

## Overview of Capital Investment Grants and Expedited Project Delivery Programs

### Funding Process

Congress authorizes policies and annual funding for the Capital Investment Grants (CIG) and Expedited Project Delivery (EPD) programs through long-term legislation such as the current Fixing America's Surface Transportation (FAST) Act. For each Federal Fiscal Year (FFY), Congress appropriates the funding for the CIG and EPD programs from the General Fund. Congress also specifies how much is dedicated to each CIG project category and for the EPD Program. Following the approval by Congress of the Appropriations Act for each FFY and signature by the President of the United States to become law, the Federal Transit Administration (FTA) allocates the CIG and EPD funds to projects in the "pipeline" based on the Annual Report on Funding Recommendations that it submitted to Congress for the FFY and for any additional projects that met the requirements following the submittal of this document contingent on funding availability. The FTA can also allocate funds to projects in the pipeline prior to the execution of the grant agreements, including Full Funding Grant Agreement (FFGAs) for New Starts projects, contingent on meeting certain requirements.

As applicable to New Starts and EPD grants, the FFGAs detail the annual schedule of Federal funds (including the amount of the New Starts or EPD grant, as applicable), as well as the project sponsor's funding sources and corresponding amounts. Ultimately, Congress has the authority to determine the actual amount on New Starts grants that will be made available for each project in any given FFY through the Appropriations Act. Whether allocated directly by Congress or by the FTA, it takes several years for a project to receive all its New Starts or EPD grant allocations. Also, annual appropriations for the CIG and EPD programs can be higher or lower than what Congress authorized in the long-term legislation. For example, the FAST Act authorized about \$2.3 billion per year for the CIG and EPD programs. However, annual appropriations ranged between \$1.98 billion in FFY 2020 and \$2.64 billion in FFY 2018. Annual appropriations dedicated for New Starts projects ranged from \$1.17 billion in FFY 2021 to \$1.51 billion in FFY 2018. Overall, about 59 percent of the CIG funding was dedicated for New Starts projects.

### New Starts Grant Application and Evaluation Process

The FTA's application and approval process for securing New Starts grants is very competitive and takes several years to complete. It is a "rolling" solicitation, with reviews and approvals following a "first-come/first-served" process. An optimistic schedule assumes about five years. A more aggressive schedule assumes a minimum of four years. The process and evaluation criteria are set by Congress and codified in Federal law. The FTA administers the process, evaluates potential projects, and makes funding recommendations to Congress as detailed in its Policy Guidance for the CIG Program.

The New Starts grant application process includes the project sponsor's sequential request and the FTA's sequential approval for entry into the Project Development (PD)

Phase and the Project Engineering (PE) Phase, respectively, prior to the execution of the FFGA (the third and last step of the New Starts grant pre-award process). Existing Federal law allows project sponsors a maximum of two years from receiving approval for entry into the PD Phase to receiving approval for entry into the PE Phase. The FTA evaluates and rates projects during these two phases based on its Policy Guidance that implements Federal statutory justification and local financial commitment criteria. The FAST Act requires the FTA to evaluate a project as a whole on a 5-point scale and rate it based on the combined summary ratings for project justification and local financial commitment as high, medium-high, medium, medium-low, or low. These two sets of criteria have the same weight (i.e., 50% each) in a project's overall rating. The project justification criteria consist of mobility improvements, environmental benefits, congestion relief, economic development effects, land use, and cost-effectiveness. The FTA assigns the same weight to each one of these six criteria. The local financial commitment criteria consist of the project sponsor's current capital and operating conditions, its commitment of funds (including share of New Starts grant requested) for the project, and its capacity/reliability to deliver the proposed plan (including financial and planning assumptions, among other). The weights that the FTA assigns to these criteria are 25%, 25% and 50%, respectively.

#### New Starts Grant Eligibility Requirements

Per the FAST Act, a project must receive at least a medium overall rating to be eligible for entry into the Engineering Phase and execution of the FFGA. To comply with this requirement, the FTA combines the project justification and local financial commitment ratings it estimated to arrive at an overall project rating. The FTA further requires at least a medium rating on both project justification and local financial commitment to obtain a medium or better overall project rating. The project's overall rating is among several factors the FTA considers in its evaluation of New Starts grant requests. Other factors include the availability of CIG program funds and considerations related to project readiness during the PD and PE phases. For example, project sponsors during the PD Phase must: i) commit at least 30 percent of the total project cost from sources other than the CIG Program; ii) complete at least 30 percent design and engineering; and iii) identify the delivery method. Similarly, project sponsors during the PE Phase must: i) commit at least 50 percent of the total project cost from sources other than the CIG Program within three years of entry into this phase; ii) complete sufficient design and engineering, within three years of entry into this phase, to develop firm and reliable project cost, scope and budget; and iii) obtain all funding commitments from sources other than the CIG Program. The FTA "locks-in" the amount of the New Starts grant for the project, not the share from the overall project cost, at the level included in the project sponsor's request for entry into the PE Phase. Project sponsors must demonstrate sufficient progress during the PE Phase to remain in the FTA's project "pipeline". The FTA withdraws a project from further consideration for a New Starts grant if the sponsor agency does not make sufficient progress in obtaining funding commitments or advancing the level of design within three years of entry into the PE Phase.

## EPD Grant Application and Evaluation Process

The FAST Act repealed the original program that the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) had authorized in 2012, including grant application and evaluation process. As currently authorized by the FAST Act, and as implied by its name, the FTA's EPD Program aims to expedite the delivery of New Starts, Core Capacity and Small Starts projects. The FAST Act (as in MAP-21) specifies a maximum of 8 EPD grant awards nationwide. The Federal authorization, appropriations and allocations processes are as detailed for the CIG Program. However, the funding that Congress has dedicated so far is much less with a total of \$225 M during the six-year period of the FAST Act. Annual appropriations range between \$5 M in FFY 2016 and \$100 M in FFY 2020, which correspond to the minimum and maximum annual allocations, respectively. The FTA has so far allocated \$125 M to the Santa Clara Valley Transportation Authority (VTA) for the Bay Area Rapid Transit (BART) Silicon Valley Phase II Extension Project. The balance of \$100 M in appropriated funds remains to be allocated.

The FTA's application and approval process for securing EPD grants is complex and competitive. As with the CIG Program, it is also a "rolling" solicitation, with reviews and approvals following a "first-come/first-served" process. The grant applications process and evaluation criteria are set by Congress and codified in Federal law. The FTA administers the process, evaluates potential projects, and suggests funding awards in its Annual Report on Funding Recommendations to Congress.

## EPD Grant Eligibility Requirements

The FTA does not have Policy Guidelines for the EPD Program as for the CIG Program. Instead, it has so far communicated its guidelines through: i) notices it published in 2015 and 2018 soliciting Expressions of Interest (EOI) from project sponsors to participate in the EPD Program; and ii) a Notice of Funding Opportunity (NOFO) published in July 2020 requesting grant applications for the balance of \$100 M of appropriated funds that remains to be allocated. Although not specified in Federal law, the FTA listed additional project eligibility requirements in this NOFO for sponsor agencies to qualify for submitting EPD grant applications, including: i) completion of planning and other activities required under the National Environmental Policy Act (NEPA); ii) completion of at least 30 percent project design and engineering; and iii) execution of all "critical third-party agreements" that the applicant identifies and the FTA verifies during the application review process before construction or operations can begin, the absence of which may significantly change the proposed project's cost, scope and schedule. The FTA also required project sponsors to submit evidence of the P3 in their grant applications. It defined P3 as a "contractual agreement that is characterized by private sector investment and risk-sharing in the delivery, financing, and/or operation of a capital project" that also complies with the Federal statutory requirement to be operated and maintained by employees of an existing public transportation provider.

The transfer of risk from the public project sponsor agency to the private sector and the change in the FTA's status from majority to minority investor, due to the maximum Federal funding share (from all sources) of 25 percent of the proposed project's total cost, result in both challenges and opportunities. Although the intent of the EPD Program is to award grants following a very streamlined grant application and evaluation process, no project sponsor has executed a FFGA or any other agreement with the FTA. As also required by the CIG Program, the FTA cannot execute an EPD FFGA if the sponsor agency has not completed planning and other activities under NEPA. Compared to the CIG process, there are no PD or PE phases. Instead, the FAST Act requires the FTA to complete the review of grant requests that sponsor agencies submit for "project advancement" no later than 120 days after the date the Secretary of the United States Department of Transportation (USDOT) receives such requests and to either approve the grant request or provide a detailed explanation of the reasons for disapproval. In addition to the meeting eligibility requirements, the FAST Act requires the FTA to evaluate grant applications based on several factors, including: i) project justification (mobility and environmental improvements, congestion relief, economic development, and estimated ridership projections; and ii) degree of local financial commitment, including evidence of stable and dependable financing sources and cost-effective P3 strategies for project delivery. The FAST Act does not require the FTA to rate proposed projects, as required for the CIG Program or through any other methodology.

#### Metro's EPD Grant Application Related Experience

In September 2015, staff submitted EOI to the FTA in response to its solicitation for the Airport Metro Connector/ 96<sup>th</sup> Street Station and for Section 3 of the Purple Line Extension. Metro's EOI for Section 3 of the Purple Line Extension, which was among a total of eight EOI that project sponsors submitted nationwide, was well received by the FTA. However, the FAST Act repealed the law that authorized the EPD Program, which the FTA had used as reference in seeking EOI. In 2018, the FTA released another solicitation of EOI for participation in the EPD Program, now as authorized by the FAST Act. In November 2018, staff submitted EOI to the FTA in response to its solicitation for the WSAB, Sepulveda Pass and Vermont Transit Corridor projects. These three projects were proposed because they best met the criteria that the FTA outlined in its solicitation. These projects were among a total of seven EOI that project sponsors submitted nationwide. As shared with the Board of Directors in July 2019, staff discussed the design, development, and implementation of the EPD Program with staff from the FTA and the other three project sponsors that submitted EOI. The FTA announced its selection of Santa Clara VTA's BART Silicon Valley Phase II Extension Project as the first project to participate in the EPD Program with a grant request of about \$1.4 billion. The CEO followed staff engagement with the FTA with a letter to the FTA's Acting Administrator, as well as in person. Unfortunately, the project eligibility requirements that the FTA included in its July 2020 NOFO disqualified the WSAB and Sepulveda Pass Transit Corridor projects from further consideration due to the 25 percent cap on the Federal funding participation from all sources and project readiness.