



50 WAYS TO LOSE FEDERAL FINANCING



PRE-CONSTRUCTION

- Planning
 - STIP
- Finance
 - FMIS
- Environment
 - NEPA
- Real Estate
 - Uniform Act



FEDERAL RELATIONSHIP

- RIGHT WAY
- WRONG WAY
- FHWA WAY



FEDERAL RULES

- Laws - Congress
 - SAFETEA-LU
- Regulations – Executive Branch
 - 23 CFR – Code of Federal Regulations - Highways
 - 49 CFR – Code of Federal Regulations- Transportation
- Guidance
 - Memorandums
 - Questions & Answers (increased interest payment)
 - Best Practices and Advice



FEDERAL REGULATIONS

- 33 CFR – Army Corps of Engineers (wetlands)
- 40 CFR – EPA (NEPA)
- 50 CFR – Fish and Wildlife Serv. (endangered species)
- 49 CFR – Transportation
- 23 CFR – Federal Highway Administration



FEDERAL REGULATIONS

- Finance
 - 23 CFR Part 140
- Planning
 - 23 CFR Part 450
 - 23 CFR 450.216 - STIP
- Real Estate
 - 23 CFR Part 710 (Prop. Mgt., Advance Acquisition)
 - 49 CFR Part 24 (Appraisal, Acquisition, & Reloc.)



FEDERAL REGULATIONS

- Environment
 - 23 CFR Part 771
- Engineering
 - 23 CFR Parts 620 to 637
 - 23 CFR 635.301 - P,S,&E Package



FEDERAL PARTICIPATION

- Every Item MUST Have
 - Identifiable Presence on STIP
 - Environmental Approval Action
 - Federal Financial Document Approval



FEDERAL FUNDING

- Based on State or Local Match
 - Typically 80/20
- Soft Match
 - Value of something other than cash
 - On a federal-aid project, usually value of property incorporated into the right of way



FEDERAL FUNDING

- FHWA Reaction to Violations
 - Apology and Revised Procedures
 - Loss of Federal Participation - Either on a Small or Large Scale



FEDERAL FUNDING

- Federal Funds are Typically NOT Lost
 - Funds May Be Used On Other Projects
 - STIP Adjustment
- Embarrassment Factor
 - Agency
 - Media
 - Legislators



FEDERAL FUNDING

- Based on Formula – On an Annual Basis
- Distributed by Category
- Some Flexibility with Support
- NHS vs. STP
- Urban vs. Rural
- Congressional Authorizations Set Funding Limits and Program Priorities (TE Program)



FEDERAL RELATIONSHIP

- Any Project Funding = Full Project Compliance
 - Can request federal funding in any or all phases, but every phase must be compliant
- Stewardship Agreement
 - Supplemental Document
 - Different Meaning to Different People



PLANNING

- STIP – Statewide Transportation Improvement Program
 - Four year planning document
- CTP – Capital Transportation Program
 - Six year document
- For all practical purposes, the CTP and the first four years of the STIP are the same.



PLANNING

- Federal regulations push DOT's towards having a sophisticated business plan.
- Require future project activity to be identified by type of activity and cost, on an annual basis.
- Must be fiscally constrained, and sources of income must be identified.



PLANNING

- STIP
 - Made up of individual TIP's
 - Typically approved annually
 - FHWA and FTA approval with EPA concurrence
 - Regulations over time have required greater specificity
 - Fiscally Constrained



PLANNING

- YOU CANNOT GET FEDERAL FUNDING IF YOUR ACTIVITY CANNOT BE RECOGNIZED AS BEING SET OUT AND APPROVED IN THE STIP IN THAT YEAR



PLANNING

- Amending the STIP
 - Specific rules in place
 - Divided into major and minor changes
 - **PRIOR TO ACTION, THE STIP MUST BE AMENDED TO CONTAIN YOUR ACTIVITY IF IT IS NOT LISTED AND IF YOU WANT FEDERAL FUNDING**



FINANCE

- FMIS – Fiscal Management Information System
- PROJECT MUST BE LOADED INTO SYSTEM BEFORE COSTS CAN BE OBLIGATED OR INCURRED
 - Legally responsible for payment
 - 23 CFR 1.9



FINANCE

- The process of loading an activity into FMIS can take time and may be disrupted for many different reasons.
- NEVER ASSUME THAT SOMETHING WHICH HAS BEEN SUBMITTED, HAS ACTUALLY ENTERED INTO THE SYSTEM



FINANCE

- DelDOT is reimbursed for money expended
 - Contractors are not paid directly
 - LPA's are paid through DelDOT
- FHWA can unilaterally withdraw a previously made payment ,if it was made based on incorrect information



ENVIRONMENT

- ANY Expenditure of Federal Funds Must Be Covered Under a National Environmental Policy Act (NEPA) Approved Document
- 23 CFR 771
 - Environmental Impact Statement - EIS
 - Environmental Assessment - EA
 - Categorical Exclusion - CE (CAT EX)



ENVIRONMENT

- In addition to NEPA, Many Other Environmental Laws Impact Transportation Projects
- Most Common Other Impacting Laws
 - Clean Air Act
 - Clean Water Act - Wetlands
 - National Historic Preservation Act
 - Endangered Species Act
 - Farmland Preservation (Delaware)



ENVIRONMENT

- FHWA Must Approve
 - All EIS
 - All EA
 - Some CE (d) list - 771.117(d)
- DelDOT Can Approve
 - CE (c) list - 771.117(c) (some d)



ENVIRONMENT

- Why Are NEPA Documents So Extensive
 - Environmental Document Challenges Delay (Or Stop) Projects
 - Section 4(F)
 - Environmental Resource Agency Staff Outlook
 - FHWA Staff Outlook
 - Livability, Sustainability, Global Warming



REAL ESTATE

- Cannot Acquire w/Federal Funds Until After NEPA Approval
- Cannot Discuss Price w/Owner Until Offer In Writing
- Cannot Encourage Owner or Tennant To Relocate Until After Acquisition Offer Made



REAL ESTATE

- Cannot Make Any Deals (Land Swaps) Without Supporting Appraisals
- Cannot Condemn From Someone To Help Out Someone Else
- Cannot Adjust Control Of Access Line Without Appraisal



REAL ESTATE

- Early Acquisition – With Federal Participation Before NEPA Approval
- Pre-Selection of Alignment (and Project)
- Federal Approval In Writing



REAL ESTATE

- Early Acquisition
- Protective Purchase – DelDOT Initiated
 - Prevent costly development
 - Prevent limiting alternatives
- Hardship Acquisition – Property Owner Initiated
 - Demonstrated need to sell
 - Demonstrated inability to sell at market value



SITUATION

- Environmental Document Preparation Underway- Approval Expected in 24 Months
- Project P,S,&E Scheduled in 4 Years
- No ROW Acquisition Funds in STIP Until 2 Years
- Property Owner Has legitimate Hardship Acquisition Request



Situation

- Particular Property Has Denial of Access to Major Roadway, and Access Only From Side Road
- Upper Management, In The Interest of State Economic Vitality, Seeks Relinquishment of Access Control
- As Project Manager, What Steps Are Necessary