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AUTHORITY: 23 U.S.C. 106, 109, 112, 115, 315, 320, and 402(a); Sec. 1501 and 1503 of Public Law 109–59, 119 Stat. 1144; Public Law 105–178, 112 Stat. 193; Public Law 104–59, 109 Stat. 582; Public Law 97–424, 96 Stat. 2106; Public Law 90–495, 82 Stat. 828; Public Law 85–767, 72 Stat. 896; Public Law 84–627, 70 Stat. 380; 23 CFR 1.32 and 49 CFR 1.48(b).

Subpart A—Project Authorization and Agreements

SOURCE: 66 FR 23847, May 10, 2001, unless otherwise noted.

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies for authorizing Federal-aid projects through execution of the project agreement required by 23 U.S.C. 106(a)(2).

§ 630.104 Applicability.

(a) This subpart is applicable to all Federal-aid projects unless specifically exempted.

(b) Other projects which involve special procedures are to be approved, or authorized as set out in the implementing instructions or regulations for those projects.

§ 630.106 Authorization to proceed.

(a)(1) The State transportation department (STD) must obtain an authorization to proceed from the FHWA before beginning work on any Federal-aid project. The STD may request an authorization to proceed in writing or by electronic mail for a project or a group of projects.

(2) The FHWA will issue the authorization to proceed either through or after the execution of a formal project agreement with the State. The agreement can be executed only after applicable prerequisite requirements of Federal laws and implementing regulations and directives are satisfied. Except as provided in paragraphs (c)(1) through (c)(4) of this section, the FHWA will obligate Federal funds in the project or group of projects upon execution of the project agreement.

(3) The State's request that Federal funds be obligated shall be supported by a documented cost estimate that is based on the State's best estimate of costs.

(4) The State shall maintain a process to adjust project cost estimates. For example, the process would require a review of the project cost estimate when the bid is approved, a project phase is completed, a design change is approved, etc. Specifically, the State shall revise the Federal funds obligated

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within 90 days after it has determined that the estimated Federal share of project costs has decreased by \$250,000 or more.

(5) The State shall review, on a quarterly basis, inactive projects (for the purposes of this subpart an “inactive project” means a project for which no expenditures have been charged against Federal funds for the past 12 months) with unexpended Federal obligations and shall revise the Federal funds obligated for a project within 90 days to reflect the current cost estimate, based on the following criteria:

(i) Projects inactive for the past 12 months with unexpended balances more than \$500,000,

(ii) Projects inactive for the past 24 months with unexpended balances of \$50,000 to \$500,000, and

(iii) Projects inactive for the past 36 months with unexpended balances less than \$50,000.

(6) If the State fails to comply with the requirements of paragraphs (a)(3), (4), or (5) of this section, then the FHWA shall revise the obligations or take such other action as authorized by 23 CFR 1.36. The FHWA shall advise the State of its proposed actions and provide the State with the opportunity to respond before actions are taken. The FHWA shall not adjust obligations without a State’s consent during the August redistribution process, August 1 to September 30.

(7) For design-build projects, the execution or modification of the project agreement for final design and physical construction, and authorization to proceed, shall not occur until after the completion of the NEPA process. However, preliminary design (as defined in 23 CFR 636.103) and preliminary engineering may be authorized in accordance with this section.

(b) Federal funds shall not participate in costs incurred prior to the date of a project agreement except as provided by 23 CFR 1.9(b).

(c) The execution of the project agreement shall be deemed a contractual obligation of the Federal government under 23 U.S.C. 106 and shall require that appropriate funds be available at the time of authorization for the agreed Federal share, either pro rata or lump sum, of the cost of eligi-

ble work to be incurred by the State except as follows:

(1) Advance construction projects authorized under 23 U.S.C. 115.

(2) Projects for preliminary studies for the portion of the preliminary engineering and right-of-way (ROW) phase(s) through the selection of a location.

(3) Projects for ROW acquisition in hardship and protective buying situations through the selection of a particular location. This includes ROW acquisition within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accord with the provisions of 23 CFR part 710.

(4) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) For projects authorized to proceed under paragraphs (c)(1) through (c)(4) of this section, the executed project agreement shall contain the following statement: “Authorization to proceed is not a commitment or obligation to provide Federal funds for that portion of the undertaking not fully funded herein.”

(e) For projects authorized under paragraphs (c)(2) and (c)(3) of this section, subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time the project agreement is executed in one of the following manners:

(i) Pro rata, with the agreement stating the Federal share as a specified percentage; or

(ii) Lump sum, with the agreement stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the STD’s estimated cost

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of the project at the time of FHWA authorization, provided that Federal funds are available.

(3) Federal participation is limited to the agreed Federal share of eligible costs actually incurred by the State, not to exceed the maximum permitted by enabling legislation.

(g) The State may contribute more than the normal non-Federal share of title 23, U.S.C. projects. In general, financing proposals that result in only minimal amounts of Federal funds in projects should be avoided unless they are based on sound project management decisions.

(h)(1) Donations of cash, land, material or services may be credited to the State's non-Federal share of the participating project work in accordance with title 23, U.S.C., and implementing regulations.

(2) Contributions may not exceed the total costs incurred by the State on the project. Cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

[66 FR 23847, May 10, 2001, as amended at 71 FR 4995, Jan. 31, 2006; 72 FR 45336, Aug. 14, 2007]

§ 630.108 Preparation of agreement.

(a) The STD shall prepare a project agreement for each Federal-aid project.

(b) The STD may develop the project agreement in a format acceptable to both the STD and the FHWA provided the following are included:

(1) A description of each project location including State and project termini;

(2) The Federal-aid project number;

(3) The work covered by the agreement;

(4) The total project cost and amount of Federal funds under agreement;

(5) The Federal-aid share of eligible project costs expressed as either a pro rata percentage or a lump sum as set forth in § 630.106(f)(1);

(6) A statement that the State accepts and will comply with the agreement provisions set forth in § 630.112;

(7) A statement that the State stipulates that its signature on the project agreement constitutes the making of the certifications set for in § 630.112; and

(8) Signatures of officials from both the State and the FHWA, and the date executed.

(c) The project agreement should also document, by comment, instances where:

(1) The State is applying amounts of credits from special accounts (such as the 23 U.S.C. 120(j) toll credits, 23 U.S.C. 144(n) off-system bridge credits and 23 U.S.C. 323 land value credits) to cover all or a portion of the normal percent non-Federal share of the project;

(2) The project involves other arrangements affecting Federal funding or non-Federal matching provisions, including tapered match, donations, or use of other Federal agency funds, if known at the time the project agreement is executed; and

(3) The State is claiming finance related costs for bond and other debt instrument financing (such as payments to States under 23 U.S.C. 122).

(d) The STD may use an electronic version of the agreement as provided by the FHWA.

(Approved by the Office of Management and Budget under control number 2125-0529)

§ 630.110 Modification of original agreement.

(a) When changes are needed to the original project agreement, a modification of agreement shall be prepared. Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute.

(b) The STD may develop the modification of project agreement in a format acceptable to both the STD and the FHWA provided the following are included:

(1) The Federal-aid project number and State;

(2) A sequential number identifying the modification;

(3) A reference to the date of the original project agreement to be modified;

(4) The original total project cost and the original amount of Federal funds under agreement;

(5) The revised total project cost and the revised amount of Federal funds under agreement;