

the FTA-signed ROD or FONSI, or the CE determination. It does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA. At FTA's discretion, these other activities may be covered by a LONP, described in section XVII, below. This pre-award authority does not cover the acquisition of construction equipment or transit vehicles or any other acquisition except that of real property and real property rights.

Grant applicants should use this pre-award authority for real property very discreetly with a clear understanding that it does not constitute a funding commitment by FTA. On occasion, even projects that received a "recommended" rating from FTA under the New Starts regulation, 49 CFR part 611, have not received a Full Funding Grant Agreement from FTA simply because the competition for the limited New Starts funds is so intense.

This pre-award authority for the acquisition of real property and real property rights, in accordance with the URA and after FTA's signing of a ROD or FONSI or making a CE determination, is intended to streamline the project delivery process, to enhance relocation services for residents and businesses, and to avoid the escalation in the cost of real property caused by delays in its acquisition. In granting this pre-award authority, FTA is aware that the risk taken by the grant applicant in acquiring real property without an FTA commitment is somewhat mitigated by the re-sale value of the real property, in the event that FTA funding assistance is not ultimately forthcoming and the project is abandoned.

3. National Environmental Policy Act (NEPA) Activities

The NEPA requires that projects with potentially significant adverse impacts proposed for Federal funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives with potentially fewer damaging effects. Projects for which FTA experience indicates there are no significant impacts are subject to NEPA, but categorically excluded from the more rigorous levels of NEPA review.

FTA regulations, 23 CFR 771.105(e), state that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA assistance. FTA extends automatic pre-award authority for costs incurred to conduct the NEPA environmental review, including historic preservation activities, and to prepare an EIS, EA, CE,

or other environmental documents for a proposed New Starts project, effective as of the date of the federal approval of the relevant STIP or STIP amendment that includes any phase of the project. This pre-award authority applies to New Starts funding, as well as other FTA funding sources. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and prepare environmental and historic preservation documents. It does not cover preliminary engineering activities beyond those necessary for NEPA compliance. As with any pre-award authority, FTA participation in costs incurred is not guaranteed.

This pre-award authority for environmental and historic preservation work for a proposed New Starts project in the FTA-approved STIP is intended to streamline the NEPA process in accordance with TEA-21 Section 1309, "Environmental Streamlining," by eliminating unnecessary delays in starting up the conceptual engineering and environmental reviews, the public involvement process, and the interagency coordination process for New Starts projects.

4. Other New Starts Activities Requiring LONP

Except as discussed in paragraphs 1-3 above, a grant applicant must obtain a written LONP from FTA before incurring costs for any activity expected to be funded by New Start funds not yet granted. To obtain an LONP, an applicant must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office, as described in section XVII below.

XVII. Letter of no Prejudice (LONP) Policy

A. Policy

LONP authority allows an applicant to incur costs on a project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects and project activities not covered by automatic pre-award authority. The majority of LONPs will be for Section 5309 New Starts funds not covered under a full funding grant agreement or for Section 5309 Bus and Bus-Related funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only, for example, to permit real estate purchased as it becomes available to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA, DOT, and other Federal statutory, regulatory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations, 23 CFR part 771, the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved a CE determination, 23 CFR Section 771.117(d), a finding of no significant impact (FONSI), or an environmental ROD. Because project