Presentation outline

- Module 1: Federal-Aid Highway Program Overview – Ted Burch
- Module 2: Funding Federal-aid Highways – Eric Purkiss
- Module 3: Planning & Project Development – Tracie Leix
- Module 4: Project Delivery & Closeout – Kelly Crannell
MODULE 1:
Federal-Aid Highway Program
Overview

Ted Burch, P.E
Deputy Division Administrator
FHWA Michigan Division
Federal-Aid Highway Program Overview

• What is the Federal-Aid Highway Program (FAHP)?
• Laws Governing Federal-aid Program?
• What is FHWA’s Role?
• What is MDOT’s Role?
What is FAHP?

• History
  • 1893
  • 1916
  • 1956
  • 1967
  • 2015
Characteristics of the FAHP

- Federally-assisted, State-administered
- Funding tied to specific systems
- Each State must have a highway agency
- States pay for maintenance
- Matching requirements
- Contract Authority
FAHP Laws and Regulations

• Law: FAST Act
  • Passed by Congress and signed by President (Public Law 114-94)
  • Authorization of Federal-aid Highway Program

• Codified in Title 23 United States Code - Highways (23 USC)
• 23 Code of Federal Regulations - Highways (23 CFR)
  • Implementation of law

• A regulation has effect of law it implements.
Other Applicable Federal Requirements

- 49 CFR – Transportation
  - Nondiscrimination
  - Disadvantaged Business Enterprises (DBE)
  - Uniform Relocation Assistance And Real Property Acquisition
- National Environmental Policy Act (NEPA)
- 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Improper Payments Elimination and Recovery Improvement Act (IPERIA)
- Others?
Hierarchy of Law, Regulation, Policy

- Law
- Regulation
- Policy
- Guidance & Information
- State Law, Policy, Procedures and Directives
Project Life Cycle

Pre-CONST Award
Planning
ENV (NEPA)
Design
ROW
CONST
Maint/ Ops

Post-CONST Award

4 Milestones

NEPA
CE, EA, EIS
PS&E
CONST $
FINAL ACCEPT
FINAL VOUCHER

PL/SPR $
PE $
RW $
CE $
90 Days to Liquidate Obligations
3 Year Record Retention

End Date

90
CONST $
FAHP Delivery

- 23 U.S.C. Section 106
- Supervising Agency (23CFR 635.105)
- Stewardship and Oversight Agreement (SOA)
- Risk Based Oversight:
  - FHWA Tools: CAP, PoDI, Program Review
  - MDOT Tools: LAP Oversight, Final File Review, TSC Oversight
Federal-Aid Highway Program Overview

- Federal-Aid Highway Program (FAHP)
- Laws Governing Federal-aid Program
- Roles and Responsibilities
MODULE 1: Federal-Aid Highway Program Overview

Questions?
Federal-Aid Basics: Funding & Laws

• FAHP Funding Terminology
• Life Cycle of Federal-aid Highway Funding
• Select Requirements
• Six Key Words (four “A”s and two “O”s)

- Authorization
- Appropriation
- Apportionment
- Allocation
- Obligation
- Outlay

Legislative actions
Distribution of funding
Commitment and expenditure
Lifecycle of Federal-aid Highway Funds

1. Authorize
   Congress authorizes funding

2. Distribute
   FHWA distributes funding

3. Limit obligation
   Congress limits obligation of funding

4. Obligate
   FHWA obligates funding (at State request)

5. Outlay
   The U.S. Treasury pays States
Authorization Act
(example, FAST Act)

1. Authorize
   • Typically covers multiple years

2. Distribute
   • Authorizes programs and funding

3. Limit obligation
   • Sets program-specific requirements

4. Obligate
   • Provides formulas for distribution

5. Outlay
Distribution of Funds

- Apportionments
  - Formulas
  - All States Receive
  - Receive Oct 1

- Allocations
  - No set Formula
  - E.g. BUILD, TIGER

Apportioned to States (92%)
Allocated (8%)
Overview of Apportionments

Step 1.
Set lump sum for all apportioned programs & States

Step 2.
Calculate State’s total (Each State receives at least 95% of its HTF Contributions)

Step 3.
Distribute among State’s apportioned programs

$ million for MI

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
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<tbody>
<tr>
<td>NHFP</td>
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<tr>
<td>CMAQ</td>
<td>79</td>
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<td>Metro Plan</td>
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<td>NHPP</td>
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<tr>
<td>STBG</td>
<td>320</td>
</tr>
<tr>
<td>HSIP</td>
<td>62</td>
</tr>
</tbody>
</table>

$43.4 B nationwide

$1.2 B for Michigan (MI)
Federal Share

• Base Rate
  • 80%, 90%

• Special Rates
  • Sliding Scale
    • Michigan 81.85%
  • 100% for Certain Safety Projects
  • ≤ 100% for Innovative Delivery Methods
Appropriations Act

1. Authorize
2. Distribute
3. Limit obligation
4. Obligate
5. Outlay

- Enacted for each year
  - Continuing Resolutions – extension lasting less than a year
- Establishes obligation limitation
  - Applies to entire FAHP
- Provides liquidating cash
Obligation Limitation functions like a “catch limit”

1. Authorize
2. Distribute
3. Limit obligation
4. Obligate
5. Outlay

20 fish (formula funds in pond)
MDOT Process for “Reimbursement” rather than up front cash

1. Authorize
   Contractor does work

2. Distribute
   MDOT Pays Contractor Pay Estimate

3. Limit obligation
   MDOT submits voucher to FHWA/Local

4. Obligate
   FHWA sends payment request to Treasury

5. Outlay
   Treasury pays State
Lifecycle of Federal-aid Highway Funding

Step | Mechanism | Law
---|---|---
1. Authorize | Contract Authority | Authorization Act
2. Distribute | Formulas, other | 
3. Limit obligation | Obligation limit | Appropriations Act
4. Obligate | Liquidating cash | 
5. Outlay | |
Requirements, Programmatic vs Uniform

- **Programmatic Requirements**
  - Applies to specific program of funds (NHPP, STBG, CMAQ)
  - 23 & 49 CFR for FAHP

- **Uniform Requirements – 2 CFR 200**
  - Applies to all Federal Awards

Both Uniform and Programmatic requirements **must be followed on all** FAHP
2 CFR 200: Subpart E
Policy Guide

• Non-Federal entities will be responsible for:
  • Administering Federal funds efficiently and effectively
  • Complying with programmatic requirements and other terms of the Federal award
  • Maintaining internal accounting policies consistent with the cost principles
  • Support cost charged with adequate supporting documentation
Post Federal Award Requirements
2 CFR 200: Subpart D

• Remedies for noncompliance:
  • Temporarily withhold payment until correction of deficiency
  • Disallow all or part of the cost of the activity not in compliance
  • Wholly or partly suspend or terminate the Federal award
  • Initiate suspension or debarment proceedings (2 CFR Part 180)
  • Withhold further Federal awards for the project or program
  • Take other remedies that may be legally available.
Eligible and Allowable

• Eligibility
  • Location of Projects
  • Activities
    • A Guide to Federal-aid Programs and Projects (website)
    • MDOT LAP Eligibility Guidelines

• Allowable
  • Administrative Requirements (2 CFR 200, Cost Principles)
    • Necessary/Reasonable Costs
    • Allocable Costs
    • Applicable Credits
Project Life Cycle

4 Milestones

- NEPA
- CE, EA, EIS
- PS&E
- FINAL ACCEPT
- FINAL VOUCHER

End Date

90 Days to Liquidate Obligations

3 Year Record Retention

Pre-CONST Award → POST-CONST Award

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Cost Category</th>
<th>Duration</th>
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<tbody>
<tr>
<td>Pre-CONST Award</td>
<td>PL/SPR $</td>
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<tr>
<td>Post-CONST Award</td>
<td>PE $</td>
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<tr>
<td></td>
<td>RW $</td>
<td>90 Days</td>
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<td>CE $</td>
<td></td>
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<tr>
<td></td>
<td>Const $</td>
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</tbody>
</table>
MODULE 2: FAHP Basics: Funding Federal-aid Highways

Questions?
Local Agency Program Stats

- Local Agencies own 110,000 miles of roads
  - 1,200 miles on NHS
- LAP process 450-550 projects annually
- Average project cost $500,000 (federal amount)
Planning & Project Development

FY19 - Does not include Force Account
Federal Requirements; State Law

- State law can determine how federal requirements are implemented
  - Federal fund sharing: 25% to local agencies
  - Agency force account limitation
    - FHWA requirements regarding cost effectiveness
    - State law regarding per project cap
    - Industry negotiation regarding overall cap
Federal Law; Implications for LAP

• Authorization Act – FAST Act
• Appropriations Act – Annual Obligation Limitation/Authority (OA)
  • Not always annual – Continuing Resolutions
  • LAP previous: If OA ran out program stopped
  • LAP current: MDOT loans local agencies OA
Project Life Cycle: Pre-Construction
Scoping

- Responsibility of local agency
  - Work type, permit needs, NEPA classification, utility coordination
  - Funding may limit or require more
Planning

• Work with Planning entity on S/TIP
  • Statewide Transportation Improvement Program
  • 4-year cycle; 1-year overlap

• Consider NEPA

• Local agency certifies fully funded project
  • Certification via Program Application
National Environmental Policy Act

• New 5323 process
• Local agency determines classification
  • Categorical Exclusion, Environmental Assessment, Environmental Impact Statement
• MDOT approval, FHWA concurrence and/or approval
Real Estate Certification

• Local agency determines need for right of way
  • Americans with Disabilities Act compliance
• MDOT reviews and approves certification
• Changes coming to Mutual Benefit
Design

• Local agency responsibility
  • Plans, specifications, estimate
    • FHWA approved design guidelines
    • Incorporation of permit and NEPA requirements
    • Identification of ROW

• MDOT responsibility
  • DBE, SBA, obligation, advertising, letting, award
Obligation

- S/TIP
- Apportionment/Allocation and Obligation Authority
- Engineer’s Estimate +- 25% STIP
  - Eligible vs. Participating
  - Eligible vs. Allowable

MDOT LAP requests 1st come/1st serve
Letting

• Advertisement
  • Progress clause
  • Bidder’s Inquiries
  • Addendum
  • Expedited award

• Low Bid
Award

• Project Contracts
  • Construction contract and cost sharing agreement
• Bids: FY19 1.92% over EE
  • < 10% over engineer’s estimate
  • >= 10% Justification or Rejection
• Bid reviews
State Processes

• 120 days to letting
• State Transportation Commission approvals
• State Ad Board approvals

• 2 CFR 200 compliance
Inactive Obligations – FIRE List

• Zero expenditures in previous **12 months**
  • MDOT starts monitoring at 6 months – Inactive list
• Facts and circumstances causing the project inactivity
  • Beyond DOT’s Control Examples
    • Litigation
    • Unforeseen utility relocations
    • Catastrophic events
    • Unforeseen environmental concerns
MODULE 4: Project Delivery & Closeout

Kelly L. Crannell, P.E.
Local Agency Construction Engineer
Michigan Department of Transportation
Project Life Cycle: Post-CONST Award

- **CONST** to **Maint/Ops**
- **Post-CONST Award**

- **FINAL ACCEPT** to **FINAL VOUCHER**
  - **90 Days to Liquidate Obligations**
  - **CE $**
  - **3 Year Record Retention**
  - **90 Days**
  - **END DATE**

- **CONST $**
Risk Based Oversight
Available Tools to Monitor Risk

• MDOT construction oversight of LAP projects
  • TSC Oversight
  • Project Documentation Reviews
  • Certified Engineer Program
  • Contract administration procedures – Division 1 of Spec Book

• FHWA oversight of MDOT
  • Compliance Assessment Program (CAP)
  • Project of Divisional Interest (PoDI)
  • Program Reviews
Construction Oversight Roles

• MDOT Responsible Charge/Designed Representative

• Local Agency Responsible Charge

• Engineer of Record
Publications included by reference in Standard Specifications for Construction

The following MDOT publications are included by reference in these Standard Specifications as if the same were repeated herein in their entirety:

- Field Manual of Soil Engineering (out of print)
- Michigan Manual on Uniform Traffic Control Devices
- Michigan Test Methods
- Procedures for Aggregate Inspection
- Procedures Manual for Mix Design Processing
- Road and Bridge Standard Plans
- HMA Production Manual
- Soil Erosion and Sedimentation Control Manual
- Density Testing and Inspection Manual
- Work Zone Safety and Mobility Manual

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- Work Zone Safety and Mobility Manual
Risks which are monitored . . .

Federal Compliances including:
- Davis Bacon Wage Rate
- Buy America
- American with Disabilities Act
- Disadvantaged Business Enterprise Program
- US Small Business Administration
- Law/Regulation – FAST Act and CFR


Local Unique Special Provisions
Risk Mitigation Measures: Built into Specifications

- Scope of Work - 103
- Control of Work - 104
- Control of Materials - 105
- Quality Assurance Acceptance Program – 106
- Legal Relations and Responsibilities to the Public – 107
- Prosecution and Progress – 108
- Measurement and Payment – 109
- MDOT publications included by reference
Non-Compliance Remedies

2 CFR 200 – remedies for non-compliance

- Temporarily withhold payment until correction of deficiency
- Disallow all or part of the cost of the activity not in compliance
- Wholly or partly suspend or terminate the Federal award
- Initiate suspension of debarment proceedings (2 CFR Part 180)
- Withhold further Federal awards for the project or program
- Take other remedies that may be legally available
MDOT’s Local Agency Program
Vision Statement

MDOT will assist local agencies with preserving state and federal aid in a fair and consistent manner and serve as an information resource.
Improper Payments

What is an Improper Payment?
- made to an incorrect recipient
- an incorrect amount (e.g. incorrect Federal share)
- not in accordance with Federal laws, regulations, or terms and conditions of the Federal award
- for ineligible, unallowable, or unauthorized goods or services (includes charging to incorrect program code, improvement type/activity)
- insufficiently documented
Navigating Federal Aid requirements is not an easy task!

Good work, but I think we need a little more detail right here.
Wrap-Up: Federal Aid 101 Basics