

April 6, 2009

TO: Members of the ALCP Working Group

FROM: Christina Hopes, Transportation Planner II

SUBJECT: POLICIES FOR "ADVANCE CONSTRUCTION" OF FEDERALLY FUNDED LOCAL GOVERNMENT SPONSORED PROJECTS

In 2001, the Arizona Department of Transportation (ADOT) and MAG developed a process to allow local government agencies to "advance construct" projects. A summary of the guidelines for the process is attached. In addition, Federal guidance on the advance construction of Federal-aid projects is attached.

Background

"Advance Construction" refers to the process of accelerating the completion of programmed MAG federally funded projects by using local funding to complete the projects in advance of the year identified of in the Transportation Improvement Program (TIP) and/or Arterial Life Cycle Program (ALCP). An example of "advance construction" would be when a local agency completes, with its own funds, a Congestion Mitigation and Air Quality funded project in FY 2009 that is programmed in the TIP/ALCP for reimbursement in FY2011, when the federal funding becomes available.

All, or only a portion, of any federally funded project in the TIP/ALCP may be "advance constructed;" however, to "advance construct" a project, the local agency must first obtain formal permission of the Federal Highway Administration (FHWA) through ADOT. Local expenditures incurred on the project prior to obtaining formal permission cannot be reimbursed.

Moreover, to obtain permission to "advance construct" a project, the project must meet all the federal environmental, design, and other requirements as administered by ADOT. Effectively, this means that the project would be treated as if it were being constructed with federal funds.

It is anticipated that "accelerated construction" will be used primarily to advance design projects as this will allow agencies to improve their ability to accelerate construction projects during the Federal Fiscal Year Closeout Process. Also, design projects generally require less effort and funding than construction projects.

The ADOT Local Governments Section process to obligate design projects requires, but may not be limited to the following:

- The project must have an ADOT project number and TRACS number.
- The procurement process used to select a design consultant must be validated by ADOT as conforming to federal guidelines.
- The agency must submit a signed design contract with proof that the validated procurement process was followed.
- All ADOT design and review fees must be paid and executed.
- An Intergovernmental Agreement between ADOT and the local agency must be developed.

To obligate construction projects the local agency would need to complete plans, specifications, estimates and obtain utilities, right-of-way and environmental clearances within the review and design framework approved by the FHWA and as administered by the ADOT Local Governments Section. The cost to perform this work would be borne by the local agency.

Guidance provided by the FHWA Regional Office indicates that federally funded projects may be "advance constructed" by more than three years. For example, a project programmed in the ALCP for reimbursement with Federal funds in fiscal year (FY) 2018 may not be "advanced constructed" in FY 2011. If a local agency "advance constructs" a project outside the three year timeframe or without obtaining the proper clearances, the local agency will be responsible for the project expenditures incurred.

For additional information about the "advance construction" of federally funded projects, please contact Steve Tate or Christina Hopes at (602) 254-6300.

ADVANCE CONSTRUCTION GUIDELINES FOR LOCAL PROJECTS

The sponsoring agency must formally notify MAG that the sponsoring agency desires to “advance construct” a project, so that MAG Staff may make the appropriate administrative adjustments to the Transportation Improvement Program (TIP). If the project is regionally significant (e.g. includes the addition of through lane capacity) and has not be included in the TIP for conformity analysis in the year in which it is to be advance constructed, a regional emissions analysis must be performed and approved by MAG.

An Intergovernmental Agreement (IGA) is required between the Arizona Department of Transportation and the project sponsor...

1. IGA to stipulate project is to be authorized as Advance Construction in accordance with 23 USC 115.
2. The IGA should specify the dollar amount of Federal funds, Federal Fiscal Year of conversion of Federal funds and the date the invoice should be submitted to ADOT for reimbursement. Obligation and conversion of Federal funds will be done in October of the FFY.
3. The IGA should include language to relieve the State of Arizona (ADOT) of any financial responsibility. Examples – The local entity takes full responsibility of all project costs until the time of conversion of Federal funds. If Federal funds are not available, the local entity is responsible for the total cost of the project. Authorization of this project does not constitute a commitment, guarantee, or obligation on the part of the State of Arizona (ADOT) to provide payment.
4. The IGA must be signed by the Secretary of State prior to requesting FHWA authorization.
5. The Metropolitan Planning Organization (MPO) or Council of Governments (COG) must committee Federal funds in the amount show in the current TIP at the time of authorization/obligation.
6. The local agency must meet the FHWA requirement that the project be listed in the current TIP and STIP as federally funded.
7. The MPO/COG may advance the conversion year of Federal funds if formally approved through the Regional Council and a TIP/STIP amendment is approved. The MPO/COG will send a letter to ADOT requesting the conversion of funds be advanced.



May 10, 1996

GUIDANCE ON SECTION 308 OF THE NHS ACT ADVANCE CONSTRUCTION OF FEDERAL-AID PROJECTS

NHS Act Provision

Advance construction is a technique which allows a State to initiate a project using non- federal funds while preserving eligibility for future Federal-aid funds. Eligibility means that FHWA has determined that the project technically qualifies for Federal-aid; however, no present or future Federal funds are committed to the project. After an advance construction project is authorized, the State may convert the project to regular Federal- aid funding provided Federal funds are made available for the project.

Section 308 of the NHS Act replaced 23 U.S.C.115(d) relating to the amount of advance construction that may be authorized. The previous limitation required that future year authorizations be in effect one year beyond the fiscal year for which an advance construction application was sought, thus limiting the States' flexibility to advance construct during the final year of an authorization act.

The NHS Act replaces that limitation with a requirement that advance construction projects be on the approved Statewide Transportation Improvement Program (STIP). The STIP covers a period of at least three years and is a financially constrained program which is not limited to the period of the authorization act. This change in the advance construction limitation will provide the States with more flexibility in financing projects and developing financial plans. From a State and local perspective, this provision allows more projects to begin construction sooner.

Eligible Projects

The following programs are eligible for advance construction:

- National Highway System (includes Interstate Construction and Interstate Maintenance)
- Interstate Substitute
- Congestion Mitigation and Air Quality Improvement Program
- Surface Transportation Program
- Bridge Replacement and Rehabilitation
- State Planning and Research, and Metropolitan Planning.

Except for projects using National Highway System, Interstate Construction, or Interstate Maintenance funds, one of the following conditions must be met to qualify for advance construction:

- the State has obligated all the funds apportioned or allocated for the specific program,
- the State has used its obligation authority, or
- the State can demonstrate it will use it obligation authority before the end of the fiscal year.

Procedures

An advance construction project must meet the same requirements and be processed in the same manner as a regular Federal-aid project, except the FHWA authorization does not constitute a commitment of Federal funds on the project.

At the time of project approval, FHWA and the State will execute a project agreement. The project agreement contains provisions for advance construction project and specifies that the total cost of the project is an obligation of the State. No Federal obligation is created until the project is converted to a regular Federal-aid project.

The projects must be included on the STIP and meet the tests of financial constraint required by 23 U.S.C. 135(f). The total amount that may be advance constructed will be limited as follows: the Federal share of all

advance construction projects (amount not converted to Federal-aid) cannot exceed the sum of the State's current unobligated balance of apportionments plus the amount of Federal funds anticipated in the subsequent fiscal years of an approved STIP, i.e., the amount used in developing the approved STIP. If this limit is reached, the FHWA Division Administrator will not approve any additional advance construction projects.

State planning and research, and metropolitan planning projects authorized under 23 U.S.C. 307(c) and 23 U.S.C. 104(f) are not required to be included on the STIP to be eligible for advance construction.

Conversion to a Regular Federal-aid Project

The State may submit a written request to the FHWA that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available. The State may request a partial conversion where only a portion of the Federal share of project costs is obligated and the remainder may be converted at a later time provided funds are available. Only the amount converted is an obligation of the Federal Government. The project should be identified on the STIP each year a conversion occurs.

Payment for Bond Interest on Advance Construction Projects

For projects authorized before November 28, 1995, interest earned and payable on bonds issued by a State is an eligible cost of construction but is limited as follows:

Participating interest cost is based on the actual expenditure of bond proceeds on the Federal-aid project. The interest on the bonds is applied to the amount of bond proceeds expended on the project from the date of expenditure.

The amount of interest determined in the previous paragraph cannot exceed the estimated increase in the physical construction cost of the project which would have occurred had the project been authorized on the date of conversion. The estimated increase in the physical construction cost is determined by applying the increase, if any, in the national construction cost index in effect on the date of conversion over the index in effect on the date of the FHWA authorization to the actual cost of physical construction.

For projects authorized on or after November 28, 1995, all bond related costs authorized by 23 U.S.C. 122 are eligible.

[Questions relating to this guidance should be directed to Max Inman, Office of Fiscal Services, at 202-366-2853.]

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This page last updated: 03/15/1999 12:44:38