

I. INTRODUCTION

The Federal Highway Administration (FHWA) and the Kentucky Transportation Cabinet (KYTC) share a responsibility to develop and maintain a safe and efficient transportation system while following all applicable federal and state legislation and regulations. When a Local Public Agency (LPA) receives an award of Federal funds for a project, it too shares in that responsibility.

The purpose of this LPA Guide is to briefly explain to local public agencies the requirements and processes for developing Federal-aid projects in compliance with applicable legislation and regulations.

Before any LPA submits an application for transportation funding, the LPA should consider in its project financial analysis that KYTC-funded projects are reimbursement projects; this is not a grant program. The LPA must have available local funding means to pay project invoices up front, and then submit an invoice to KYTC requesting reimbursement of eligible project expenditures.

An explanation of acronyms and a glossary are provided in **Appendix A**. All referenced attachments are provided at the end of each chapter.

I.1. How to use the LPA Guide

Throughout the guide there are references made to specific laws, regulations, policies and other guidance. The LPA should explore all referenced resources to become familiar with the requirements for the development and administration of its project. This guide is not the final authority on these matters and the LPAs are responsible for following all applicable legislation and regulations whether or not they are included in this guide.

I.2. Key Understandings and First Steps

This section outlines critical items the LPA must understand before beginning its project, explains how project funding is “authorized,” and explains how project agreements are executed.

*FHWA’s “Federal-Aid Essentials for LPAs”
website:*

<http://www.fhwa.dot.gov/federal-aidessentials/index.cfm>

Funding Sources and Administering Offices (Contact

Information): **Table 1.1** illustrates the various FHWA Federal-aid project types and important corresponding information. Each project type has specific eligibility requirements. Additionally, there may be Federal Transit Administration funds available for projects involving public transit. If the LPA needs assistance in determining which funding type is appropriate for its project, it should contact the KYTC Division of Program Management.

How a project is funded dictates the KYTC Administering Office. The Administering Office is the LPAs primary point of contact; the LPA will work closely with its Administering Office over the life of the LPA project.

For OLP-Administered projects, OLP is responsible for the following project activities:

- Pre-Application
- Application
- Environmental (including Section 106)
- Programming
- KYTC Memorandum of Agreement
- Acquisition
- Procurement of Professional Services
- Procurement of Construction Contractors/Subcontractors for Projects requiring Section 106 Compliance
- Preliminary & Final Plan & Spec. Review & Approval (Section 106 Compliance to be reviewed by OLP)
- Financial Reconciliation & Reimbursement

While the relevant Highway District is responsible for:

- Plan/Spec/Checklist Review & Approval (Section 106 Compliance to be reviewed by OLP)
- Plan/Spec/Checklist Review & Approval for ADA compliance
- Procurement of Construction Contractors/Subcontractors
- Construction Monitoring & Inspection
- Invoice & Materials Verification (Construction projects)

And, OLP and the District share the responsibility for:

- Site Inspection
- Project Closure

OLP and the Districts use this delineation of duties as a guide to work together to deliver OLP-Administered projects. It is not all encompassing or rigid. Teamwork and communication are key. The Administering Office is always the primary point of contact for any LPA project.

Table 1.1 – Funding Sources and KYTC Administering Offices

Project Type (Source of Funding)	KYTC Administering Office	Local Match Required? (generally 20% of total, which is 25% of Federal award)	Project cost should include KYTC Direct Cost? (generally 10% of total)	Application Based?
Surface Transportation Program (STP)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
National Highway System (NHS)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
Planning (PL)	KYTC Division of Planning (502) 564-7183	Yes	No	No
Surface Transportation dedicated for Louisville (SLO)	Infrastructure: KYTC Highway District 5 (502) 210-5400	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Lexington (SLX)	Infrastructure: KYTC Highway District 7 (859) 246-2355	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Northern Kentucky (SNK)	Infrastructure: KYTC Highway District 6 (859) 341-2700	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Henderson (SHN)	Infrastructure: KYTC Highway District 2 (270) 824-7080	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Transportation Alternatives Program (TAP)	KYTC Office of Local Programs (502) 564-2060	Yes	Yes - TMAs dedicated TAP No - Statewide TAP	Yes
Congestion Mitigation and Air Quality (CMAQ)	KYTC Office of Local Programs (502) 564-2060	Yes	No	Yes
Earmarks (HPP, IMD, PLH, Delta Region, etc.)	KYTC Division of Program Management (502) 564-3388	Varies	Yes	Sometimes
Ferry Boat Earmarks	KYTC Division of Planning (502) 564-7183	Varies	Yes	No
Bridge Replacement (BRX or BRZ)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
Highway Safety Improvement Program (HSIP)	KYTC Division of Traffic (502) 564-3020	Yes	Yes	Sometimes
Highway Safety (NHTSA)	KYTC Division of Highway (502) 564-1438	Yes	Yes	No
Recreation Trails Program (RTP)	Department of Local Government (502) 573 2382	Yes 50% for non-motorized 20% for motorized	No	Yes
<p>Note: Recreational Trail projects must follow 23 CFR, but this is a unique Federal program with some exceptions to the rules and procedures outlined in this LPA Guide. LPAs should work closely with Jodie Williams, Department for Local Government, to deliver Recreational Trail projects in accordance with Federal and state regulations.</p>				

Reimbursement Program: Federal LPA programs do not provide up-front grant money. These are reimbursement programs. The LPA must pay for the project costs up-front (after receiving a written notice to proceed from KYTC) and then provide proper documentation for reimbursement from KYTC.

There are many requirements to using federal funds. These provisions include environmental, design, procurement, construction, reporting, inspection, and maintenance requirements. If the LPA fails to follow these requirements it will be at risk of not being reimbursed for project costs or having to return funds to FHWA.

How to Receive Project Funding: For LPAs that do not yet have a project, this sub-section provides some limited information on how to secure project funding.

While some of the federal funds used by LPAs are dedicated for a particular project or area (such as for each of Kentucky’s urbanized areas), other federal funds are awarded based on competitive application cycles, as shown in **Table I.1**.

The KYTC Office of Local Programs (OLP) is the Administering Office for the majority of application-based projects. For these projects, when federal funds are available, KYTC OLP will notify the public that an application cycle is open. The notification will indicate the type of funding available, the application deadline, and the eligibility requirements. The amount and type of funding available will vary between application cycles. LPAs may contact the KYTC Office of Local Programs for additional information about application cycles and requirements.

The LPA must not begin work upon selection announcements; the LPA must wait until funding is obligated through FHWA and the Memorandum of Agreement (MOA) is in place, as discussed below.

Some funding types (planning or dedicated STP for example) follow a different application process. For those projects that are not administered by OLP, the LPA should contact the KYTC Division of Planning for information regarding how to request project funding.

Required Checklists (LDRC and LPA-PDC): The Local Public Agency Project Development Checklist (LPA-PDC), which is referenced throughout this Guide, is required to be completed to obtain FHWA project approval/authorization of construction funds (except questions 11 and 12 of the construction procurement section, which should be completed as soon as applicable). This Guide and the LPA-PDC are organized chronologically whenever possible and are designed to help the LPAs navigate the project development process. LPA projects vary widely and, therefore, not all portions of the guide or the LPA-PDC will apply to each project. The criteria for determining whether a particular section applies to a particular project are stated at the beginning of each section. Often the applicability of a section depends on whether or not a project is an infrastructure project. Infrastructure projects are those that involve any ground disturbance or that involve an existing structure. Examples include but are not limited to sidewalks, streetscape projects, installing signs, restoration of historic buildings, ADA ramps, pavement striping, bicycle accommodations and any major construction project. Non-infrastructure projects are those that do not involve ground disturbance or structures. Examples include, but are not limited to, creating and distributing educational pamphlets, planning studies

and activities, rideshare programs, purchasing vehicles for any number of reasons, and promotional or educational events.

The Local Public Agency Design Review Checklist (LDRC) accompanies the LPA-PDC. It is intended to assist in development of design plans for projects which conform to FHWA Federal-aid regulations, policies, and guidance for Local Public Agency (LPA) infrastructure projects.

The LDRC must be completed by the LPA’s professional engineer or design consultant and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. The completed LDRC will indicate the design documents for this project have been prepared in accordance with the current version of KYTC LPA guidance documents, the MOA, and all applicable state and federal laws, regulations, policies and specifications. Concurrence with the PS&E package, LPA-PDC and the LDRC by the KYTC is required prior to advertisement for construction bids. The LPA-PDC and LDRC can be found at the following link and a copy of each is provided at the end of this chapter:

<http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>

Project Budget: Every project must have a budget. It is very important that LPAs develop adequate project budgets to cover all foreseeable costs, including allowances for contingencies. All projects require significant project performance monitoring and oversight. If the LPA project requires KYTC direct costs for oversight, as outlined in **Table I.1.**, the LPA must allow 10% of its total budget for these oversight services. No additional funds will be allocated for the project, so the LPA must monitor project expenditures closely to ensure that the project stays within budget. It is the LPAs responsibility to complete the project as defined in the MOA. Additional funds needed to cover cost overruns will be the responsibility of the LPA. Lastly, Federal LPA program awards must be thought of as an award of a defined project. They must not be thought of as an award of a certain sum of money. The LPA is not entitled to any funds which may remain once the project has been completed.

Indirect costs (such as overhead) are not eligible for reimbursement unless the LPA has an approved Cost Allocation Plan.¹ For information regarding what indirect costs are eligible for reimbursement and the requirements for a Cost Allocation Plan please see the OMB Super Circular 2 CFR 200:

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

If the LPA wishes to include indirect costs in its budget, it must obtain KYTC approval including approval of its Cost Allocation Plan.

Time spent on administrative duties is not eligible for reimbursement.

Schedule: Once a project is announced, the LPA should work closely with its Administering Office to establish funding authorization and an agreement in a timely manner.

¹ OMB Circular A-87 (as revised); FHWA Memorandum: “Indirect Costs Eligibility and other TEA-21 Revisions to Title 23 USC § 302,” September 24, 1998.

Federal LPA projects do not provide fast money. Due to federal requirements, it is possible that an LPA project will take longer than some may expect. The time the project takes can be limited by diligence, communication, and attention on the part of the LPA.

LPAs will be required to have a project schedule. LPAs and their Administering Offices must discuss the period of performance start and end date for each project.² The project end date is included in the Project Agreement. If a project is behind schedule and goes beyond its performance end date, project funding could be jeopardized and expenditures will not be eligible for reimbursement after the “Project End Date”.

Matching Requirements: Federal LPA programs do not provide free or effortless money. As shown in **Table I.1.**, with most federal programs there is a matching requirement. For the majority of Federal-aid projects, FHWA will provide 80 percent of project costs and the LPA must participate in 20 percent. If the LPA fails to meet the matching requirement, it may be required to return all federal funds reimbursed previously.

The matching requirement is usually paid in cash, but certain in-kind contributions can be used instead. All in-kind contributions must be pre-approved by KYTC. The LPA must provide documentation of any in-kind contributions with its request for reimbursement, as discussed in **Chapter XI**. Without this documentation, KYTC will automatically withhold the matching percentage from the LPA’s reimbursement payments. The amount of matching funds actually spent will be included in the Project Closure Form discussed in **Chapter XII**.

If real property is to be included in the LPA’s matching requirements, it must be appraised by a prequalified KYTC appraiser.³ If the property was purchased or donated specifically for the project, it must have been acquired in compliance with the Right of Way (ROW) requirements discussed in **Chapter VI**.

If the LPA’s employees’ time and equipment usage for construction force account expenditures are to be included in the LPA’s matching requirements, the LPA must provide appropriate documentation. Employees of the LPA must record daily only that time worked and those equipment hours used specifically for the individual project. Employees must sign the daily time and equipment record and their supervisor must approve it. Force account labor is discussed further in **Chapter VIII**.

Locally-Funded Design: LPAs may choose to fund the design phase of their project with local funds. Doing so does not lessen or change the requirements of the Federal-aid project. In these cases, if the LPA wishes to use the local design investment as match to future federally-funded phases, it must have a federal authorization in place before any expenditures may be considered as eligible for match. For projects in MPO areas, the local design costs must be programmed in the MPO TIP and 10% of the design costs should be programmed with Federal dollars for KYTC oversight. To explore this option, the LPA should contact its Administering Office who will work with KYTC Program Management.

² 2 CFR 200.210.

³ 2 CFR 200.306. The process for hiring an appraiser is discussed in Sections III and V.

Fund Allocation: For federal funds to be used they must first be “programmed”. This means that they are allocated to the project budget and made available for use. The Administering Office works with the KYTC Division of Program Management to “program” funds for awarded projects.

All LPA projects must be programmed in the Statewide Transportation Improvement Program (STIP).⁴ If an LPA project is located within the planning boundary of a Metropolitan Planning Organization (MPO) it must also be programmed in the Transportation Improvement Program (TIP).⁵

The LPA must receive a written notice to proceed (and confirm that the funding and MOA are in place) prior to making any expenditures. Some projects’ funding will be programmed in phases. For example, the money allocated for the design phase may be available at a different time than the money allocated for the construction phase. For these projects, the LPA must confirm that the funds have been programmed and ensure that they receive a written notice to proceed from the Administering Office prior to starting each new phase of the project (design, right-of-way, utilities, and construction).

Project Agreement: The LPA and KYTC must enter into an MOA which will govern their relationship and dictate each party’s duties to the other. There is standard MOA language that will apply to all projects, but MOAs vary depending on project type and funding. As part of the MOA the LPA must certify that it has read and understood this Guide and that it will comply with all applicable federal and state legislation and regulations. The MOA will also describe the scope of the project; clearly define measurable project objectives; include the project schedule and budget. The LPA must pass a resolution that it will enter the MOA and ensure the project complies with applicable state and federal laws. The resolution will be included in the MOA and an example can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Resolution%20Authorizing%20LPA%20to%20Enter%20into%20a%20MOA.pdf>

If the project scope or phase costs change, a new resolution is required for each phase (when the supplemental MOA is prepared for that phase).

Infrastructure project MOAs will also include a maintenance plan. All arrangements for funding long term maintenance should be included in the MOA between the LPA and KYTC.

KYTC will draft the MOA and provide it to the LPA to sign. Once the funds are allocated, the MOA is approved and signed (fully executed) and the LPA has received a written notice to proceed from its Administering Office, the LPA may begin work on the project. Any amount the LPA spends on the project before receiving the notice to proceed will not be reimbursed.⁶

⁴ 23 USC § 135; 23 CFR § 450.216.

⁵ 23 USC § 135; 23 CFR §§ 450.216, 450.322 and 450.324, 23 CFR § 450.104.

⁶ 23 CFR § 630.106(a)(1).

Responsible Charge: The LPA must provide a full-time employee of the agency to be the “employee in responsible charge” of its Federal-aid project. “This person should be expected to be able to perform the following duties and functions:

- Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintains familiarity of day to day project operations, including project safety issues;
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project;
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and
- Directs project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation.
- Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.”⁷

FHWA Video on “Responsible Charge”:

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=15>

Stewardship Agreement: KYTC is here to help the LPAs as they navigate the LPA process, but it is only able to allow LPAs as much flexibility as the Kentucky Federal-aid Highway Program Stewardship Plan (Stewardship Plan) and the federal and state legislation and regulations allow.⁸

NO PROJECT ACTIVITY WILL BE ELIGIBLE FOR FEDERAL FUNDING BEFORE FHWA AUTHORIZATION HAS BEEN RECEIVED, THE PROJECT AGREEMENT IS SIGNED, AND THE LPA HAS RECEIVED ITS WRITTEN NOTICE TO PROCEED FROM KYTC.

⁷ <http://www.fhwa.dot.gov/federalaid/110804.cfm>

⁸ This document outlines KYTC’s duties in administering the Federal LPA programs. The LPA may request a copy of the current agreement (May 2015) from its Administering Office.