly active in the infrastructure space.