
Appendix I
Active FTA Letters of No
Prejudice

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FTA PRE-AWARD AUTHORITY

The Federal Transit Administration (FTA) has developed two processes that allow grant recipients to incur costs using non-federal resources in advance of grant approval. These expenditures may subsequently be reimbursed using federal funds (or used as credit toward the required non-federal share) after a grant is approved. These provisions are generally referred to as ‘pre-award authority’.

It is important to note that exercising pre-award authority involves considerable risk. There is no guarantee federal funds will be available or awarded for reimbursement and costs incurred must meet all federal planning, environmental, and procurement requirements, (as if federal grant funds are being used) as well as any program-specific requirements that may exist. All expenditures made under pre-award authority are subject to audit and potential disallowance.

AUTOMATIC PRE-AWARD AUTHORITY

In cases where FTA has determined specific pre-approval is not necessary, recipients may incur costs under ‘automatic’ pre-award authority. The list of eligible activities and conditions precedent for the use of automatic pre-award authority is revised each year and published in the Federal Register as part of FTA’s annual notice of funding apportionments.

Automatic pre-award authority is generally restricted to activities where (1) substantial certainty surrounds the availability of future federal funds, such as 5307 formula funds, or (2) the recipient is pursuing funding support under a process where significant FTA involvement/oversight is involved (e.g. New Starts/Small Starts).

While FTA has continually expanded the list of eligible programs and activities which qualify for automatic pre-award authority, funds transferred from the highway account (CMAQ/STP/etc.) are currently not covered by these provisions.

LETTERS OF NO PREJUDICE (LONP)

In all other cases, specific FTA approval is required before expenses may be incurred using non-federal resources. The approval document issued by FTA is a Letter of No Prejudice (LONP).

LONPs must meet the same conditions as automatic pre-award authority and will only be issued

APPENDIX I: LETTERS OF NO PREJUDICE

following completion of the environmental review process.

LONPs are intended to allow *time-sensitive critical-path* project activities to occur using local funds in advance of federal grant funds being available for reimbursement. As such, LONPs expire after a specific period of time, generally limited to five years.

Given this purpose and significant constraints, LONPs are most valuable when a significant local project investment is imminent **and** federal funds are likely to be available to continue project implementation within the five-year period covered by the LONP.

If local funds are not available to make an investment in the project, or if federal funds are not likely to be available within five years of the local investment, an LONP provides little or no value.

The following examples illustrate situations where LONPs are appropriate:

- **Long-lead items:** The time required to procure certain long-lead items, such as transit vehicles or proprietary equipment, may necessitate initiating these activities prior to grant approval.
- **Final design:** A recipient may wish to undertake engineering and design activities upon the completion of environmental review so construction may begin immediately upon grant approval.

DOCUMENTATION OF LONPS IN THE RTP AND TIP

Project sponsors within the Houston-Galveston region have made greater use of FTA pre-award authority, particularly Letters of No Prejudice, over the past few years. In order to ensure the planning requirement conditions for LONP issuance are being satisfied, H-GAC issued a memorandum to transit funding recipients in the region detailing a new process for the treatment of LONPs in the TIP and RTP.

Under this new process, proposed LONPs which represent multi-year capital programs will be considered for inclusion in the RTP. As is the case for roadway projects, documentation of financial responsibility will be required to support the inclusion of an LONP project in the RTP.

As local funding commitments are made or federal grant funds are secured to implement the LONP project, the funded scope elements will be programmed in the TIP. In addition, active and proposed LONPs will be included in an appendix to the TIP for the purpose of facilitating federal approvals and authorizations.