

Framework on Responsibilities for Local Government Federal Discretionary Grant Awards

Purpose

This document intends to outline the responsibilities of the Texas Department of Transportation, the Federal Highway Administration (FHWA), and local transportation stakeholders (cities, counties, MPOs) concerning the administration of federal discretionary grants. By providing direction, this guidance aims to ensure that TxDOT, FHWA and local governments are operating consistently and effectively in matters pertaining to federal discretionary grants.

Scope

This guidance is relevant to every TxDOT Division and District, local government transportation provider (cities, counties, MPO, etc.) and is applicable to all federal discretionary grant programs across all federal government agencies.

Guidance

TxDOT must be a party to the decision to serve as direct recipient or a pass-through agent for a local government federal discretionary grant award. This decision must be coordinated between TxDOT, FHWA, and the local applicant. Title 43, Section 15.52 of the Texas Administrative Code outlines the terms of the funding arrangement between the department and a local government for transportation projects. It also specifies the duties of both parties involved. All local projects that have been awarded federal discretionary grant funding, for which TxDOT is designated to facilitate or execute on behalf of a local government, must adhere to its stipulations.

There are two separate paths that a local government may take relating to working with TxDOT on their federal discretionary grant award:

Project is on the State Highway System

When a local government receives a federal discretionary grant award for a project on the state highway system, the local entity may request that TxDOT become the direct recipient of the grant award. The local TxDOT District must be consulted and has the right of refusal if they do not have the resources to deliver the project. If TxDOT declines to become the direct recipient, then a project appropriate agreement, Local On System Agreement (LOSA), or an Advanced Funding Agreement (AFA), will be negotiated and executed. If TxDOT agrees to become the direct recipient, then TxDOT will work with FHWA to execute the grant agreement and deliver the project.

Local project not on the State Highway System

For federal discretionary grant awards not located on the State highway system, TxDOT's Transportation Programs Division will work with the TxDOT Districts to determine the feasibility of serving as a pass-through for the federal funding. TxDOT would decline off system projects with awarded funding less than \$400,000 (TxDOT direct and indirect costs would cut into the small budget that the local entity has to complete the job). TxDOT could also likely decline projects that are not part of our core function or normal business processes such as commuter railroad projects, building projects, airport projects and non-transportation related

technology projects. If TxDOT, FHWA, and the local partners determine that TxDOT will serve as a pass through, then an AFA will be executed.

The following applies to all federal discretionary awards that TxDOT will be a party to.

Pre-application Notification and Requirements

TxDOT should be made aware of a local government's intention to apply for a federal discretionary grant. If TxDOT has no concerns about the project, they will provide a letter of support to the local government, which serves as a commitment to work with the local government to administer the grant award should that be necessary. Failure to inform TxDOT of an application pre-submission could result in TxDOT declining to assist the local partner in delivering the project.

TxDOT must review and approve the scope of work to be included in the grant application that may directly or indirectly impact the state highway system. The TxDOT local District Engineer should provide documentation of approval to the applicant.

Any funding commitment from TxDOT that is identified in the application should be consistent with authorized funding for the project in the most recently approved Unified Transportation Program.

NEPA Reviews

As part of TxDOT's delegated NEPA Assignment (TxDOT/FHWA MOU signed Dec. 9, 2019), TxDOT has committed to provide the NEPA review for all local government projects selected for a grant. TxDOT's Environmental Affairs Division will work with the FHWA and the locals to clear the projects of necessary federally mandated reviews.

Statewide Transportation Improvement Program (STIP)/TxDOTCONNECT

Due to the inclusion of federal funding in the local project funding scheme, inclusion in the STIP is required by federal law. TxDOT's Transportation Planning and Programming Division will work with the TxDOT District where the grant award is located to have the project placed in the STIP. The District, in coordination with Finance Division, will have the project placed in TxDOTCONNECT to manage the delivery of the project.

Direct/Indirect Costs

TxDOT will charge to the local grant recipient any direct/indirect costs associated with delivering the project as part of the federal grant award. The language used in TxDOT's AFAs is closely aligned with the [Texas Government Code §2106.001](#) by using the terms "direct" and "indirect" costs to differentiate between costs incurred by providing a statewide support service (indirect) and the actual costs of the program (direct)

Cost Overruns

The local government will typically be responsible for project cost overruns.

Reporting Requirements

TxDOT will work with the local government partner on all applicable reporting requirements. For projects which TxDOT serves as a pass-through, the local award recipient will be responsible for providing TxDOT the proper documentation to submit with the required invoices. When TxDOT becomes the direct recipient of the grant, TxDOT will be responsible for the performance requirements.