More Money, Same Problems for U.S. Port Infrastructure

By Jeff Vogel

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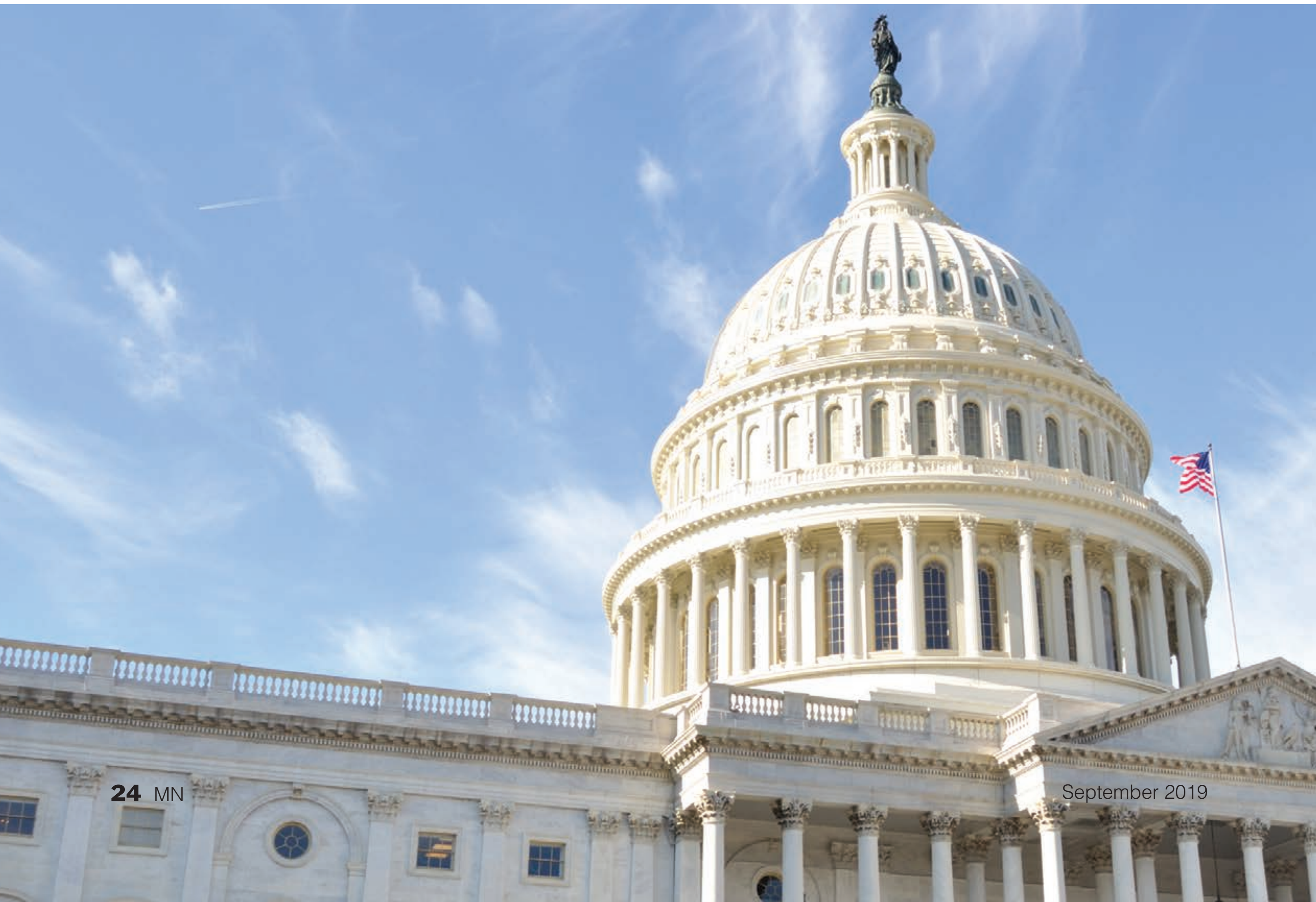
It appears that Washington, DC, has finally taken notice of the need to make direct federal investment in the Nation's port infrastructure. The Consolidated Appropriations Act, 2019, provided $292.73 million for the U.S. Department of Transportation's (DOT) Port Infrastructure Development Program. After much anticipation, DOT finally published its Notice of Funding Availability (NOFA) on June 18, with applications due on September 16.

Similarly, port stakeholders are awaiting DOT's award announcements for the Better Utilizing Investments to Leverage Development (BUILD) Transportation grant program, which was appropriated $900 million for Fiscal Year (FY) 2019, a portion of which will go to port development (specifically including inland port projects). There is also an open NOFA for the Maritime Administration's (MARAD) America's Marine Highways Program, which was provided $7 million in funding for FY 2019, with applications due on September 20. In aggregate, the funding available for port infrastructure projects in FY 2019 far exceeds any prior year.

Looking forward, the current version of the Transportation, and Housing and Urban Development (THUD) appropriations bill under Senate consideration would provide $1 billion for the BUILD Transportation grants program, $225 million for the Port Infrastructure Development Program and $15 million for the America Marine Highway Program. In addition, Rep. Peter DeFazio, Chair



of the House Committee on Transportation and Infrastructure, continues to press forward in his efforts to pass the Full Utilization of the Harbor Maintenance Trust Fund Act, which would unlock more than $9.3 billion in funding for harbor maintenance and dredging projects.

Notwithstanding these positive indicators, significant questions remain about the ultimate impact of these additional federal funding opportunities.

No Private Parties Allowed

One of the largest challenges is that only public entities are generally eligible for federal grant programs and direct funding is therefore unavailable to private marine terminal operators (MTOs). For example, both the BUILD Transportation grants program and the Port Infrastructure Development Program permit ap-

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plications only from public port authorities and State, local or tribal government agencies. If an MTO wishes to participate in such programs it must do so through a public-private partnership with the public entity serving as the lead applicant. This often results in the MTO's objectives becoming secondary to the needs of the public port authority. It is a lost opportunity because MTOs often have critical information as to where federal investment is required. Moreover, federal investment may have an increased impact in improving intermodal productivity when it is paired with an MTO's private investment and strategic planning.

Challenging Environment for Inland Ports

The restrictions on federal funding are often felt more acutely at privately-operated inland port terminals, particularly in rural locations. These terminal operators may have greater difficulty developing the profile and stakeholder support necessary to develop a public-private partnership eligible to pursue federal funding. In addition, the projects at these smaller inland ports may not have the impact necessary in terms of economic value to be competitive in discretionary grant programs.

Grant programs often try to counteract these inherent impacts by creating preferences to develop regional diversification. For example, the BUILD Transportation grants program reserves 50% of its funding for rural projects.

Similarly, the Port Infrastructure Development Program considers "the geographic diversity among applicants" when making its award decisions. Notably, however, $92 million of the Port Infrastructure Development Program's current funding is statutorily reserved for the 15 largest coastal seaports and the minimum award under the program is $10 million, which may further limit the ability of smaller inland terminal operators to pursue such grants.

In aggregate, the restrictions on private applicants, competitive economic evaluation criteria, and often onerous application requirements ultimately diminish the value of federal port development funding for inland terminal operators.

The Automation Battle

Perhaps the most contentious issue in these port infrastructure programs is the role that federal investment will play in the development and implementation of automated technologies at U.S. ports. The Consolidated Appropriations Act, 2019, contained a Joint Explanatory Statement directing the DOT to ensure that any fully-automated cargo-handling equipment procured under the Port Infrastructure Development Program will not directly result in a net job loss or directly reduce the overall safety, reliability and efficiency of a port.

The previously-discussed FY 2020 THUD appropriations bill contains even stronger restrictions providing that the proposed $225 million in funding "may not be used to purchase fully-automated cargo handling equipment or to otherwise facilitate fully-automated cargo handling." The bill defines "fully-automated cargo handling" to mean "equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control."

Senator Wicker's version of the FY 2020 MARAD authorization bill contains similar language for his proposed Port Operations, Research, and Technology Act, which would provide an authorization for $600 million in port development grants. No funding under Sen. Wicker's program could be used "to purchase fully automated cargo handling equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control" if such equipment would result in a net job loss.

Clearly the contentious issue of port automation has caught Congress' attention and will remain at the forefront of any debates about federal investment in U.S. port infrastructure. MARAD has also taken note, issuing a Request for Information (RFI) on opportunities, challenges and impacts of automated port technologies on August 2, 2019. The RFI seeks information on ports' plans to automate operations, and obstacles and opportunities that exist in implementing those plans, including regulatory impediments.

Ultimately, the federal government is making strides to increase investment on the American waterfront. It is now up to port stakeholders – including port authorities, MTOs, labor, and vessel operators – to actively engage with Congress and the Executive Branch to ensure that these increased funding opportunities have a meaningful impact.

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