

U.S. DEPARTMENT OF TRANSPORTATION
GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2020 INFRA PROGRAM: FHWA PROJECTS

SEPTEMBER 1, 2020

The USDOT published the “Notice of Funding Opportunity for the Department of Transportation’s Nationally Significant Freight and Highway Projects (INFRA Grants) for Fiscal Year 2020; Infrastructure for Rebuilding America (INFRA) Program FY 2020 Notice of Funding Opportunity,” 85 Fed. Reg. 3745 (January 22, 2020) (the “**NOFO**”). The NOFO solicited applications for Federal financial assistance to highway and freight projects of national or regional significance under the Nationally Significant Freight and Highway Projects program, 23 U.S.C. 117. That program is also referred to as the INFRA program. In these general terms and conditions, “**INFRA Grant**” means an award of funds that were made available under the NOFO.

These general terms and conditions are incorporated by reference in a project-specific term sheet under the fiscal year 2020 INFRA Program. The “Project” and “Project Sponsor” are defined in the project-specific term sheet. In these general terms and conditions, “schedule A,” “schedule B,” and “schedule C” refer to schedules to the project-specific term sheet.

1. Division of USDOT Responsibilities.

- (a) The Office of the Secretary of Transportation is responsible for the USDOT’s overall administration of the INFRA program and the approval of the term sheet.
- (b) The Federal Highway Administration (the “**FHWA**”) will develop and administer all Fund-Obligating Agreements, administer the reimbursement process, collect and review progress reports submitted in accordance with section 12 from the Project Sponsor, coordinate oversight activities, and administer close-out activities. In these general terms and conditions, the “**Administering Operating Administration**” means the FHWA.

2. Fund-Obligating Agreements.

- (a) The term sheet does not commit the USDOT to provide funding for the Project or any component of the Project.
- (b) The USDOT will not commit to provide funding to the Project or any component of the Project except by executing, through the Administering Operating Administration, one or more agreements (collectively, the “**Fund-Obligating Agreements**”).
- (c) The Project Sponsor acknowledges that the Fund-Obligating Agreements will require it to administer all INFRA Grant funds under the terms and conditions of those agreements, including requirements to comply with applicable Federal statutes, regulations, and policies, including the Federal statutes, regulations, and policies listed in appendix I.

- (d) The USDOT will not reimburse the Project Sponsor for expenditures, except under the terms and conditions of the Fund-Obligating Agreements.

3. Project Sponsor Statements.

- (a) The Project Sponsor states that:

- (1) except as expressly documented in schedule C, all material statements of fact in the application were accurate when that application was submitted;
- (2) schedule C documents all material changes since submission in the information contained in that application; and
- (3) it has the legal authority to complete the Project.

- (b) The Project Sponsor acknowledges that

- (1) the USDOT relied on statements of fact in the application to select the Project to receive the INFRA Grant;
- (2) the USDOT relied on statements of fact in both the application and this term sheet to determine that the Project Sponsor and the Project are eligible under the terms of the NOFO; and
- (3) the USDOT's selection of the Project to receive the INFRA Grant prevented awards under the NOFO to other eligible applicants.

4. Costs Incurred Before a Fund-Obligating Agreement. The Project Sponsor acknowledges that the term sheet is not USDOT approval of any pre-award costs and that, unless the USDOT provides written approval of pre-award costs under 2 CFR 200.458, the USDOT will not reimburse expenditures made before the parties have executed a Fund-Obligating Agreement.

5. Project-Specific Terms in the Term Sheet. Schedule A specifically memorializes the agreement of the parties on the following terms for each component of the Project:

- (1) the component's scope of work;
- (2) the component's budget, including identification of all funds necessary to complete the proposed component's scope of work;
- (3) the component's milestone completion schedule, which sets dates for the completion of all major milestones relating to that component, including:
 - (A) completion and receipt of all required environmental approvals (including National Environmental Policy Act (NEPA) approvals);
 - (B) application for and anticipated receipt of all necessary Federal, State, and local permits and approvals;

(C) any necessary approval by a local transportation planning organization and inclusion in the required Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP); and

(D) start and completion of construction.

6. Project-Specific Accountability Provisions.

(a) The USDOT may reduce the INFRA Grant by the lesser of ten percent or \$10,000,000 if the USDOT determines that:

(1) the Project does not meet all project delivery milestones enumerated in section 2 of schedule B by the corresponding dates stated for those milestones in schedule A;

(2) the Project does not meet an indicator of project success enumerated in section 2 of schedule B; or

(3) the Project Sponsor has not provided information that is sufficient to determine if the Project meets an indicator of project success enumerated in section 2 of schedule B.

If the USDOT had reimbursed costs exceeding the reduced amount, the Project Sponsor shall refund to the USDOT the difference between the reimbursed costs and the reduced amount.

(b) The Project Sponsor acknowledges that amounts that are required to be refunded under this section 6 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.345 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

7. Use of Limited Non-Highway Funds. The Project Sponsor acknowledges that the USDOT selected the Project for award with the expectation that no more than the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in schedule A would be subject to the limitation at 23 U.S.C. 117(d)(2). The Project Sponsor shall not request reimbursements that are subject to the limitation at 23 U.S.C. 117(d)(2) and, in aggregate, exceed the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in schedule A.

8. Safety Requirements.

(a) The Project Sponsor shall work with the Administering Operating Administration to identify, and the Project Sponsor shall carry out, safety-related activities for the Project that are consistent with the priority areas in the strategic highway safety plan for the State in which the Project is located and likely to yield safety benefits.

- (b) In the Project, the Project Sponsor shall incorporate appropriate safety-related activities that are identified as “proven safety countermeasures” at <https://safety.fhwa.dot.gov/provencountermeasures/>.
 - (c) The Project Sponsor shall describe, in the reports required under section 12, the specific safety-related activities carried out under this section 8.
- 9. **Buy America Requirements.** The Project Sponsor acknowledges that the execution of a Fund-Obligating Agreement will subject the Project to 23 U.S.C. 313 and the term sheet is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
- 10. **Environmental Review.** The Project Sponsor acknowledges that the term sheet does not commit the USDOT to any determination required under NEPA. The USDOT’s determinations on the Project will be issued in full compliance with its NEPA regulations, 23 CFR Part 771, those of the Council on Environmental Quality, 40 CFR Parts 1500–1508, and all other applicable Federal environmental laws and regulations and, State and local laws and regulations, to the extent applicable.
- 11. **Applicability of Federal Law.**
 - (a) The Project Sponsor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. In particular, the Project Sponsor shall ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment.
 - (b) If the USDOT determines that the Project Sponsor has failed to comply with applicable Federal requirements, the USDOT may take remedial action, including terminating of the INFRA Grant, disallowing costs incurred for the Project, requiring the Project Sponsor to refund to the USDOT the INFRA Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.
- 12. **Quarterly Project Progress Reports.**
 - (a) On or before the 20th day of January, April, July, and October of each year and until the Project is complete and all Fund-Obligating Agreements under this term sheet have been closed out, the Project Sponsor shall submit a Quarterly Project Progress Report for each component of the Project. But if the date of the term sheet is in March, June, September, or December, instead of submitting a Quarterly Project Progress Report covering less than one month, the Project Sponsor shall submit the first Quarterly Project Progress Report in the fourth calendar month that begins after the date of the term sheet.
 - (b) The Project Sponsor shall submit a Federal Financial Report (SF-425) as part of each Quarterly Project Progress Report.

- (c) The Administering Operating Administration will provide the Project Sponsor with the form and content for these Quarterly Project Progress Reports.

13. Cost Sharing and Changes in Total Project Costs.

- (a) The Project Sponsor hereby certifies that the “State Funds,” “Local Funds,” and “Other Funds” listed in schedule A are committed to fund the Project.
- (b) If the actual eligible project costs are less than the “Total Future Eligible Project Cost” that is listed in schedule A, then the Project Sponsor may propose to the USDOT, in writing consistent with the Administering Operating Administration’s requirements, specific additional activities that are within the scope of the Project, as defined in the Project Sponsor’s application, schedule A, and schedule C, and that the Project Sponsor could complete with the difference between the “Total Future Eligible Project Cost” that is listed in schedule A and the actual eligible project costs.
- (c) If the actual eligible project costs are less than the “Total Future Eligible Project Cost” that is listed in schedule A and either the Project Sponsor does not make a proposal under section 13(b) or the USDOT does not accept the Project Sponsor’s proposal under section 13(b), then:
 - (1) the Project Sponsor shall submit a request under section 14 to reduce the Total Federal Assistance by the difference between the “Total Future Eligible Project Cost” that is listed in schedule A and the actual eligible project costs; and
 - (2) if that modification reduces the “INFRA Grant Amount” listed in schedule A and the USDOT had reimbursed costs exceeding the revised amount, the Project Sponsor shall refund to the USDOT the difference between the reimbursed costs and the revised award.

In these general terms and conditions, “**Total Federal Assistance**” means the sum of the “INFRA Grant Amount” and the “Other Federal Funds” amounts that are listed in schedule A.

- (d) The Project Sponsor acknowledges that amounts that are required to be refunded under section 13(c) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.345 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

14. Term Sheet Modifications.

- (a) The parties may amend, modify, or supplement the term sheet by mutual agreement in writing signed by the USDOT and the Project Sponsor. Either party may request to amend, modify, or supplement the term sheet by written notice to the other party.
- (b) The parties shall not amend, modify, or supplement the term sheet except as permitted under section 14(a). If an amendment, modification, or supplement is not permitted under section 14(a), it is void.

- (c) The Project Sponsor shall request a modification of the term sheet to update schedule A if:
 - (1) the Project's activities differ from the statement of work that is described in schedule A;
 - (2) the construction complete date for the Project or any component of the Project changes to a date that is more than six months after the construction complete date listed in schedule A;
 - (3) the Project's "Other Federal Funds" increases from the amount listed in schedule A;
 - (4) the Project's "State Funds," "Local Funds," "Private Funds," or "Other Funds" decrease from the amounts listed in schedule A; or
 - (5) the "INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)" changes from the amount listed in schedule A.
- (e) The USDOT may accept or reject proposals from the Project Sponsor under section 13 and section 14 and in doing so may elect to consider only the interests of the USDOT. The Project Sponsor acknowledges that making a proposal under section 13 does not amend, modify, or supplement the term sheet unless the parties execute a modification under section 14(a).

15. Noncompliance, Remedies, and Termination.

- (a) The Project Sponsor acknowledges that the USDOT considers all INFRA Grant funds under the term sheet to constitute a single grant under 23 U.S.C. 117, that all Fund-Obligating Agreements entered under the term sheet are inter-related, and that all INFRA Grant funds provided through a Fund-Obligating Agreement are subject to the Project Sponsor's compliance with the term sheet and all other Fund-Obligating Agreements.
- (b) If the Project Sponsor fails to comply with the term sheet or a Fund-Obligating Agreement under the term sheet, then the USDOT may take actions under 2 CFR 200.338 without limiting those actions to the agreement under which the Project Sponsor was noncompliant.
- (c) If the Project Sponsor fails to timely complete a component of the Project, the USDOT may take action under section 15(b), including termination of all Fund-Obligating Agreements and disallowance of costs incurred under those agreements.
- (d) If the USDOT determines either (1) that the Project Sponsor's use of INFRA Grant funds under the term sheet would not advance the purposes of the INFRA program or (2) that termination is in the public interest, the USDOT may terminate one or more Fund-Obligating Agreements and disallow costs incurred under those agreements.

- (e) In terminating one or more Fund-Obligating Agreement under this section 15, the USDOT may elect to consider only the interests of the USDOT.

16. Agreement Execution and Effective Date.

- (a) This term sheet may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- (b) The terms and conditions in the term sheet are effective on the Project Sponsor upon execution of the term sheet by both the Project Sponsor and the USDOT. The date of this agreement will be the date this term sheet is signed by the last party to sign it, which will be the USDOT.

APPENDIX I

SELECTED APPLICABLE FEDERAL STATUTES, REGULATIONS, AND POLICIES

When carrying out the INFRA Grant, the Project Sponsor shall comply with all applicable Federal statutes, regulations, and policies, including the following non-exhaustive list.

Federal Statutes

- Letting of Contracts, 23 U.S.C. 112
- Buy America, 23 U.S.C. 313

Federal Regulations

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. parts 200 and 1201

Federal Policies

- Buy American and Hire American, Executive Order 13788 (Apr. 18, 2017)