

SUBCHAPTER F. TRANSPORTATION ALTERNATIVES PROGRAM

§11.300. Purpose. The sections under this subchapter prescribe the policies and procedures for the implementation and administration of the Transportation Alternatives Program (TAP), as authorized by 23 U. S. C. §213.

The provisions of this §11.300 adopted to be effective October 12, 2014, 39

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§11.301. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--Texas Transportation Commission.

(2) Department--Texas Department of Transportation.

(3) Executive director--The executive director of the Texas Department of Transportation or his or her designee.

(4) FHWA--Federal Highway Administration.

(5) Local agreement--An agreement between the project sponsor and the department which includes a commitment for the required local funding, describes the total scope and course of project activities, and outlines the responsibilities and duties of the participants.

(6) Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under 23 U. S. C. §134, and 49 U. S. C. §5303, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan planning process.

(7) Project--An undertaking to implement or construct an eligible activity at a

specific location or locations, or, if the context so implies, the particular activity so implemented or constructed.

(8) Project sponsor--An eligible entity as described by 23 U. S. C. §213, that nominates a particular project for consideration, exercises jurisdiction over the geographic area in which that project is located, and commits to the project's development, implementation, construction, maintenance, management, and financing.

(9) State--The State of Texas or any of its political subdivisions.

(10) Statewide Transportation Improvement Program (STIP)--A four year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs, together with rural transportation improvement programs, that include recommendations from rural planning organizations and department districts for the areas of the state that are outside of the boundaries of a metropolitan planning organization, including transportation between cities.

(11) Surface transportation system--An interconnected surface transportation network for moving people and goods using various combinations of transportation modes.

(12) Transportation Improvement Program (TIP)--A short-range program developed by each metropolitan planning organization in cooperation with the department and public transportation operators that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in a metropolitan area.

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§11.302. Program Administration.

(a) The state is required to suballocate, in accordance with 23 U.S.C. §213, a part of its TAP apportionment to urbanized areas with populations over 200,000.

(b) Each MPO serving an urbanized area with a population over 200,000 shall implement the TAP for the award of funds suballocated within such area. Section 11.303 of this subchapter applies only to the use of those TAP funds.

(c) For TAP funds not covered by subsection (b) of this section, the commission will select projects through a competitive process administered by the department. Sections 11.304 – 11.317 of this subchapter apply only to the use of those TAP funds.

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§11.303. Project Selection and Implementation by MPOs.

(a) This section applies only to an MPO serving an urbanized area with a population over 200,000 and the award of TAP funds suballocated for such an urbanized area.

(b) The MPO, in consultation with the department, shall develop a competitive process to allow project sponsors to submit applications for funding under the TAP.

(c) The MPO will coordinate determinations regarding project eligibility, subject to audit by the FHWA.

(d) Projects, or substantially similar projects, submitted during a program call administered by the MPO are not eligible for consideration under a program call administered by the department.

(e) Following the conclusion of the competitive process, the MPO shall provide to the

department a list of all projects submitted during the program call on which the selected projects are identified, and immediately shall begin the process required to include the selected projects in its TIP.

(f) The MPO will conduct project selection and implementation in accordance with all applicable federal and state laws and regulations.

(g) If a project is located on state right-of-way, the project sponsor is responsible for securing a land-use permit from the department prior to construction.

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§11.304. Eligible Activities.

(a) During a program call administered by the department, TAP funds may be awarded for any of the following activities:

(1) construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990;

(2) construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs;

(3) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; and

(4) construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.

(b) A project that will require the acquisition of real property through the exercise of eminent domain or condemnation is not eligible for participation in the TAP.

(c) Whether proposed as an independent project or as an element of a larger transportation project, the project must be limited to a logical unit of work and be constructible as an independent project.

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§11.305. Allowable Costs.

(a) Costs are allowable only if they are necessary construction-related project expenditures that are eligible for reimbursement under applicable statutes and regulations.

(b) The costs of preliminary engineering (including planning, design, and plans, specifications, and estimates) are not allowable costs.

(c) Eligible pre-construction costs incurred by the department are reimbursable. All other pre-construction costs are the responsibility of the project sponsor.

(d) Expenditures for routine operation and maintenance are not allowable costs unless specifically allowed under the individual federal category for which the project qualifies.

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§11.306. Local Funding Match.

(a) The local funding match is a cash match or in-kind contribution provided by or through the project sponsor. An in-kind contribution may only include actual and documented pre-construction or construction-related costs previously incurred by the project sponsor that are otherwise eligible for reimbursement under applicable statutes and regulations.

(b) Funds from other federal programs may be used as a local funding match only when specifically authorized by federal law or regulation.

(c) Donated services may not be accepted as a local funding match, but may be used to reduce the overall cost of the project.

(d) If a project selected by the commission is administered by the department, the project sponsor must provide the cash portion of the local funding match prior to the commencement of project activities.

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§11.307. Call for Nominations.

(a) The department will issue a notice of a call for nominations by publication in the Texas Register.

(b) The notice will include information regarding the content of the nomination package, the procedures applicable to the program call, and the specific evaluation criteria to be used during the project selection process.

(c) All or a portion of a call for nominations may be designated for a particular eligible activity.

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§11.308. Nomination Package.

(a) To nominate a project during a program call administered by the department, the project sponsor must submit its nomination in the form prescribed by the department.

(b) The nomination package must present persuasive evidence of support for the proposed project from the communities in which it would be implemented and include a commitment to provide a local funding match of at least 20% of the allowable costs of the project.

(c) If the project is located in a county that has been certified by the commission as an economically disadvantaged county, the nomination package may include a request for adjustment to the minimum local funding match requirement. For those projects in which the commission is authorized by law to provide state cost participation, the department may adjust the amount required by subsection (b) in this section.

(d) A complete nomination package must be received by the department no later than the specified deadline published in the Texas Register. A nomination package that fails to include any of the items specified in this subsection or the respective program call is considered to be incomplete and will not be considered for funding.

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§11.309. Project Screening and Evaluation.

(a) The executive director will appoint a project evaluation committee consisting of department staff to review, evaluate, and make recommendations on projects submitted during a program call administered by the department.

(b) The committee will screen each project to determine whether it is eligible for funding under applicable federal and state law and whether it meets technical standards established by applicable law and accepted professional practice.

(c) The committee will evaluate the benefits of each project that is determined to be eligible under subsection (b) of this section or §11.310 based on the specific selection criteria set forth in the program call.

(d) The committee will provide project selection recommendations and supporting documentation to the director of the division of the department responsible for administering the TAP.

(e) The director of the division responsible for administering the TAP will provide a list of recommended projects to the commission for consideration.

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§11.310. Finding of Ineligibility; Request for Reconsideration.

(a) The department will by certified mail, return receipt requested, notify the project sponsor of each ineligible activity proposed and the reason for the determination.

(b) A request for reconsideration of a finding of ineligibility may be initiated only by a

letter from the nominating entity to the executive director setting forth reasons in support of a finding of eligibility. The letter requesting reconsideration must be received by the department no later than 15 days after the nominating entity received the department's notification, as established by the return receipt.

(c) The determination of the executive director in response to the request for reconsideration is final.

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§11.311. Selection of Projects by the Commission.

(a) The commission, by written order, will select projects for funding under the TAP based on:

(1) recommendations from the director of the division responsible for administering the TAP;

(2) the potential benefit to the state of the project; and

(3) whether the project enhances the surface transportation system.

(b) The commission is not bound by project selection recommendations provided by the department.

(c) The department will notify the project sponsor of the selection.

(d) The commission will specify a fixed amount of TAP funds for each project. Project costs in excess of this amount are the responsibility of the project sponsor. The project sponsor may seek additional funds through the TAP in subsequent program calls.

(e) A project that is not selected must be resubmitted to receive consideration during

subsequent program calls.

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§11.312. Inclusion of Selected Projects in Planning Documents.

(a) If a project selected by the commission is to be implemented in a metropolitan area, the department will request that the MPO for that area immediately begin the process required to include the selected project in its TIP.

(b) The department will also immediately begin the process required to include all selected projects in the STIP.

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§11.313. Project Implementation.

(a) The project sponsor will implement or arrange for implementation of each project selected by the commission in accordance with statutory requisites and contracting procedures applicable to the type and character of the project. The department, in its sole discretion, may agree to implement a project on behalf of a project sponsor.

(b) All projects must be developed:

(1) to current standards and specifications established or recognized by the federal government and the department; and

(2) in accordance with this subchapter.

(c) All project sponsors must enter into a local agreement and comply with all federal and

state procedures and requirements applicable to development of federal-aid transportation projects.

(d) Before funding any construction activities, the department will ensure that required opportunities for public involvement have been provided and proper environmental documentation has been completed.

(e) Funds from other federal programs may be used only when specifically authorized by federal law or regulation. Private cash donations may be accepted if authorized by law.

(f) Any change in the scope of work that was specified in the nomination package and approved by the commission must have the advance written approval of the executive director.

(g) The department is responsible for the inspection and final acceptance of all projects selected by the commission and for certification of project completion.

(h) If the project sponsor does not complete the project as originally approved by the commission, the department may seek reimbursement of the expended federal funds from the sponsor.

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§11.314. Payment of Costs.

(a) The department will submit all requests for reimbursement of allowable costs to FHWA.

(b) A project sponsor must use the forms and procedures specified by the department to request reimbursement of allowable costs incurred.

(c) For locally administered projects, the entire project cost is borne by the project

sponsor until reimbursement can be obtained from FHWA for eligible activities.

(d) Costs incurred prior to the inclusion of the project in the STIP, execution of the local agreement, or prior to federal and state approval and authorization to proceed are not eligible for reimbursement.

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§11.315. Elimination of Project from the TAP.

(a) A project will be eliminated from participation in the TAP if at any time prior to the execution of the local agreement, the governing body of a municipality or county in which project activities are proposed, by resolution, order, or other official action, notifies the department of its opposition to the project.

(b) The executive director may eliminate a project or a portion of a project from participation in the TAP if at any time:

- (1) the project sponsor fails to satisfy any requirement of this subchapter;
- (2) implementation of the project would involve significant deviation from the activities as proposed in the nomination package and approved by the commission;
- (3) the project sponsor withdraws from participation in the project;
- (4) a construction contract has not been awarded or construction has not been initiated within three years after the date that the commission selected the project;
- (5) a local agreement is not executed within one year after the date that the commission selected the project; or
- (6) the executive director determines that federal funding may be lost because the

project has not been implemented or completed.

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§11.316. Project Transfer; Approval of Change.

(a) If at any time legislative action requires transfer of the project to another entity, the department may terminate the existing project agreement and execute an agreement with the responsible entity.

(b) A transfer under subsection (a) of this section must receive approval from FHWA.

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§11.317. Maintenance and Operation; Dedication for Public Use.

(a) A project selected by the commission shall be maintained and operated for the purpose for which it was approved and funded and for a period of time that is commensurate with the amount of federal investment in the project.

(b) A project selected by the commission shall be dedicated for public use for the greater of:

(1) a period that is commensurate with the amount of federal investment in the project; or

(2) 10 years, if the amount of federal investment in the project is \$1 million or less, or 20 years, if the amount of federal investment is more than \$1 million.

(c) If at any time the project sponsor can no longer maintain and operate the project for

its intended purpose, the sponsor will return the federal share used for the project in accordance with current deferral recapture procedures.

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