Federal Highway Administration, DOT

§ 630.106 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.
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 eligible work to be incurred by the State except as follows:


(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...
of the project at the time of FHWA au-
thorization, 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, fi-
nancing proposals that result in only
minimal amounts of Federal funds in
projects should be avoided unless they
are based on sound project manage-
decisions.
(h)(1) Donations of cash, land, mate-
rial or services may be credited to the
State’s non-Federal share of the par-
ticipating 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.

§ 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 loca-
tion including State and project ter-
mini;
(2) The Federal-aid project number;
(3) The work covered by the agree-
ment;
(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 ac-
cepts and will comply with the agree-
ment provisions set forth in § 630.112;
(7) A statement that the State stipu-
lates 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 ar-
rangements 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 agree-
ment is executed; and
(3) The State is claiming finance re-
lated costs for bond and other debt in-
strument financing (such as payments
(d) The STD may use an electronic
version of the agreement as provided
by the FHWA.

§ 630.110 Modification of original
agreement.
(a) When changes are needed to the
original project agreement, a modifi-
cation 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 modi-
fication of project agreement in a for-
mat acceptable to both the STD and the
FHWA provided the following are in-
cluded:
(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 modi-
(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;

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