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DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[Docket No: FHWA-2016-0030]

Local Empowerment for Accelerating Projects (LEAP) Pilot Program

AGENCY: Federal Highway Administration, U.S. Department of Transportation.

ACTION: Notice. Solicitation of Interest and Participation in Direct Aid Pilot Program.

SUMMARY: The Federal Highway Administration (FHWA) is announcing a pilot program to permit, on an experimental basis, direct delivery of Federal-aid funding of up to five Local Public Agencies (LPAs). These LPAs will be subject to Federal oversight, and the State DOT will be relieved of direct oversight and accountability for projects funded under the LEAP pilot program. The pilot program will be carried out for a period of 5 years (unless extended). It will be implemented in accordance with FHWA's experimental authority provided by the project flexibility authority granted under section 1420 of the Fixing America's Surface Transportation Act.

DATES: Applications must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION.].

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting applications.
- Electronic Mail: LEAPFRN@Sharepointmail.dot.gov
- Mail: U.S. Department of Transportation, Dockets Management Facility, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

All applications must include the docket number DOT–FHWA–2016–0030 at the beginning of the submission.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert (Bob) Wright, Local Public Agencies Program Manager, 1200 New Jersey Avenue, SE., Washington, DC 20590, 202-366-4630, Robert.Wright@dot.gov., or

Mr. Steve Rochlis, Office of Chief Counsel, 202-366-1395, Steve.Rochlis@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of this notice and the related *Attachment A: Sequencing of Certain Key Direct Recipient Requirements* is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register’s home page at: <https://www.federalregister.gov/> and the Government Publishing Office’s Web page at: <https://www.gpo.gov/fdsys/>.

BACKGROUND

The Federal-aid highway program is a federally funded, State-administered program, under which State DOTs are responsible for determining which projects are federally funded, including highway projects within the boundaries of the LPAs.

The American Public Works Association (APWA), National Association of County Engineers (NACE), and other local entities have advocated for improvements to the Federal-aid Highway Program delivery to LPAs. The FHWA is aware of concerns expressed by LPAs related to cost and time delays in delivery of projects, inadequate communication and collaboration among transportation partners, accessibility to Federal funding, and the need for improved statewide consistency in project administration and oversight, including the need for clarity and consistency as to direction and interpretation.

The FHWA has long supported innovative approaches to project delivery and is constantly searching for new and better ways to oversee, accelerate, and reduce the cost of the delivery of highway projects. FHWA's goals in launching the LEAP pilot program are twofold. The first is to evaluate the impact of direct Federal-aid funding on the effectiveness, efficiency, and expediency of projects delivered by LPAs utilizing innovative approaches to project delivery. The second is to assess the cost and benefit of direct Federal-aid funding of LPAs as well as FHWA's ability, administrative costs, and resources needed to oversee an expanded base of direct aid recipients by using various approaches to oversight.

OBJECTIVE OF THE LEAP PILOT PROGRAM

The objectives of the LEAP pilot program are as follows:

1. To determine whether qualified LPAs can deliver Federal-aid highway projects more expeditiously and at a lower cost via innovative approaches to project delivery when the LPA is a direct Federal-aid recipient and employs its own project delivery processes, in compliance with Federal and State requirements.

2. To assess the additional costs and other impacts to FHWA associated with providing effective and efficient stewardship and oversight to an expanded number of direct Federal-aid recipients, and to explore various approaches to stewardship and oversight.

LEAP PILOT PROGRAM DESCRIPTION

The Federal-aid highway program (FAHP), under which the LEAP pilot program is being administered, is a Federally-assisted, State administered program. The FAHP supports States and localities by providing financial assistance for the design, construction, preventive maintenance, and other Federal eligible costs associated with about 25 percent of the 3.9 million mile highway network of the United States, including the Interstate Highway System and the National Highway System, as well as primary highways and other major collector roads. Federal funds and obligation authority are distributed to the State DOTs, which act on behalf of the States in accordance with 23 U.S.C. 145, 302, and 23 CFR 1.3. State DOTs, in turn, make subawards of Federal-aid highway funds to LPAs. These subrecipient LPAs are jointly responsible with the State DOTs for meeting Federal and State requirements. The LEAP pilot program, carried out pursuant to authority in 23 U.S.C. 502(b)(1)(B), 502(b)(5) and 23 U.S.C. 104(f)(3)(A), will rely upon a cooperative partnership among State DOTs, participating LPAs, and FHWA to fund and administer the program and to assess its impact on project delivery and on FHWA's ability to carry out the additional responsibilities that the direct aid to the LPAs would require.

The LPAs (primarily counties, cities, and towns) own and operate about 43 percent of the roughly 1.0 million miles of the Nation's Federal-aid highways. These LPAs build and maintain this network using a variety of funding sources, including FAHP funding. An estimated 7,000 LPAs deliver about \$7 billion annually in Federal-aid projects, or roughly 15 percent of the total

Federal-aid program. As noted in the Background Section above, LPAs have requested direct accessibility to Federal funding. At the same time, some States are experiencing budgetary constraints that result in oversight challenges and project delivery delays associated with LPA administered projects. The LEAP pilot program will reduce State DOTs' oversight responsibility of their LPAs for projects delivered under the LEAP pilot program. The pilot program will also test the impact of direct LPA funding on project delivery efficiency and effectiveness.

FHWA believes this pilot program is in alignment with the findings of the draft report *Beyond Traffic: Trends and Choices 2045*. *Beyond Traffic* was released by the Department in February 2015. It examines the long-term and emerging trends affecting our Nation's transportation system and the implications of those trends. It describes how demographic and economic trends, as well as changes in technology, governance, and our climate, will increase the importance of our metropolitan regions in making decisions that cross State, political, socioeconomic, and often transportation planning lines. By 2045, the population is anticipated to increase by 70 million people, with most of that growth occurring in metropolitan areas. Providing LPAs with direct funding is consistent with these trends.

APPLICATION AND SUBMISSION INFORMATION FOR THE LEAP PILOT PROGRAM

Applications must include all of the information below. Incomplete applications will not be considered. The FHWA may ask any applicant to supplement data in its application, but expects the applications to be complete upon submission. The FHWA will expect finalist LPAs to provide additional information described in the participant selection section, if requested..

Applications must include all of the following information for it to be considered for the LEAP pilot program:

Title page: The title page must include the name, location, and population of the LPA, Federal program funding size, total program funding size (Federal plus other), and primary point of contact for the LEAP pilot program.

Structure: The LPA must show its organizational structure and clearly articulate that it is adequately staffed and suitably equipped to administer the Federal-aid program and deliver Federal-aid projects in compliance with Federal requirements.

Narrative: The narrative should include and address the following:

- 1) Describe and quantify how participation in the LEAP pilot program will accelerate project delivery and improve efficiency and accessibility to the benefits derived from the Federal-aid highway program, generally and specifically, with regard to LPA program administration in the applicant's State. The benefits discussion must address the anticipated overall program and project delivery cost and schedule savings. The LPAs should compare the anticipated savings between current and proposed delivery and oversight approaches utilizing innovations, streamlined processes and procedures, and technology. The LPAs should identify administrative impediments or delays associated with the current project delivery and oversight process that would be modified or eliminated under the LEAP pilot program.
- 2) Describe and quantify how participation in the LEAP pilot program will provide added value to the LPA, FHWA, community, and project delivery (e.g., creates jobs and paves the way for business, particularly small and disadvantaged business enterprises; provides Americans with safe, reliable, and affordable connections to

employment, education, healthcare, and other essential services; lifts up neighborhoods and regions by attracting new opportunities, jobs, and housing; ensures intellectual opportunity to improve the LPA staffing abilities and/or strategic delivery capability; fosters effective and efficient stewardship and oversight as well as integrity of the FAHP funds; promotes sustainability; captures higher impact opportunities; and includes technological or collaborative processes and procedures).

- 3) Describe how the LPA will evaluate the effects of applicable Federal-aid project delivery requirements on the LPA's project delivery capacity under the LEAP pilot program. In doing so, the LPA should consider comparing the costs and efficiency of project delivery as a subrecipient of the State DOT with delivery as a direct recipient under the LEAP pilot program.
- 4) Describe how the LPA currently administers State funded (State only and Federal-aid funds subawarded by the State) capital improvement projects and the level of State administration and oversight associated with these projects.

APPLICATION REVIEW AND SELECTION

This section outlines the process and factors that FHWA will use to evaluate and select applicants to participate in the LEAP pilot program. The FHWA will use a two-step process for the selection of LEAP pilot program participants.

STEP 1 – SELECTION OF FINALISTS

The FHWA will provide an initial evaluation of applicants by reviewing the application information with particular consideration of the rating factors listed below.

RATING FACTORS

1. Anticipated project delivery cost savings;
2. Anticipated project delivery time savings;
3. The added value of the proposed approaches to the LPA, FHWA, community, and project delivery (e.g., creates jobs and paves the way for business, particularly small and disadvantaged business enterprises; provides Americans with safe, reliable, and affordable connections to employment, education, healthcare, and other essential services; lifts up neighborhoods and regions by attracting new opportunities, jobs, and housing; ensures intellectual opportunity to improve the LPA staffing abilities and/or strategic delivery capability; fosters effective and efficient stewardship and oversight as well as integrity of the FAHP funds; promotes sustainability; captures higher impact opportunities; and includes technological or collaborative processes and procedures); and
4. The population affected by the projects included in the pilot.

STEP 2 – SELECTION OF LEAP PILOT PROGRAM PARTICIPANTS

FHWA intends to ask specific LPAs, based on the initial evaluation in Step 1 above, to provide the following supplemental information for further evaluation of their applications:

- 1) A certification verifying that:
 - a. The applicant LPA has legal authority under State law to act independently or on behalf of the State to fulfill the State's responsibilities under title 23 of the United States Code.
 - b. The State has agreed or will agree to transfer to FHWA (i) formula funds and obligation authority in accordance with 23 U.S.C. 104(f)(3)(A) for purposes

of the LEAP pilot program and (ii) a schedule of the annual amount of such funds and obligation authority to be transferred.

- c. The LPA and/or partnering State has agreed or will agree to a voluntary contribution from non-Federal funds (LPA, State, or other) in an amount equal to one percent (for the first year) of the funds transferred to FHWA. The FHWA will use these non-Federal funds to administer the pilot program and provide direct stewardship and oversight of the LPA's delivery of Federal-aid projects that would have otherwise been provided by the State. The amount is to be deposited into a special account, as authorized by 23 U.S.C. 502(b)(5). The LPA must identify the source of the funds and certify that those funds can and will be used for this purpose. The LPA and/or State will need to acknowledge that FHWA may adjust this amount annually to ensure that adequate funds are allocated for the proper administration and associated experimental activities of the pilot program.

2) Input from the State DOT as to whether the applicant LPA:

- a. has an adequate project delivery system as required in 23 U.S.C. 106(g); and
- b. has in place the necessary financial management systems and processes to carry out government requirements outlined in 23 U.S.C. 106(g) and 2 CFR 200.302-303.

3) The auditor's reports of the LPA's last 5 years of Federal and/or State required audits, including those conducted in accordance with 2 CFR 200 Subpart F.

- 4) A description of the funding categories and annual amounts the State DOT agrees to transfer to FHWA under 23 U.S.C. 104(f)(3)(A) for purposes of the LEAP pilot program.
- 5) A description of the state of the LPA's Federal-aid obligation and expenditure history over the last 5 years, with a particular emphasis on inactive obligations (see 23 CFR 630.106(a)(4)-(6)). If the LPA has a high rate of inactive obligations, the LPA should explain the circumstances associated with that high inactive obligation rate and quantify how the LEAP pilot program would increase the effectiveness and efficiency associated with use of Federal funds and project delivery.

The FHWA will use the supplemental information above to assess the LPA's likelihood of success, readiness, and capability to successfully deliver Federal-aid projects effectively, efficiently, and in compliance with Federal and State requirements. Based upon this evaluation, the FHWA will select up to five LPA applicants as LEAP pilot program participants, pending further verification as described below.

VERIFICATION OF LEAP PILOT PROGRAM PARTICIPANTS

Before FHWA can grant authority for direct administration of Federal Funds, LPAs selected as LEAP pilot program participants must fulfill key Federal-aid requirements as shown in Attachment A. As deemed necessary by FHWA, participating LPAs must verify their capability to comply with requirements applicable to State DOTs under 23 U.S.C. 302. In particular, eligible LPAs, including cities and counties that apply with a State DOT partner, must be adequately staffed and suitably equipped and have (or able to quickly integrate) requisite project delivery, financial, accounting, recordkeeping, and internal controls to carry out the FAHP as a direct recipient of FAHP funding. The LPAs must match direct aid in accordance

with 23 U.S.C. 120 and other applicable cost sharing requirements. Finally, LPAs must contribute funds at the beginning of each pilot year from non-Federal (State, local, or other) resources to cover FHWA's administration, oversight, and other pilot costs. This amount will be equal to one percent of the LPA's annual Federal-aid allotment and may be adjusted annually by FHWA as needed, based upon administrative costs.

The verification required may include, but is not limited to, the following:

- evaluation of the LPA's financial management and project delivery systems in accordance with 23 U.S.C. 106 (g)(2)(A) and (g)(3);
- compliance assessment of the LPA's financial controls and project delivery program in accordance with government-wide requirements in 2 CFR 200.302-303; and
- review and assessment of critical core program areas.

Based upon the verification above and the associated documentation, FHWA will confirm, or adjust as necessary, the selected LPAs as LEAP pilot program participants.

The amount of direct aid funding, the formula fund categories, and obligation authority that a selected LPA will ultimately receive depends upon the cooperative relationship between the LPA and the State DOT. A State DOT and LPA that desire to participate in the LEAP pilot program should assess current annual and out-year program needs at the State and local levels. Collaboratively, they should develop a budget that addresses current and projected required budgetary resources to be made available by the State DOT to FHWA, and then in turn by FHWA to the LPA throughout the term of the pilot. This budget should be based upon the formula (apportioned) contract authority, program funding, and obligation authority the State DOT agrees to transfer. For any LPA that is selected for the pilot, the State DOT must submit a

request to transfer formula program funding and obligation authority to FHWA in accordance with 23 U.S.C 104(f)(3)(A). After receipt and processing of the transfer request and the receipt of FHWA's anticipated administrative expenses from non-Federal funds, FHWA will directly award the transferred funding and obligation authority to the participating LPA. Under the LEAP pilot program, the State DOT is not accountable for the funding transferred by the State to FHWA and directly awarded by FHWA to the LPA.

OTHER PERTINENT REQUIREMENTS

The FHWA will establish a special account under 23 U.S.C. 502(b)(5) to which a selected participating LPA (or State) will contribute from non-Federal resources an amount equal to one percent (for the first year) from the LPA's Federal-aid allotment that a State transfers to FHWA. The FHWA will use these funds to administer the pilot and provide direct stewardship and oversight of LPAs that the LPA's State DOT would have provided otherwise under the FAHP. The LPA agrees to deposit such amount on an annual basis within 30 days of acceptance into the LEAP pilot program and annually thereafter, no later than October 15 of each succeeding year. The FHWA may adjust this amount annually to ensure that adequate funds are allocated for the proper administration and associated experimental activities of the pilot program. When adjusted, FHWA will provide the LPAs and/or States with a 60-day advance notice.

The FHWA will carry out the LEAP pilot program for a period of five years, unless FHWA elects to extend the program.

PERFORMANCE OF LEAP PILOT PROGRAM PARTICIPANTS

An LPA selected to participate in the LEAP pilot program will assume responsibility under this section for compliance with all procedural and substantive requirements as would

apply if that responsibility were carried out by the State DOT. These requirements include LEAP pilot program specific reporting, regular Federal-aid reporting, right-of-way acquisition, environmental compliance, engineering, civil rights, design and inspection, procurement, construction administration, financial administration, performance management, and all other applicable Federal requirements, unless FHWA determines that such assumption of responsibility for one or more of the procedural or substantive requirements is not appropriate. Each applicant selected for the LEAP pilot program must work with FHWA to develop and implement a plan to collect information and report on the LPA's performance with respect to the relevant objectives outlined in the LEAP pilot program.

Each recipient will enter into a Memorandum of Agreement (MOA) with FHWA and its respective State DOT. The MOA will have a term of no more than 5 years, with the option to extend if approved by FHWA. The MOA will also require the LPA to provide to FHWA any information that FHWA considers necessary to ensure that the LPA carries out the requirements of the LEAP pilot program, the Federal-aid Highway Program, and project related requirements. To ensure compliance with the LEAP pilot program by participating LPAs, FHWA will conduct audits, reviews, and/or assessments during the pilot program. Such audits will be in addition to any of FHWA's other stewardship and oversight responsibilities relating to the LEAP pilot program, as well as any other projects and/or other activities carried out under the LEAP pilot program.

The FHWA will assess the partnership developed under this pilot program in accordance with existing requirements. The FHWA may terminate the agreement and/or pilot program at any time or for any reason consistent with 2 CFR 200.339, including, but not limited to, inadequate LPA performance or inadequate FHWA resources to administer the LEAP pilot

program. The participating LPA may also terminate the pilot program upon FHWA's receipt of a 90-day notice from both the LPA and State DOT.

Authority: 23 U.S.C. 502; Sec. 1420, Pub. L. 114-94, 129 Stat.1423; 49 CFR 1.85.

Issued on: October 21, 2016

Gregory G. Nadeau
Administrator
Federal Highway Administration

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