

Nationally Significant Federal Lands and Tribal Projects Program Questions and Answers

Section 1123 of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94) established the Nationally Significant Federal Lands and Tribal Projects Program (Program) to provide funding for major projects accessing Federal and Tribal lands. The FHWA has issued a notice of funding opportunity (NOFO) with application instructions and deadlines.

Link to NOFO – <https://www.federalregister.gov/d/2018-21826>

These Questions and Answers provide supplementary guidance for preparing applications under the Program.

Eligible Applicants/Application Process

1. Are non-profit organizations or other non-governmental entities eligible to apply?

No. Non-governmental entities, including non-profit organizations, are not eligible to apply for Program funds.

2. Are FLMAs or Tribes required to sponsor an application on behalf of a State, county, or unit of local government if the proposed project does not align with their goals?

No.

2.01. [Added 11/29/2018] Are Alaska Native Corporations that were formed by the Alaska Native Claims Settlement Act eligible to apply?

Alaska Native Corporations are not eligible to receive funds under sections 201, 202, 203, or 204 of title 23, and therefore, pursuant to section 1123(b)(1) of the FAST Act, are not eligible recipients under the NSFLTP.

2.02. [Added 11/29/2018] If an applicant does not receive funding in the first round, is it required to re-submit its application?

No, the original application will be retained and evaluated during the next quarterly evaluation, until available funding has been exhausted.

2.03. [Added 11/29/2018] If an applicant does not receive funding in the first round, may it resubmit or edit its application?

As indicated above, an applicant is not required to apply multiple times. Once submitted to Grants.gov, an applicant will not be able to edit its application. If an applicant would like to make changes to its application, a revised application can be submitted. It is recommended that if a revised application is submitted, the applicant either delete the previous application from Grants.gov or advise the NSFLTP Program contacts listed on page 2 of the NOFO that there is a new application and the previous application should be disregarded. It is also recommended that the applicant highlight or otherwise denote revisions to the application so that reviewers can make note of them.

2.04. [Added 11/29/2018] If an applicant does not receive funding in the first round, can it request a debrief to learn how its application was deficient so that it can improve the application?

Applicants will receive notification of the status of their applications after each round. An applicant can request a debrief, but the debrief would focus on the format and readability of the application and project narrative, not on the merits of the proposed project described in the application.

Eligible Projects and Facilities

3. What types of activities qualify as “construction” costs?

The FHWA interprets the intent of the term “construction” in section 1123 to mean the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction, reconstruction or rehabilitation of an eligible transportation facility, including bond costs, but excluding costs related to project design.

4. Are operations and maintenance of transit facilities eligible activities under this program?

No. This Program provides funding to “construct, reconstruct, or rehabilitate nationally significant Federal lands and Tribal transportation projects.”

5. Does a transportation facility need to be included in the national Federal lands transportation or Tribal transportation facility inventory to be eligible under this program?

No. Section 1123 of the FAST Act specifically exempted nationally significant Federal lands and Tribal projects from this requirement.

6. Are corridor projects eligible?

Only a single continuous project is eligible. A series of unconnected projects along a corridor likely would not be eligible for Program funds unless the applicant is able to make a convincing case that the project is somehow continuous.

7. Are visitor centers eligible?

No. Facilities such as visitor centers, contact stations, campgrounds, and other visitor amenities are not listed under the definitions for Federal lands transportation facility, a Federal lands access transportation facility, or a tribal transportation facility, and, therefore, are not eligible.

8. Are rail projects eligible?

A rail project is eligible only if it fits the definition of a transit system.

8.01. [Added 11/29/2018] Does the NSFLTP cover improvements to connecting roads used to manage traffic during construction? If so are there limits as to the length of these upgrades?

The project must be a single continuous project. All work required to complete the project, including necessary detours, would be eligible. The project application will need to describe the scope of work and justify necessary improvements to connecting roads.

Eligible Project Expenses

9. [Revised 11/29/2018] Are easements and other land acquisitions eligible to be included in the cost of the project?

The Program funds construction and acquisition of rights-of-way are part of the definition of construction found under 23 U.S.C. 101(a)(4). Pursuant to 2 CFR 200.458, the cost of acquisition of real property prior to the effective date of the grant award is eligible to be included in the project cost if the cost was incurred after notice of selection and:

- the costs are directly pursuant to the negotiation and in anticipation of the Federal award;
- the costs are necessary for efficient and timely performance of the scope of work;
- the costs would have been allowable if incurred after the date of award; and
- FHWA provides written approval.

Real property acquired on or after the effective date of the grant award is also eligible to be included in the project cost for reimbursement at the applicable Federal share. Real property acquired prior to notice of selection is not eligible to be included in the reimbursable project cost, but the value of such property donated to be incorporated into the awarded project may count towards the non-Federal entity's matching requirement. [See question 26.01 for additional information.]

10. Are activities to meet environmental commitments eligible?

Environmental commitments, including mitigation activities, are often part of project construction or they coincide with the timing of project construction. Activities to meet environmental commitments and accelerate project delivery are eligible. Environmental studies are not eligible unless they relate to fulfilling environmental commitments that the lead Federal agency made during the NEPA process.

11. Are contract management costs eligible?

Contract management costs are eligible for contracts related to construction, reconstruction, and rehabilitation.

Selection Criteria

12. Does a project need to meet all of the selection criteria listed in section 1123(f)?

No. A project could be eligible if it does not meet all nine selection criteria listed in section 1123(f). However, applicants should try to address each of the criteria to the greatest extent possible in their applications. If a project does not meet one or more of the criteria, the application should clearly state this.

The following questions and answers (numbers 13 to 20) are intended to assist applicants in the development of their applications. The descriptions and considerations offered for each selection criteria are provided as examples.

13. How could an applicant demonstrate that a project “furthers the goals of the U.S. DOT, including state of good repair, economic competitiveness, quality of life, and safety”?

An applicant could address this by:

- Documenting that the project would further the goal of state of good repair for transportation facilities. Documentation may include technical data about existing facilities in poor repair or, where the project is new construction, the extent to which the existing conditions demonstrate a need for new transportation facilities.
- Showing existing economic indicators in the project vicinity to demonstrate the extent to which the project would further economic competitiveness. Economic indicators may include economic impact analysis or other data demonstrating existing economic conditions and projected future economic conditions with and without the project.
- Demonstrating that the project may improve the quality of life for a local community and/or the traveling public. Measures of quality of life may include, but are not limited to, the extent to which the project would improve reliability and reduce delay, the extent to which it would facilitate access to goods and services, education, employment, and recreational opportunities.
- Demonstrate how the project can improve safety by providing baseline data of any safety problems that the project will correct.

14. How could an applicant demonstrate that a project “improves the condition of critical transportation facilities, including multimodal facilities”?

Applicants could describe and justify the basis for determining the facilities are critical transportation facilities, including critical multimodal facilities. For example, an applicant can demonstrate facilities are primary visitation routes to public lands and/or recreation resources, that socioeconomic data demonstrate a need to improve access opportunities for underserved populations, or other baseline data that make a strong case for critical transportation facilities. After establishing and defining critical transportation facilities, the applicant should demonstrate the extent to which the project will improve the condition of these facilities.

15. How could an applicant demonstrate that a project meets “the need for construction, reconstruction, or rehabilitation”?

Many factors may demonstrate the need for a project. Some examples include condition assessments that show substantial deterioration or safety problems, socioeconomic data that demonstrate a need to improve access opportunities for underserved populations, or other baseline data that make a strong case that the need for the project is significant.

16. How does an applicant identify and document that transportation facilities are included in or eligible for inclusion in the National Register of Historic Places? Does this criterion apply to all facilities subject to project activities?

The National Historic Preservation Act (54 U.S.C. 300101 et seq.) established the National Register of Historic Places (National Register), and the Act defines a “historic property” as “any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object.” When a property is not already listed in the National Register, the Federal agency or the Keeper of the National Register may make a determination of a property’s National Register eligibility. An applicant will need to determine if project facilities are National Register eligible historic properties based on the professional judgement of an employee or consultant meeting the Secretary of the Interior’s Professional Qualification Standards in one or more disciplines appropriate to identifying all or part of the project facilities.

An applicant should document that the transportation facility is a historic property, is a contributing element to a historic property, and/or that the transportation facility provides an opportunity for enjoyment of or access to a historic property. Linear historic properties often have sections that contribute to the overall National Register eligibility of the property as well as sections that no longer retain sufficient integrity to contribute to National Register eligibility. Therefore, an applicant can demonstrate that they have met criterion 5 when any part of a project is a historic property or provides enjoyment of or access to a historic property.

17. How could an applicant show a project uses new technologies and innovations that enhance the efficiency of the project?

The applicant could describe what makes the particular technology new. Then the applicant could describe how the technology makes construction of the project either shorter, less costly, or both relative to a more conventional construction method. And finally, an applicant can demonstrate how the technology improves safety, visitor experience, or offers long-term efficiencies in the operations, maintenance, or other aspects of the useful life of the newly constructed, reconstructed, or rehabilitated facility.

18. What information could an applicant provide regarding the extent to which a project is supported by funds, other than funds received under the Program, to construct, maintain, and operate the facility?

Besides the required 10% match, an applicant could demonstrate and describe the availability of other funding sources for construction. If the available funds exceed the requisite 10% match, these applications will be viewed favorably. Additionally, an applicant could demonstrate that non-Program funds are available to maintain and operate a facility built with Program dollars and that the applicant has a reasonable expectation that those funds will be available throughout the useful life of all project facilities.

19. Is a project required to span two or more States to be eligible? If a project does not span two States, what other documentation can an applicant provide to address that criterion?

A project does not have to span more than one State to be eligible under the Program. However, FHWA will consider the extent to which a project spans two or more States

when applying the selection criteria. If a project does not span two or more States, but serves communities or recreational interests in two or more States, an applicant can strengthen its application by demonstrating the benefits to two or more States. Many Federal and Tribal lands span more than one State. Additionally, many State and Tribal lands near State borders serve communities and/or recreational interests in multiple States. If an applicant can demonstrate that a project is part of a larger infrastructure system or is a necessary access point that benefits Federal or Tribal lands in two or more States, FHWA may consider this information to review the extent to which a project meets the intent of selection criterion 8.

20. Is a project required to serve land owned by multiple Federal agencies or Indian tribes to be eligible for funding? How should an applicant demonstrate that a project serves multiple Federal or Tribal lands?

A project does not have to serve multiple Federal or Tribal lands to be eligible under the Program.

To demonstrate that the project serves land owned by multiple Federal agencies and/or Indian tribes, applicants should include a description of the project and how it supports multiple stakeholders. Applicants may also include letters of support from officials at each of the agencies and/or Tribes that would benefit from the project.

Funding Authorization

21. Is there a maximum project cost?

No.

22. Can a single project receive funds from the Program from more than one application cycle?

Yes. A single project may apply for funds during multiple application cycles. Each application must clearly identify the phase and deliverables of the project for which it is seeking annual funding. For example, the resubmission of an identical application (that received funds) will not be considered unless the application clearly identifies how the use of prospective funding will advance additional stages of the project.

23. What other FHWA funding sources may supplement Program funds for a project?

Subject to the eligibility requirements of each FHWA funding program, a project eligible under this Program may also be eligible for supplemental funding under one of the following:

- One or more State transportation agency's allotments under the FHWA Federal-aid program;
- Surface Transportation Block Grants <https://www.fhwa.dot.gov/fastact/factsheets/stbgfs.pdf>;
- BUILD discretionary grants <http://ops.fhwa.dot.gov/freight/infrastructure/tiger/>;
- INFRA discretionary grants <https://www.transportation.gov/FASTLANEgrants>; and
- Any of FHWA's other discretionary grants <https://www.fhwa.dot.gov/discretionary/>.

23.01. [Added 11/29/2018] Is there a minimum amount of NSFLTP Program participation that can be awarded to a selected application?

There is no minimum dollar amount that the NSFLTP Program can provide to an applicant.

Non-Federal Share Requirement

24. [Revised 11/29/2018] What are the Federal and non-Federal share requirements?

Program funds may cover up to 90 percent of eligible project costs. Federal funds other than those made available under Title 23 or Title 49 of the U.S. Code may be used to satisfy the non-Federal share requirement as authorized by section 1123(g)(2) of the FAST Act.

25. Can Tribal Transportation Program funds be used for the non-Federal match?

No. Because TTP funds are made available under Title 23 of the US Code, they cannot be used as match.

26.01. [Added 11/29/2018] Can the value of real property acquired by a non-Federal entity before the effective date of the grant award be used toward meeting the non-Federal share?

FHWA may consider the value of property to be incorporated into the awarded project acquired prior to the effective date of the grant award as part of the non-Federal entity's matching share requirement. To be considered part of the non-Federal share, FHWA must authorize acceptance of the non-Federal entity's donation of the real property that is incorporated into the project and the allowable value. 2 CFR 200.306(d). [See question 26.02 for information on pre-award costs, in general.]

26.02. [Added 11/29/2018] What costs incurred by a non-Federal entity before the effective date of the grant award may be included in the cost of the project and used toward meeting the non-Federal share?

Pursuant to 2 CFR 200.458, costs incurred by a non-Federal entity for the project after notice of selection and before the effective date of the grant agreement may count toward meeting the non-Federal share if:

- the costs are directly pursuant to the negotiation and in anticipation of the Federal award;
- the costs are necessary for efficient and timely performance of the scope of work;
- the costs would have been allowable if incurred after the date of award; and
- FHWA provides written approval.

Other costs incurred before the effective date of the grant award may not be considered for the non-Federal share or reimbursement. For example, costs incurred for construction activities before notice of selection and negotiation of the project agreement are not eligible for consideration as the non-Federal share or reimbursement.

26.03. [Added 11/29/2018] Is the minimum of \$25 million for estimated construction costs inclusive of match?

Yes.

Project Administration

27. How will Stewardship and Oversight of the funds be handled?

For projects awarded to an FLMA, FHWA will provide Stewardship and Oversight (S&O) following the process provided in FLH's S&O Guidance document, located at <http://flh.fhwa.dot.gov/programs/stewardship-oversight/>.

For projects awarded to a Tribal government, FHWA will provide S&O following the process provided in format provided in the Tribal Transportation Program Delivery Guide, located at <https://flh.fhwa.dot.gov/programs/ttp/guide/>.

For projects awarded to a State or local government, FHWA will provide S&O following the process developed under the Federal Lands Access Program, in conjunction with a State's Programming Decisions Committee.

28. Will a project level agreement be executed and, if so, what will be its scope?

After project selection, FLH will work to execute an agreement between the pertinent agencies to describe how a specific project will be delivered.

Agreements for projects that will be delivered by an FLMA or a Tribal government should generally include:

- Scope of the project;
- Schedule for delivery;
- Budget, including funding sources other than USDOT sources;
- Roles and responsibilities of all agreement signatories;
- other project issues worth noting, such as the performance goal(s) supported by the project;
- match requirements and strategy for administering and tracking;
- reporting requirements, such as:
 - Progress Reports to the FLH headquarters office on the status of the project, as well as a closeout report documenting completion of all project elements; and
 - Financial Reports, such as an SF 133;
- maintenance commitment; and
- other recommended information included in the Office of Federal Lands Highway's Stewardship and Oversight (S&O) Guidance and Instructions, if applicable.

Agreements for projects that a State or local government will carry out under the sponsorship of an FLMA or tribe should contain all of the information described above, plus the following:

- Maintenance commitment of the State or Local Government carrying out the project;

- budget, including funding sources other than FHWA program funding;
- process for coordinating with pertinent FLMAs and/or Tribal governments, including the sponsor; and
- any other necessary information, including items required under 2 CFR part 200.