



Regional Planning Partnership

January 21, 2009

American Recovery and Reinvestment Act Special Amendment to the 2009/12 Metropolitan Transportation Improvement Program

Issue: SACOG may soon need to amend several millions in American Recovery and Reinvestment Act funds. How will the Metropolitan Transportation Improvement Program (MTIP) be revised in order to add in these funds?

Recommendation: None. This item is for discussion.

Discussion: If the proposed American Recovery and Reinvestment Bill passes as currently drafted, it will likely require some project sponsors to OBLIGATE AND AWARD contracts within as early as 90 days. Therefore SACOG is acting immediately in order to help local agencies obligate or get grants approved and award these funds within the tight schedule.

Although relief from federal programming requirements would help, SACOG does not expect or plan on it. Assuming the rules do not change, then all federal funds for capital projects will need to be brought in through an amendment, approved by the SACOG Board, approved by Caltrans, and jointly approved by the Federal Highway Administration and Federal Transit Administration. These regulatory agencies are likely to expedite the process even if programming requirements are not reduced.

The proposed schedule would proceed as follows:

- February 4: Identify projects for American Recovery & Reinvestment Act funding.
- February 5: Transportation Committee hosts public hearing and makes recommendation.
- February 6: Begin public comment period.
- February 13: Close public comment period (at least 7 days required).
- February 16: President signs American Recovery & Reinvestment Act (SACOG staff estimate).
- February 19: Board approval.
- March 20: Final federal approval (SACOG staff estimate).
- May 16: 90-day deadline for funds to be obligated and awarded.
- June 15: 120 day deadline for funds to be obligated (or grant approved) and awarded.

According to this schedule, agencies needing to meet the first deadline would have less than two months to obligate and award. Please see the attached bill (90 days) summary for deadline details.

JLC:ts

Attachment

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GENERAL PROVISIONS:

- Statement of Purpose (1101)
 - Create and promote jobs
 - Assist those most impacted by the economic recession
 - Provide investments to increase economic efficiency
 - Invest in transportation, environmental protection and other infrastructure
 - Stabilize state and local government budgets
 - Use funds as quickly as possible within prudent budget management
- Preference for Quick Start Activities in Regard to Infrastructure Projects (1102)
 - For the first 50% of funds recipients required to give preference for projects that can be initiated within 120 days of enactment.
 - Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

FUNDING:

- Funds remain available for obligation until September 30, 2010. (1105)
- Federal departments or agencies may set aside .5% of the appropriated funds for management and oversight. (1106)
 - Department of Transportation Office of Inspector General is appropriated \$20 million for oversight and audit purposes in addition to the amount described above.

FEDERAL HIGHWAY ADMINISTRATION (TITLE XII): \$30 billion

- \$29.41 billion made available for projects and activities eligible for funding under the following programs:
 - Surface Transportation Program {23 USC 133}
 - Bridge {except for discretionary program} {23 USC 144}
 - Interstate and National Highway System {23 USC 103}
 - Interstate Maintenance {23 USC 119}
 - Metropolitan Planning {23 USC 134}
 - Highway Safety Improvement Program {23 USC 148}
 - Congestion Mitigation and Air Quality Program {23 USC 149}
- \$300 million for Indian Reservation Roads {23 USC 204}
- \$250 million for park roads and parkways {23 USC 204}
- \$20 million for highway surface and transportation training {23 USC 140(b)}
- \$20 million for Disadvantaged Business Enterprises Bonding Assistance {49 USC 332(e)}

(Bill Section References are in Parenthesis) {Other US Code References are in brackets}

- Management and Oversight set aside is reduced to .2 percent
- Funds Distribution to States and Regions
 - Distributed to states and territories in the same ratio as their 2008 Obligation limitation.
 - 45 percent of the funds distributed to each State are suballocated using the Surface Transportation Program formulas described in 23 USC 133 (d), which include the following:
 - Transportation Enhancement 10 percent set aside
 - Urbanized Area and rural population distribution formulas.
- Project selection requirements:
 - Recipients must give priority to projects that
 - Can award contracts within 120 days of enactment,
 - Are an approved MTIP and STIP,
 - Are projected to be completed within a three year time frame, and
 - Are located in economically distressed areas defined as meeting one or more of the following criteria (using Bureau of Labor Statistics):
 - * Have a per capita income that is less than 80 percent of national average.
 - * Have an unemployment rate at least 1 percent above national average for the past 24 month period.
 - * Has experienced or is about to experience a special need due to severe unemployment or economic problems as determined by the US Secretary of Labor {42 USC 3161}
- Federal share payable may be up to 100 percent of the total cost of a project at the option of the recipient.
- Cannot use advance construction flexibility.
- 10 percent of the funds shall be expended under DBE requirements.
- Use It Or Lose It Requirements
 - If less than 50 percent of the funds are obligated based on awarded contracts within 120 days of distribution, the remainder of the 50% are redistributed to other states that have met the 50% commitment.
 - Of the funds suballocated within a state under Surface Transportation Program provisions, if less than 50% of the funds are obligated based on awarded contracts within 90 days of distribution, the remainder of the 50% are returned to the State for use anywhere in the State. All other funds must be obligated and awarded by August 1, 2010.
 - Any funds not used by August 1, 2010 shall be redistributed to States that have committed all of their funds.

FEDERAL TRANSIT ADMINISTRATION (TITLE XII): \$9 billion

- Transit Capital Assistance \$6 billion
 - \$5.4 billion for grants under 5307 program and apportioned under formulas in 49 USC 5336
 - Recovery funds cannot be commingled with 5336 funds.
 - \$600 million for grants under the 5311 program
 - Funds cannot be comingled with existing 5311 funds.
 - 3 % or \$18 million of the funds set aside for Public Transit on Indian Reservations.
 - The federal share is up to 100 percent at the discretion of the recipient.
 - Use It Or Lose It Deadline for first 50% is 120 days after apportionment otherwise see Grant Provisions below.
 - 10 percent Disadvantaged Business Enterprise requirement
 - FTA can reserve .75% for administration and oversight of the 5336 and .5% for 5311 funds.

- Fixed Guideway Infrastructure Investment: \$2 billion
 - For capital expenditures under 49 USC 5309 (b)(2) Fixed Guideway Modernization
 - Apportioned using formulas in 49 USC 5337
 - Funds cannot be comingled with funds available under Formula and Bus Grants account.
 - The federal share is up to 100 percent at the discretion of the recipient.
 - Use It Or Lose It Deadline for first 50% is 120 days after apportionment otherwise see Grant Provisions below.
 - 10 percent Disadvantaged Business Enterprise requirement
 - FTA can reserve 1 % for administration and oversight

- Capital Investment Grants \$1 billion
 - For Major Capital Investment Grants under discretionary allocation.
 - Priority given to projects that can award within 120 days of enactment
 - Use It Or Lose It Deadline for first 50% is 120 days after apportionment otherwise see Grant Provisions below.
 - FTA can reserve 1 % for administration and oversight

FEDERAL RAILROAD ADMINISTRATION (Title XII): \$1.1 billion

- Capital Assistance for Intercity Passenger Rail: \$300 million
 - US DOT Secretary to give preference for projects that:
 - Can be awarded within 180 days,
 - Are FRA compliant for rolling stock and locomotive acquisitions,
 - Support the development of high speed rail service.
 - Use It Or Lose It requirements are as described in the Grant Provisions below.

(Bill Section References are in Parenthesis) {Other US Code References are in brackets}

- The federal share is up to 100 percent at the discretion of the recipient.
- AMTRAK: \$800 million
 - Priority given to repair, rehabilitation, and upgrade of railroad assets and infrastructure
 - Funds cannot be used to subsidize operating losses.
 - Funds must be awarded within 7 days of enactment.

FEDERAL AVIATION ADMINISTRATION (Title XII): \$3 billion,

- For Grants In Aid to Airports
 - Subject to Grant Program provisions described below,
 - Use It or Lose It provisions require grantees to award contracts for not less than 50 percent of the funds within 120 days after award of grant.

OTHER PROGRAMS:

- Provides \$400 million to fund an alternative fuel vehicle pilot program established under the Energy Policy Act of 2005 (Title V)
- Transportation Security Administration: \$500 million for Aviation Explosive Detection Systems at airports. (Title VII)
- Coast Guard: \$150 million to repair or remove bridges deemed hazardous to marine navigation. (Title VII)
- Border Ports of Entry: \$1.15 billion to construct GSA and Border land ports of entry. (Title VI and Title VII)
- Bureau of Land Management (Title VIII)
 - \$325 million for priority road, bridge and trail repair
 - \$1.5 billion for national parks, an unspecified portion of which can be used for bridge and road repair.
 - Bureau of Indian Affairs: \$500 million, an unspecified portion of which can be used for Indian Reservation roads.
 - Forest Service: \$650 million, an unspecified portion of which can be used for forest roads, bridges, trails, removal of fish passage barriers and watershed improvement.

GRANT PROGRAM USE IT OR LOSE IT PROVISIONS (1104):

- Applies to:
 - Federal Aviation Administration
 - Grants-in-aid for Airports
 - Federal Railroad Administration
 - Capital Assistance for Intercity Passenger Rail Service
 - Federal Transit Administration

(Bill Section References are in Parenthesis) {Other US Code References are in brackets}

- Fixed Guideway Infrastructure Investment
 - Transit Capital Assistance
- First 50 percent of the funds
 - Must award contract within one-year of enactment or 9 months of grant award whichever is later
- Second 50 percent of the funds
 - Must award contract within two-years of enactment or 21 months of grant award, whichever is later
- Funds not awarded within the timeframe above are redistributed to other eligible recipients
- Uncommitted funds redistributed by appropriate federal department or agency

TRANSPARENCY AND OVERSIGHT REQUIREMENTS:

- Federal Agencies are required to post their plans for using their funds and announcements for grant competitions, allocations of formula grants, and awards of competitive grants on the Recovery.gov website. (1201)
- State and Local Agency Requirements (1201)
 - Agencies are required to post notices of obligation of funds on Recovery.gov website.
 - Includes a certification that the investment has received the full review and vetting required by law. Certification is signed by the Governor, mayor, or other chief executive officer as appropriate.
 - Contracts will also be posted on the website with proprietary data redacted.
- To the maximum extent possible, contracts will be awarded as fixed price contracts (1205)
- Establishes an Accountability and Transparency Board (1221, 1222, 1223)
 - Seven members
 - Purpose is prevent fraud, waste and abuse
 - Oversight of compliance with reporting, competition, and other requirements of the Act.

TITLE VI FINANCIAL SERVICES

- Creates a small business loan program (Subtitle B, 6202, et.al.)