

Metropolitan Transportation Commission Programming and Allocations Committee

January 8, 2014

Resolution No. 3606, Revised

Subject: Regional Project Delivery Policy for FHWA Administered Funds

Background: The region has maintained an excellent project delivery record during the last several federal transportation authorization periods due to the hard work of Caltrans Local Assistance, the Congestion Management Agencies (CMAs), project sponsors and the regional project-funding delivery policies developed by MTC and the Bay Area Partnership. In an effort to maintain this delivery record and maximize the amount of federal funds available to the region, staff is recommending revisions to the Project delivery policy in MTC Resolution 3606.

The revisions respond to federal transportation act provisions, increased scrutiny of federal funding deadlines, recent Caltrans procedural changes, and anticipated federal and state policies relating to the timely use of federal funds in order to improve management of the limited annual Obligation Authority (OA, meet pre and post-obligation funding deadlines, align regional deadlines with the project implementation timeline and facilitate project delivery. Most importantly, the revisions call for the programming and obligation of funds consistent with the timing and availability of federal OA.

MTC staff has worked with representatives of the CMAs, counties, cities, Caltrans, and MTC staff over the last several months to develop the revisions to the regional project-funding delivery policy to reflect new state and federal requirements.

The following are the proposed significant changes to the policy, most of which already apply to OBAG funds:

- Advance obligation (E-76 authorization) deadline from April 30 to January 31 to better align with the natural schedule of projects to be constructed in the following summer construction season.
- Advance obligation Request Submittal deadline from February 1 to November 1 in response to the advanced obligation deadline.
- Revise construction award deadline from 9 months to 6 months following obligation of funds to be consistent with CTC requirements.
- For regional discretionary funds subject to a federal rescission, apply the rescinded funding first to projects with funds that have missed the regional obligation deadline and to projects with funds that have been de-obligated but not yet re-obligated.

Programming and Allocations Committee

January 8, 2014

Page 2

- Expand the policy to apply to all FHWA-administered funds programmed in the federal TIP, with additional principles applied to regional discretionary funding.
- Require every Local Public Agency (LPA) receiving FHWA-administered funds in the federal TIP is to identify and maintain a staff position that serves as the single point of contact for the implementation of FHWA-administered funds within that agency.
- Require project sponsors that miss delivery milestones and funding deadlines for FHWA-administered funds to prepare and update a delivery status report on major delivery milestones for all active projects with FHWA-administered funds to ensure other funding will not be jeopardized.
- Modify attachment A to focus on Commission enacted policies and principles, with specific guidance developed by staff in consultation with partner agencies.

Once FHWA-administered funds are transferred to FTA, the project sponsor must then follow FTA guidance and requirements.

The policy revisions take effect once approved by the Commission, with the exception of the obligation and obligation submittal deadlines for funds already programmed in the federal TIP. These deadlines will take effect in fiscal year FY 2015-16 for currently programmed funds.

Issues: None.

Recommendation: Refer MTC Resolution No. 3606, revised, to the Commission for approval.

Attachments: MTC Resolution No. 3606, Attachment A, Revised

Date: October 22, 2003
W.I.: 1512
Referred by: PAC
Revised: 04/26/06-C 07/23/08-C
01/22/14-C

ABSTRACT

Resolution No. 3606, Revised

This Resolution establishes the regional policy for project delivery for the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) period and subsequent extensions, for Surface Transportation Program (STP) and Congestion Management and Air Quality Improvement (CMAQ) funds.

This resolution was revised on April 26, 2006 to reflect changes in Caltrans procedures and federal regulations.

This resolution was revised on July 23, 2008 to advance the obligation and obligation request submittal deadlines in response to a change in Caltrans' release date for unused regional Obligation Authority (OA).

Attachment A to the resolution was revised on January 22, 2014 to advance the obligation and obligation request submittal deadlines to be more aligned with the summer construction season, shorten the award deadline to be consistent with CTC and Caltrans requirements, expand the policy to cover all FHWA-administered funds programmed in the TIP rather than just STP/CMAQ funds, establish local public agency project management expectations, require a single point of contact for all agencies delivering projects with FHWA-administered funds, apply the policy to MAP-21 and beyond, and modify attachment A to focus on specific Commission policies rather than general guidance which are to be promulgated by staff in consultation with partnering agencies.

Further discussion of this action is contained in the summary/ MTC Executive Director's Memorandums to the MTC Programming and Allocations Committee dated October 8, 2003, April 12, 2006, July 9, 2008, and January 8, 2014.

Date: October 22, 2003
W.I.: 1512
Referred by: PAC

Re: Regional Project Delivery Policy for TEA-21 Reauthorization for STP and CMAQ Funds

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3606

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency (RTPA) for the San Francisco Bay Area pursuant to Government Code § 66500 et seq.; and

WHEREAS, MTC is the designated Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area Region (the region); and

WHEREAS, MTC, as the designated RTPA and MPO for the region, is responsible for programming and managing certain federal and state funding provided to the San Francisco Bay Area for transportation purposes; and

WHEREAS, Assembly Bill 1012 (Chapter 783, Statutes of 1999 - Torlakson) established stringent timely use of funds deadlines for projects receiving federal Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement (CMAQ) program funding; and

WHEREAS, Section 16304 of the California Government Code requires that federal funds obligated to a project must be encumbered within two state fiscal years following the year of obligation, and requires that these funds be liquidated (expended, invoiced and reimbursed) within three state fiscal years following the state fiscal year of encumbrance; and

WHEREAS, the region could lose STP and CMAQ funding if projects within the region do not adhere to the timely use of funds requirements under AB 1012 and Section 16304 of the California Government Code; and

WHEREAS, the region has used all of its federal Obligation Authority (OA) under TEA-21 and has over 125 projects totaling approximately \$100 million waiting for additional OA; and

WHEREAS, Attachment A to this resolution, attached hereto and incorporated herein as though set forth at length, establishes the policy for managing the region's OA and enforcing the region's delivery of STP and CMAQ funding; now, therefore, be it

RESOLVED, that MTC approves the Regional Project Delivery Policy for TEA-21 Reauthorization for STP and CMAQ funds set forth in Attachment A to this resolution.

METROPOLITAN TRANSPORTATION COMMISSION

Steve Kinsey, Chair

The above resolution was entered into
by the Metropolitan Transportation
Commission at a regular meeting of the
Commission held in Oakland, California,
on October 22, 2003

Date: October 22, 2003
W.I.: 1512
Referred by: PAC
Revised: 04/26/06-C 07/23/08-C
01/22/14-C

Attachment A
MTC Resolution No. 3606
Page 1 of 5

Regional Project Funding Delivery Principles for FHWA-Administered Federal Funds in the San Francisco Bay Area

Background

As the federally designated Metropolitan Planning Organization (MPO) and the agency serving as the Regional Transportation Planning Agency (RTPA) for the nine-counties of the San Francisco Bay Area, the Metropolitan Transportation Commission (MTC) is responsible for various funding and programming requirements, including, but not limited to: development and submittal of the Regional Transportation Improvement Program (RTIP); managing and administering the federal Transportation Improvement Program (TIP); and project selection for various fund sources (referred collectively as 'Regional Discretionary Funding').

As a result of the responsibility to administer these funding programs, the region has established various principles for the delivery of regional discretionary funds in various programs, including the regional Surface Transportation Program (STP), Congestion Mitigation and Air Quality Improvement (CMAQ) Program, regional Transportation Alternatives Program (TAP) and Regional Transportation Improvement Program (RTIP), to ensure timely project delivery against state and federal funding deadlines. The regional project funding delivery principles establish a standard policy and guidance for implementing project funding deadlines for these and other federal funds administered by the Federal Highway Administration (FHWA) during the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Moving Ahead for Progress in the 21st Century (MAP 21) and subsequent extensions and federal transportation acts.

Regional Project Funding Delivery Policy Intent

The intent of this regional project funding delivery policy is to ensure implementing agencies do not lose transportation funds due to missing a federal or state funding deadline, while providing maximum flexibility in delivering transportation projects. It is also intended to assist the region in managing Obligation Authority (OA), and in meeting federal financial constraint requirements. MTC has purposefully established regional deadlines in addition to state and federal funding deadlines to provide the opportunity for implementing agencies, the county Congestion Management Agencies (CMAs), Caltrans, and MTC to solve potential project delivery issues and bring projects back on-line in advance of losing funds due to a missed funding deadline. The policy is also intended to assist in project delivery, and ensure funds are used in a timely manner.

The policy applies to all FHWA-administered funds programmed in the federal TIP, with additional principles applied to regional discretionary funding as noted. Implementing agencies should pay close attention to additional state and federal deadlines and requirements imposed on their funding so as not to miss any other applicable funding deadlines, such as those required by the California Transportation Commission (CTC).

This regional project funding delivery policy was developed by the San Francisco Bay Area Partnership, through the working groups of the Bay Area Partnership's Technical Advisory Committee (PTAC) consisting of representatives of Caltrans, CMAs, transit operators, counties, cities and MTC staff.

Benefits of the Regional Project-Funding Delivery Policy and Principles:

The following are key benefits of the policy and principles:

- Strengthens the region's delivery efforts, which has assisted the region and sponsors in delivering to the full apportionment and Obligation Authority (OA) levels.
- Strengthens the region's ability to meet AB 1012 requirements, and incorporate Caltrans and FHWA post-obligation requirements, thus minimizing risk of losing federal transportation funding.
- Supports subsequent requests for additional federal funding for the region by demonstrating success in delivery of regional transportation projects.
- Establishes standard guidance to be applied for all regional discretionary funds and programming cycles and all FHWA-administered funds included in the TIP. A standardized policy makes it easier for project sponsors to implement project delivery strategies consistently among the programmed projects.
- Keeps the region ahead of other regions in the state, that in recent years have been improving their own delivery rates.

Regional Principles

The following requirements apply to the management and implementation of FHWA-administered funds within the region:

- **Federal funds must comply with federal fiscal constraint requirements.** FHWA-administered federal funds are to be programmed in the federal Transportation Improvement Program (TIP), up to the apportionment level for that fiscal year, in the fiscal year in which the funds are to be obligated by FHWA or transferred to the Federal Transit Administration (FTA) or allocated by the CTC.
- **Regional discretionary funds are project specific.** Projects are chosen for the program based on eligibility, project merit, and deliverability within the established deadlines. The regional discretionary funds are for those projects alone and may be used for any phase of

the project, unless otherwise specified at the time of programming, in accordance with Caltrans procedures and federal regulations.

- **Funds must be included in the annual obligation plan.** MTC staff, in consultation with regional partners, will prepare an annual obligation plan as required by California Streets and Highway Code 182.6(f) at the end of each state fiscal year based on the funding programmed in the federal TIP and the apportionment and OA expected to be available. This plan will be the basis upon which obligations will be made in the following federal fiscal year.
- **Advance Construction Conversion has priority for funding.** Conversion of Advance Construction Authorization (AC) to full authorization receives priority in the annual obligation plan. At the end of the federal authorization Act, AC may be the only option available should the region fully use its Obligation Authority.
- **Federal funds must meet timely use of funds requirements.** To comply with federal timely use of funds requirements, the Request for Authorization (RFA) and obligation (E-76 authorization/ FTA Transfer) deadlines are November 1 and January 31, respectively. These deadlines align with the natural schedule to have projects ready for the following summer construction season.
- **Projects may be advanced from future years.** Obligations for funds advanced from future years of the TIP will be permitted only upon the availability of surplus OA and generally will only be considered after the obligation submittal deadline of November 1. OA is available first-come first-served after January 31. In some years OA may not be available for project advancements until after April 30, when Caltrans releases unused OA statewide.
- **CTC allocation and FHWA authorization requests should be coordinated.** To ensure deadlines imposed by the CTC are met, allocation requests to the CTC for federal funds should be accompanied with a complete RFA package, so the authorization request for federal funds may be submitted to FHWA immediately following CTC action.
- **Funds for construction should be awarded within 6 months of obligation.** This deadline is for consistency with the CTC's 6-month award deadline following CTC allocation, and to ensure there are eligible expenditures to invoice against to meet Caltrans' 6-month invoicing requirement and FHWA's inactive obligations requirements.
- **Funds must be invoiced against at least once every 6 months.** Project sponsors must submit a valid invoice to Caltrans Local Assistance at least once every 6 months and receive a reimbursement at least once every 9 months, but should not submit an invoice more than quarterly. This ensures the sponsor complies with Caltrans requirements and the project does not become inactive under FHWA's rules.

- **Funds not used in a timely manner are subject to rescission.** For regional discretionary funds subject to a federal rescission, the rescinded funding will first apply to projects with funds that have missed the regional obligation deadline and to projects with funds that have been de-obligated but not yet re-obligated. This ensures future funding commitments are not impacted due to delivery failures of earlier-funded projects.
- **Local Agencies delivering federal-aid projects are to assign a single point of contact.** Every Local Public Agency (LPA) with FHWA-administered funds programmed in the federal TIP must identify and maintain a staff position that serves as the single point of contact for the implementation of all FHWA-administered funds within that agency. This will improve communication and coordination of delivering federal-aid projects.
- **Local Public Agencies should be qualified in the federal-aid process.** By requesting the programming of federal funds in the federal TIP, the agency is self-certifying they are qualified to deliver federal-funding transportation projects. This regional qualification is to help confirm the jurisdiction has the appropriate knowledge and expertise to deliver the federal-aid project.
- **LPAs should engage in good project management practices.** Project sponsors that miss delivery milestones and funding deadlines for FHWA-administered funds are required to prepare and update a delivery status report on major delivery milestones for all active projects with FHWA-administered funds and participate, if requested, in a consultation meeting with the county CMA, MTC and Caltrans. This will ensure sponsors are actively monitoring the status of their projects to ensure federal funds are not lost.
- **LPAs should be in good standing.** It is the responsibility of the implementing agency at the time of project application and programming to ensure the regional deadlines and provisions of the regional project funding delivery policy can be met. Agencies with difficulty in delivering existing FHWA federal-aid projects will have future programming and OA restricted for additional projects until the troubled projects are brought back on schedule, and the agency demonstrates it can deliver new projects within the funding deadlines and can meet federal-aid project requirements.
- **Guidance on these delivery principles shall be promulgated by MTC staff.** Commission policies and principles for the management and implementation of FHWA-administered funds programmed in the federal TIP shall be promulgated by staff through the development of regional guidance in consultation with partner agencies.

Consequences of Non-compliance

It is the responsibility of the implementing agency to ensure the funds can be used within the established regional, state and federal deadlines and that the provisions of the regional project-funding delivery policy, and all other state and federal requirements can be met. It is also the responsibility of the implementing agency to continuously monitor the progress of all their FHWA federal-aid projects against these regional, state and federal funding deadlines and milestones and report any potential difficulties in meeting these deadlines to MTC, Caltrans and

the appropriate county CMA within a timely manner. MTC, Caltrans and the CMAs are available to assist the implementing agencies in meeting the funding deadlines, and will work with the agency to find solutions that avoid the loss of funds.

Agencies that do not meet these funding deadlines risk the loss of federal funds. To minimize such losses to the region, and encourage timely project delivery, agencies that continue to be delivery-challenged and/or have current projects that have missed the funding deadlines, or are out of compliance with federal-aid requirements and deadlines will have future obligations, programming or requests for advancement of funds restricted until their projects are brought back into good standing. Projects are selected to receive Regional Discretionary Funding based on the implementing agency's demonstrated ability to deliver the projects within the funding deadlines. An agency's proven delivery record will be used for selecting projects for funding and placement in a particular year of the TIP, and for receipt of OA.