

Applying Federal Transportation Funding to Engineering and Design Costs

A Summary of Federal Regulations and Guidance

Background

This guidance document was developed for Metropolitan Planning Organizations (MPOs) in Massachusetts interested in applying regional target funding in their Transportation Improvement Programs (TIPs) toward engineering and design costs for municipally-advanced infrastructure projects. Applying TIP funds to engineering and design costs requires municipalities to comply with federal regulations, law, and guidelines, which are summarized below.

Federal Law and Regulations

The most important pieces of federal law and regulation that must be accounted for if a municipality wishes to apply federal funding to design and engineering activities are 1.) a qualifications-based (not price-based) procurement; 2.) public advertisement of the procurement; and 3.) negotiation of a final scope and fee with the selected firm.

Page 37 of the Federal Highway Administration's (FHWA) *2014 Contract Administration Core Curriculum Manual* (<https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf>) states the following:

"The qualifications based selection procedures prescribed in the Brooks Act require public announcement/advertisement of all requirements for the desired services (as specified in 40 U.S.C. 1101). The Brooks Act further requires evaluation of current statements of qualifications, performance data, and statements regarding the proposed project or services submitted by prospective consultant engineering firms."

In the unusual circumstance that **all** work is located outside of the public highway right-of-way then municipalities may follow the procurement procedures outlined under state law. More details on this process are available at [this link](#).

Other Requirements and Considerations

In addition to compliance with the Brooks Act and the guidance referenced above, the following must also be followed when considering the application of TIP funding to design and engineering costs:

- **TIP funding for design can only be programmed for new design activities without a previously procured design firm.** FHWA has advised that they are unable to retroactively "federalize" previously executed contracts/agreements and reimburse work completed prior to federal-aid authorization. Therefore, new scopes of work that account for all phases of work (including NEPA permitting, right-of-way, and design activities) to which these funds are intended to be applied against must be established and a new procurement must occur.
- **For a municipality to receive TIP funds for engineering and design services, they must enter into a reimbursable contract with MassDOT.** This contract would be reimbursement-based, meaning that costs would be incurred and then billed to MassDOT's Highway Division.
- **Local (non-federal and non-state) matches are required for all projects for which design costs are reimbursed through TIP funding.** MassDOT is unable to guarantee the required 20% non-federal match for projects that federally fund design and engineering activities. Municipalities must provide this match locally. Federal guidance on matching requirements can be found at [this link](#).
- **Corresponding construction project(s) should be programmed on the TIP/STIP:** Although this is preferred for most projects, if construction is anticipated beyond the STIP timeframe, programming construction funds is not required, but the estimated timeline for construction should be stated in the TIP as supporting information.
- **Additional coordination with utility providers and rail operators:** This coordination is a requirement of the design process to ensure that all conflicts have been identified, avoided and/or mitigated.
- **Hiring a MassDOT prequalified A&E Firm:** MassDOT strongly recommends that any firm selected to provide engineering and design services be prequalified in the applicable discipline category by MassDOT's Architects and Engineers Review Board (<https://www.mass.gov/prequalification-of-architectural-engineering-firms>).

POLICY DIRECTIVE


ADMINISTRATOR, HIGHWAY DIVISION

Municipal Responsibilities and Procedures for Federally-Aided Design Agreements and Contracts

This Policy Directive outlines the responsibilities required of cities and towns to enter into federally-aided agreements or contracts with the Massachusetts Department of Transportation (MassDOT) for planning studies, engineering design and other pre-construction services involving municipally-owned facilities.

This Policy Directive supersedes MassHighway Policy Directive P-09-005, dated 9/24/09.

Local Match

MassDOT does not provide the non-federal match (typically 20%) for federally-aided planning studies, engineering design and other pre-construction services, even if state funds are specifically earmarked for this purpose in bond bills or other legislation. This match must be funded by the local proponent. The intent of this policy is for municipalities to have a sense of ownership and be more involved in controlling project development and design costs for their projects.

The only exception to this policy is if a municipality/local proponent has demonstrated that they have already met the 20% match requirement from funds provided for a previous design phase.

Consultant Procurement Process

In order for federal funds to be used for any engineering purpose, the Municipality must demonstrate to MassDOT and FHWA that the process used to procure the services of a Design Consultant was done in accordance with relevant MassDOT and FHWA policies. Specifically, the Design Consultant's contract with the Municipality must adhere to MassDOT's Standard Provisions for Consultant Contracts, 1993 edition, as applicable; and to federal regulation 23 CFR 172, Administration of Engineering and Design Related Service Contracts. Consultant selection shall be accomplished through a competitive, qualifications-based process.

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