TxDOT Statewide 2017 TA Set-Aside Questions & Answers

Below are some common questions received in TxDOT's 2017 TA Set-Aside Call for Projects. The Code of Federal Regulations (CFR) and Texas Administration Code (TAC) have been cited in response to several questions using only the abbreviations CFR and TAC.

1) If TA Set-Aside projects will be selected in the fall of 2017, when will project sponsors (with funded projects) be required to pay their local match?

   Answer:

   The local funding match for TxDOT's review of project plans and environmental documentation will be due to TxDOT within 30 days of the local government receiving the fully executed project agreement.

   Note: Projects must be included on the locally approved Transportation Improvement Program (TIP) and on the federally approved Statewide TIP before the project AFA can be fully executed by TxDOT. This process generally takes 9-12 months; however, it can take as few as 4-6 months. Refer to the project development guidelines on pages 14 - 30 of TxDOT's *2017 TA Set-Aside Program Guide* to help establish your project timeline to construction.

   The remaining local match will be due to TxDOT 60 days prior to TxDOT's construction letting of the project. If a local letting is authorized, the local government would simply be reimbursed for 80% of the eligible construction costs and be responsible for 100% of any cost overruns.

   Note: Authorization for a local letting is a district decision. The local government would be required to request a local letting through the district office and complete a *Risk Assessment* evaluation. TxDOT makes the final decision on whether a local letting would be authorized.

2) Does the local match requirement increase when in-kind contributions are used as a local match for construction?

   Answer:

   The local government's local funding match percentage will not be affected by the inclusion of in-kind contribution(s); however, the overall match required would increase. TxDOT's Transportation Alternatives Set-Aside nomination form was developed in accordance with the guidelines established by the Federal Highway Administration (FHWA) for federal-aid projects with non-federal match. In accordance with FHWA guidelines, the in-kind value is added to the estimated construction cost before the federal share and local match are calculated (generally 80/20 respectively).

For **FHWA *Federal-Aid Guidance Non-Federal Match Requirements***, please visit FHWA's website at:
https://www.fhwa.dot.gov/legsregs/directives/policy/fedaid_guidance_nfmr.pdf

Note: TxDOT's administrative cost is based on the local government's construction cost estimate only. TxDOT's administrative cost is federally reimbursable at the same rate as other eligible costs (generally 80/20).

3) Which projects are eligible under provisions of the Economically Disadvantaged County Program (EDCP)?

Answer:

All projects proposed under an eligible TA Set-Aside project activity may be considered for EDCP. However, for a project to be eligible for EDCP, the project must be located in a county that has been designated by the Texas Transportation Commission as a disadvantaged county. The infrastructure improvements must be within public roadway right-of-way (ROW) either on-system (state-maintained) or off-system (locally maintained) or be immediately adjacent to roadway ROW.

If the project is located in a county that has been certified by the commission as an economically disadvantaged county (EDC), the nomination package for those projects eligible for relief may include a request for adjustment to the minimum local funding match requirement (Review page 36 in TxDOT's *2017 TA Set-Aside Program Guide* and include eligible EDC adjustment on page 9 of the project nomination form). If an adjustment is granted, the adjustment percentage in effect for the county at the time TxDOT's TA Set-Aside program call is initiated will be used. The county must remain eligible for an EDC adjustment until the date the project sponsor executes the project agreement with TxDOT.

For current EDC program guidance visit TxDOT's website at:
http://www.txdot.gov/inside-txdot/division/transportation-planning/disadvantaged-county.html.

4) Are local government costs toward preparing the nomination package eligible for reimbursement?

Answer:

No. Any costs incurred prior to the project being selected for funding, being identified in the local Transportation Improvement Program (TIP), included in the Statewide TIP, execution of the project agreement (generally an Advance Funding Agreement), and authorization from TxDOT to proceed **are not eligible for reimbursement or as an in-kind contribution towards the project sponsor's local match for construction**.

5) What is a reasonable minimum cost threshold for a project? At what point does a project become not cost-effective?

Answer:
TxDOT did not establish a minimum cost for TA Set-Aside projects. However, a project may be determined to be ineligible if the estimated cost to administer the funds exceeds the estimated construction cost.

6) What is the role of Regional Transportation Planning Organizations (RTPOs) in TxDOT's TA Set-Aside program call?

Answer:
In Texas, Regional Transportation Planning Organizations have not been formally designated by the Governor in accordance with 23 CFR 450.210(d); therefore, they are not eligible project sponsors for TA Set-Aside funding. In TxDOT's 2017 TA Set-Aside Call for Projects, the role of planning organizations would be to provide technical and planning assistance to its member jurisdictions, consistent with their capacity as a regional planning entity.

7) If the TA Set-Aside nomination package includes a proposed traffic signal, is development and submittal of a warrant study required?

Answer:
Yes, please refer to page 15 of TxDOT's 2017 *TA Set-Aside Program Guide* for the following:
Traffic control devices such as signs, signals, and markings are designed to regulate, warn, guide, and inform. All pavement markings, signals, and signage must comply with the current Texas Manual on Uniform Traffic Control Devices.

8) - **What is a Pedestrian Hybrid Beacon (PHB)?** See response below.
- **What are the procedures for approval of a PHB on a state-maintained roadway**? See response below.
- **Is the project sponsor required to obtained advance approval from the TxDOT district office for a PHB or traffic signal proposed on a state-maintained roadway**? Yes
- **Does the project nominator package need to include TxDOT district approval for a PHB or traffic signal proposed on a state-maintained roadway**? Yes

Answer-below is a comprehensive answer to address all of the questions above:
Yes, all improvements on state-maintained right-of-way must have a letter of consent from the current District Engineer. Refer to page 22 of TxDOT's *2017 TA Set-Aside Program Guide* for the following text:

> *Projects that include state-maintained right-of-way or have a direct effect on an existing state-maintained roadway* ***must have a recent letter of consent, addressed to the project sponsor, and signed by the current TxDOT District Engineer*** *(DE); this consent cannot be delegated down. The DE letter must be included in the nomination package as Attachment G*.

Also review the answer to question 7 above.

Note: The TxDOT district office must receive Traffic Operations Division approval for installation of a PHB or traffic signal for each location.

Procedures / Guidance for Pedestrian Hybrid Beacons:
The *2011 Texas Manual on Uniform Traffic Control Devices* (TMUTCD) includes Pedestrian Hybrid Beacons (PHB) for use at marked crosswalks, which are not managed by a traffic control device such as a traffic signal or stop signs. A PHB is a pedestrian-activated warning device located on the roadside or on mast arms over midblock pedestrian crossings. The beacon head consists of two red lenses above a single yellow lens. The beacon head is "dark" until the pedestrian wanting to cross the roadway presses the button and activates the beacons. This device provides an additional tool for improving the safety of crosswalks when traffic signals do not meet warrants. PHB's should be used in conjunction with signs and pavement markings to warn and control traffic at locations where pedestrians enter or cross a street or highway.

All of the following conditions must be met before a PHB can be considered on or adjacent to a state-maintained roadway:

- An engineering study must be performed and meet the guidelines detailed in Chapter 4F of the TMUTCD
- An established crosswalk with adequate visibility, markings and signs
- A posted speed limit of 40 mph or less (does not include school speed zones)
- 20 pedestrians or more crossing in one hour
- Location deemed as a high risk area (e.g. schools, shopping centers, etc.)
- Crosswalk is more than 300 feet from an existing, traffic-controlled pedestrian crossing

For additional information on PHBs, review Appendix A of the NCHRP 562 Report at: http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf

Note: **Signal improvements must be for non-motorized traffic safety to be considered for funding under TxDOT's 2017 TA Set-Aside Call for Projects** (Example: upgrade to install pedestrian crossing elements).

Note: A project proposing any signal improvements without the appropriate documentation will not be eligible for consideration in TxDOT's 2017 TA Set-Aside Call for Projects.

9) What type of right-of-way (ROW) / property ownership documentation is required?
Answer:
ROW ownership documentation may include ROW maps and/or deed records.

10) Do federal requirements apply to project development?

Answer:

Yes, federal and state requirements apply to any costs incurred that will be used as an in-kind contribution towards the local match for construction. Additionally, project property acquired (including easements and donations) after 1971 must have been acquired in accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Act). Furthermore, design must comply with federal and state standards; local design specifications may be approved on a case-by-case basis.

11) If project sponsors do not have an engineer on staff, what resources might be available to prepare a reasonable itemized construction estimate?

Answer:

Project sponsors may need to seek the advice of professionals experienced in designing and/or implementing federally funded bicycle/pedestrian projects within the state of Texas, including the preparation of a reasonable project estimate. TxDOT includes on its website a list of average low bid unit prices at: (http://www.txdot.gov/business/letting-bids/average-low-bid-unit-prices.html).

In addition, review pages 31 through 34 of TxDOT's *2017 TA Set-Aside Program Guide*. Other local resources may be available. Project sponsors may explore potential partnerships with entities in their area that may have project development experience such as county agencies, school districts, and/or transit agencies. Contact your district TA Set-Aside coordinator for additional guidance.

12) Is 2 CFR 200.319 (Competition) applicable to TxDOT's *2017 Transportation Alternatives Set-Aside Program* Call for Projects? If so, would a grant administration or engineering firm that assisted with the completion/submittal of the project nomination/application be excluded from competing for procurements done after the signing of the Advanced Funding Agreement?

Answer:

To answer the first question, yes, 2 CFR 200.319 is applicable to the TA Set-Aside Program. However, the regulation only addresses situations when a contractor (such as a grant administrator or engineering firm) is involved with the development or drafting of **procurement** documents for property or services. In such cases, a contractor that helps to develop or draft procurement document(s) would be excluded from competing for such procurements.

To answer the second question, 2 CFR 200.319 does not appear to prohibit a contractor (or any other 3rd party, such as a grant administrator or engineering firm) from assisting with the completion/submittal of a project nomination form/application for a federal subaward under TxDOT's TA Set-Aside Program since the application process is not part of a procurement for goods or services. It should be noted that any costs related to the preparation of a TA Set-Aside nomination

form/application (including any assistance provided by a 3rd party) are not federally reimbursable under the TA Set-Aside Program.

13) How does the city or county select the method of construction for a project?

Answer:

If the local government wants to use their own forces to construct a federal-aid project rather than competitively bidding the project, the local government must submit documentation to TxDOT that use of force account is more cost effective than a competitive bidding process. The Federal Highway Administration (FHWA) provides a number of videos to assist and educate local public agencies on the use of federal-aid programs. The main FHWA Federal-aid Essentials website is: https://www.fhwa.dot.gov/federal-aidessentials/index.cfm. For FHWA guidance review their video entitled *"Selecting the Method of Construction or Force Account"* at: https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=24
To review FHWA's Policy on Agency Force Account Use visit either of the following FHWA websites:
https://www.fhwa.dot.gov/legsregs/directives/orders/50601.pdf
https://www.fhwa.dot.gov/legsregs/directives/orders/50601.cfm

If the local government is approved to construct all or a portion of a project with their own forces, the local government will still need to follow all other federal requirements and obtain TxDOT approval of environmental documentation and engineer-prepared plans, specifications, and estimate (often referred to as PS&E), provide proper inspection, quality assurance and quality control, material testing, and documentation where appropriate. At the completion of construction, the local government must submit to TxDOT a letter of certification sealed by a licensed engineer, indicating that all construction and materials incorporated into the project are in substantial conformity with the approved plans and specifications. Refer to TxDOT Chapter 9 of the Local Government Project Management Guide for more information on the construction phase requirements at:
http://ftp.dot.state.tx.us/pub/txdot/lgp/procedures/guide.pdf#9Const

14) When hiring a consultant, when is a local government required to meet Federal Procurement Requirements?

Answer:

Federal Procurement Requirements must be followed when the Local Government is using the cost of professional services as in-kind local match for construction and when a local government is authorized a local letting for construction. When procuring professional services, the local government must submit federal compliant procurement procedures to TxDOT for review and approval or adopt TxDOT's procurement process. In addition, contracts between the local government and consultants must include applicable federal requirements, and be submitted to TxDOT for review and approval, prior to execution. Federal Procurement

Requirements apply regardless of whether the project is let for construction by TxDOT or by the local government.

The Federal Highway Administration's federal-aid essentials for local public agencies video library includes a video entitled *Hiring a Consultant using Competitive Negotiation Procedures* that provides an overview of the hiring process. Here is the video link: https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=7.

For additional guidance on Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers visit: https://www.fhwa.dot.gov/programadmin/172qa_01.cfm

15) If a local government is procuring architectural, engineering, and surveying services and seeking credit for in-kind services, do firms providing professional services need to have overhead or indirect rates that meet Federal Acquisition Regulations (FAR) and/or be administratively qualified by TxDOT?

Answer:

Yes, firms providing professional services (prime and subs) are required to have an overhead or indirect rate that meets the FAR requirements. TxDOT has a list of firms that meet the FAR requirements and are referred to as being "administratively qualified". The list of firms can be found at: http://ftp.dot.state.tx.us/pub/txdot-info/des/cco/professional_services/qualified_firms.pdf.

In addition to being administratively qualified by TxDOT, there are other ways for local governments to ensure that firms providing professional services have overhead or indirect cost rates that meet FAR requirements. To understand these requirements please reference TxDOT's website: http://www.txdot.gov/business/consultants/architectural-engineering-surveying/getting-started/administrative-qualification.html.

The Federal Highway Administration's federal-aid essentials for local public agencies video library includes a video entitled *Hiring a Consultant using Competitive Negotiation Procedures* that provides an overview of the hiring process. Here is the video link: https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=7.

For additional guidance Procurement, Management, and Administration of Engineering and Design Related Services visit: https://www.fhwa.dot.gov/programadmin/172qa_01.cfm

16) Can the project sponsors use force account for development of the project plans and environmental documentation as an in-kind contribution towards the local match for construction?

Answer:

Yes, 43 TAC 11.406(a) provides that the in-kind contribution of a project sponsor may include costs incurred by the project sponsor for the development of project plans, specifications & estimates (PS&E) and environmental documentation. However, only actual and documented costs that are eligible under applicable statutes and regulations will be considered for inclusion as an in-kind contribution towards the project sponsor's local match for construction. For projects selected for funding, the project sponsors will be required to document in-kind costs and provide quarterly expenditure reports to TxDOT. In-kind costs must occur after the project agreement is fully executed and the project sponsor receives authorization to proceed.

A project sponsor utilizing their own forces must still comply with all applicable portions of state and federal statutes and regulations, including (but not limited to) the record keeping and allowable cost provisions of 23 CFR 172, the cost principles and audit requirements under 2 CFR 200 (clarifying that cost principles, and audit requirements etc. of Uniform Guidance are still applicable to the local government doing force account work) and cost effectiveness findings required by 23 CFR 635.

17) Can project administration of the construction phase be contracted out? Can project administration for construction be procured at the same time as PS&E?

Answer:

Yes, administration of the project during construction can be contracted out and can be procured at the same time as the contract for development of the plans, specification & estimate (PS&E) and environmental documentation. The local government would need to ensure that the PS&E procurement document includes construction phase administration in the contract's scope of work. If the local government is seeking federal reimbursement or using services as an in-kind contribution for construction for any of these services, then the procurement process must meet federal procurement requirements. If a local government is not seeking federal reimbursement for construction administration or using professional services as in-kind contributions towards the project sponsors local match for construction, then the local government needs to follow state and local government procurement rules.

18) What is the time required to publish a Request for Qualifications?

Answer:

If a local government is utilizing the costs of professional services as an in-kind match for project construction, a Request for Qualifications or a Request for Proposals issued to procure the professional services must allow for a period of at least 14 days after the date of issuance for responses to be submitted by interested providers.

19) Many local government contracts for construction include a warranty period. Can a local government include a warranty period in a local government construction contract for projects constructed under TxDOT's TA Set-Aside Program?

Answer:

Yes, warranty clauses may be used as long as they comply with federal regulations. 23 CFR 635.413 states in part:

Guaranty and warranty clauses. The State Transportation Department may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

(a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

(b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.

(c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.

(d) A State Transportation Department (STD) may follow its own procedures regarding the inclusion of warranty provisions in non-NHS federal-aid contracts.

20) What resources are available to local governments to aid them in complying with federal and state requirements?

Answer:

TxDOT and FHWA have many resources available to local governments. The resources listed below are some of the most commonly used resources (accessible via the internet):

TxDOT

- TxDOT Local Government Projects website: https://www.txdot.gov/government/programs/local-government-projects.html
- Online Toolkit: https://www.txdot.gov/government/processes-procedures/lgp-toolkit.html
- Training and Qualifications: https://www.txdot.gov/government/programs/local-government-projects/training.html
- Forms and Publications: https://www.txdot.gov/inside-txdot/forms-publications/publications/local-government.html
- Local Government Standards and Special Provisions: https://www.txdot.gov/business/resources/txdot-specifications/local-government.html

- Attached Local Government Trifold

FHWA

- FHWA website: https://www.fhwa.dot.gov/
- Federal-aid Essentials for Local Public Agencies: Federal-aid Essentials offers a central online library of informational videos and resources, designed specifically for local public agencies. Each video addresses a single topic-condensing the complex regulations and requirements of the Federal-aid Highway Program into easy-to-understand concepts with illustrated examples. Visit FHWA's website at: https://www.fhwa.dot.gov/federal-aidessentials/

21) Can right-of-way (ROW) be acquired before the project is environmentally cleared?

Answer:

In general, environmental clearance occurs prior to ROW acquisition for federally funded projects. Once the ROW boundaries are established, preliminary steps toward acquisition, such as surveying and appraisals, can begin. After environmental clearance is obtained, ROW acquisition may commence. However, when a local government project sponsor uses its own funds to advance property acquisition (i.e. prior to environmental approval) without seeking federal reimbursement, the local government can do so subject to the guidance in Chapter 3, Section 8 of TxDOT's Right of Way Manual Vol. 2.

Consult with your local TxDOT TA Set-Aside Coordinator for additional clarification. All project ROW acquisitions must be evaluated in an appropriate environmental document. Additionally, all property acquisitions must comply with the federal Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Act), as amended. For additional property acquisition guidance, review topic **16. Property Ownership and Acquisition Information** in TxDOT's *2017 TA Set-Aside Program Guide*.

22) How many projects were selected from small urban and non-urban locations as a result of TxDOT's 2015 Transportation Alternatives Program (TAP) Call for Projects?

Answer:

TxDOT received 120 project nominations in its 2015 TAP Call for Projects. A total of 17 small urban projects (from population areas of 5,001 to 200,000) and 33 nonurban projects (from population areas of 5,000 or less) were funded.

Note: Distribution of TA Set-Aside funding apportioned to TxDOT for population areas of 200,000 or less is based on population; in Texas, approximately 50.5% will go to small urban areas and approximately 49.5% will go to nonurban population areas.

For additional TA Set-Aside Program information, visit TxDOT's website at:
http://www.txdot.gov/inside-txdot/division/public-transportation/bicycle-pedestrian.html