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Revised Practices for Pre-Award Authority and Letters of No Prejudice

FTA reminds project sponsors and the public that neither pre-award authority nor an LONP has ever been a guarantee of future federal funding. Moreover, FTA here highlights that contrary to past practice, an LONP no longer serves as an indicator of a project being a promising candidate for a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA). The following discussion presents a summary of existing and revised practices for pre-award authority and LONPs.

Under existing practice, upon FTA approval to enter preliminary engineering, FTA extends pre-award authority to incur costs for preliminary engineering. Upon FTA approval to enter final design, FTA extends pre-award authority to incur costs for final design. Pre-award authority for each phase is automatic upon FTA's signing of a letter to the project sponsor approving entry into that phase.

Also under existing practice, FTA extends automatic pre-award authority for the acquisition of real property and real property rights for a New Starts or Small Starts project upon completion of the National Environmental Policy Act (NEPA) process for that project. The NEPA process is complete when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination.

Previously, FTA granted pre-award authority for utility relocation upon entry into final design. FTA hereby changes its existing practice by extending pre-award authority for utility relocation upon completion of the NEPA process for New Starts and Small Starts projects.

Previously, an LONP was required for grantees to purchase vehicles. FTA hereby changes existing practice by extending pre-award authority for the procurement of vehicles upon completion of the NEPA process for New Starts and Small Starts projects. FTA cautions grantees that do not currently operate the type of vehicle proposed in the New Starts or Small Starts project about exercising this pre-award authority and encourages these sponsors to wait until later in the project development process when project plans are more fully developed and federal support for the project is more certain. ...

FTA hereby changes existing practice by extending pre-award authority for non-construction activities upon entry into final design for New Starts projects. The intent is to allow for the procurement of long-lead time items or items for which market conditions play a significant role in the acquisition price. Previously, an LONP was required for these activities. The following list of non-construction activities is illustrative rather than exhaustive. Please contact your FTA Regional Office for a determination of activities not listed here, but which meet the intent described above.

FTA grants pre-award authority upon entry into final design for the following activities: procurement of rails, ties, and other specialized equipment; the procurement of commodities; and demolition.

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FTA reminds project sponsors and the public that local funds expended by the project sponsor pursuant to and after the date of the pre-award authority are eligible for reimbursement or as credit toward local match only if FTA later makes a grant or grant amendment for the project. Local funds expended by the project sponsor prior to the date of the pre-award authority are not eligible for credit toward local match or reimbursement.

The above changes to automatic pre-award authority are expected to reduce the need for LONPs. FTA will still consider LONPs for activities not covered by automatic pre-award authority. As a change in administrative practice, FTA will, following the completion of the requirements under NEPA, expedite the issuance of LONPs, when appropriate, by no longer performing a detailed review of the cost and scope of the request in every instance. Rather, a limited review will be performed in those cases that are of a more routine nature, especially those involving an experienced sponsor.

This change has the following ramifications. First, an LONP is no longer an indication by FTA that the project is a promising candidate for either an FFGA or PCGA. Second, FTA is transferring more risk to the project sponsor. LONPs allow a project sponsor to incur costs using non-federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible as credit toward the local match only if FTA approves the project for funding at a later date. Federal funding is not implied or guaranteed by an LONP. The reduced level of FTA oversight should expedite the delivery of New Starts and Small Starts projects, but will also require increased diligence on the part of project sponsors to ensure that public funds are expended wisely.

Issued on:

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