

# Advance and Pre-Award Costs for the Federal-State Partnership for Intercity Passenger Rail Program: Northeast Corridor Grants

March 3, 2023

## I. Summary

This policy allows certain Federal State Partnership for Intercity Passenger Rail (FSP) Northeast Corridor (NEC) (FSP-NEC) projects to incur costs prior to selection for and obligation of a grant award. Before obligation, FRA can approve a project sponsor's request to incur costs at its own risk, and after obligation, FRA may approve previously incurred costs for inclusion in the project scope of the grant. The majority of this policy document focuses on pre-obligation approvals of costs incurred before obligation. This policy does not change or affect FRA's practice with respect to Pre-Award Costs for other FRA grant programs, including projects not on the NEC funded under the FSP program.

This policy does not have the force and effect of law and is not meant to bind the public in any way. It is intended only to provide information to the public regarding the existing requirements under the law or agency policies. This policy is subject to review and periodic revision by FRA.

## II. Overview

### a. Definitions Under This Policy

**Advance Costs** means costs incurred before grant selection and obligation. After obligation of an award, these costs may be approved as Pre-Award Costs.

**Construction** means activities in support of the Construction Lifecycle Stage as defined in FRA's Guidance on Development and Implementation of Railroad Capital Projects (Guidance).<sup>1</sup>

**Earliest Incurrence Date** means the earliest date that a cost may be incurred and still be considered a Pre-Award Cost at or after grant obligation. The Earliest Incurrence Date for FSP-NEC projects is the issuance date of the first NEC Project Inventory in which the project received an Anticipated Obligation.<sup>2</sup>

**Equipment and Construction Materials Acquisition** means the purchase of construction materials, equipment, railroad components, and rolling stock.

**Final Design** means activities in support of the Final Design Lifecycle Stage as defined in the Guidance, other than Preliminary Real Property Investigation and Real Property Acquisition.

**NEPA Documentation** means the activities that support completion of the environmental process required under the National Environmental Policy Act (NEPA), and related

---

<sup>1</sup> [FRA Guidance on Development and Implementation of Railroad Capital Project | FRA \(dot.gov\)](#)

<sup>2</sup> For all other FRA projects, the Earliest Incurrence Date is the date FRA announces that the project is selected to receive a grant.

environmental laws. NEPA Documentation follows FRA's determination of the appropriate NEPA class of action as defined in 23 CFR 771.115.

**Pre-Award Costs** has the meaning described in 2 CFR 200.458.

**Preliminary Engineering** has the meaning described in the Guidance.

**Preliminary Environmental Investigation** means activities generally undertaken to inform preliminary design, determine the scope of environmental analysis, and assist FRA in making the determination of the potential class of action for the environmental review. Preliminary Environmental Investigation includes activities such as: resourcing mapping, identification of potential environmental impacts, localized geotechnical/other investigations for permitting purposes, archeology resources assessment or similar survey, and wetland surveys.

**Preliminary Real Property Investigation** means activities in support of or in preparation for implementing real property acquisition. Preliminary Real Property Investigation includes activities such as: title searches, right-of-way cost estimates, acquisition plans and legal descriptions, public meetings or hearings, and initial appraisal work. Preliminary Real Property Investigation does NOT include offers, negotiations, or commitments to purchase real property.

**Real Property Acquisition** means activities in support of the acquisition of interests in real property, other than Preliminary Real Property Investigation.

#### **b. Relevant Legal Authority**

FRA's Office of Railroad Development (RRD) leads FRA's review and approval of costs incurred before grant obligation if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement, and if such costs are necessary for efficient and timely performance of the scope of work consistent with the requirements of 2 CFR 200.458 ("Pre-Award Costs"). The legal authority for this notice in 2 CFR 200.458 states:

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

For most programs, FRA only reimburses Pre-Award Costs after the time of grant obligation when such costs were incurred on or after the date of FRA's selection of the project for award. In those instances, the Earliest Incurrence Date is the date of selection for award.

**c. Approval of Advance Cost and Pre-Award Cost Incurrence for Certain FSP-NEC Projects.**

This policy allows certain FSP-NEC projects to incur costs prior to selection for award. Under this policy, FRA may approve costs incurred prior to a project's selection for obligation consistent with 2 CFR 200.458 and the limitations described herein. This policy is only applicable to FSP-NEC projects identified on the NEC Project Inventory (Inventory)<sup>3</sup> with an Anticipated Obligation.<sup>4</sup> The post-award approval of such costs for reimbursement is only available for eligible projects if the costs incurred were for activities within the scope of the project identified for the Inventory's Anticipated Obligation and the project scope under the FSP-NEC grant. Under this policy, the Earliest Incurrence Date is on or after the date of the first Inventory in which the project received an Anticipated Obligation.

Incurrence of Advance Costs consistent with this policy will not affect the likelihood, positively or negatively, of that project being selected for an FSP-NEC award. Project sponsors should describe Advance Costs and activities that they will include as project scope in their applications for FSP-NEC funding in response to the Notice of Funding Opportunity.

Any pre-obligation approval of Advance Cost incurrence is not a legal or implied commitment that the subject project will be selected for FRA assistance or that FRA will obligate Federal funds; incurrence of such costs are undertaken at the project sponsor's risk. Furthermore, it is not a legal or implied commitment by FRA that activities undertaken by the project sponsor will be eligible for inclusion in the project. Such approval of Advance Cost incurrence is not an approval of the costs themselves, but rather an approval for the project sponsor to incur them. To be included as project scope and eligible for reimbursement or counted towards non-Federal match of a grant, such costs must be consistent with the terms of the grant agreement, FRA procedural requirements, and applicable Federal law. Advance Cost incurrence enables expeditious project implementation and advancement, but will not enable the avoidance of oversight that would have been in place post-selection.

As described below, the process for appropriately incurring Advance Costs depends on the types of activities that a project sponsor intends to perform.

**d. Process**

**i. Automatic Approval of Advance Cost Incurrence**

Project sponsors may incur Advance Costs for Preliminary Engineering, Preliminary Environmental Investigation, and Preliminary Real Property Investigation. FRA has concluded that costs associated with these activities categorically meet the standards for FRA to approve Pre-Award Costs under 2 CFR 200.458 after obligation, if selected and obligated, and therefore may be progressed under this policy without additional FRA's written approval. Project sponsors

---

<sup>3</sup> [NEC Inventory | FRA \(dot.gov\)](#)

<sup>4</sup> Projects listed with an "Anticipated Obligation," including Gateway: Hudson Tunnel Project, are projects to which FRA most reasonably anticipates making an award within the inventory period. Anticipated Obligations are based on FRA's understanding of the total amount of funding available for projects in that Inventory period.

should still provide RRD with a written notice of the incurrence of or intent to incur costs prior to a project's selection for award of Federal funds ("Written Notice"), identifying the activities the project sponsor intends to progress. Project sponsors should submit a Written Notice as soon as feasible after deciding to incur such costs. While RRD will not provide a formal response to the Written Notice, RRD will review the information provided and the project sponsor will coordinate with FRA, as appropriate. See Appendix I below. The nature and extent of oversight coordination will vary depending on the project and the nature of the activity. RRD will exercise oversight through pre-selection coordination, including by communicating to the project sponsor concerns regarding the likelihood of reimbursement or eligibility for project match or project selection as they arise.

## **ii. Discretionary Approval of Advance Cost Incurrence**

For Advance Costs associated with NEPA Documentation, Final Design, Real Property Acquisition and Equipment and Construction Materials Acquisition, and Construction activities, RRD will conduct a project-specific review. Project sponsors should provide RRD with a written request regarding the incurrence of Advance Costs, identifying the activities for which the project sponsor has incurred or intends to incur costs ("Written Request"). The Written Request should include: (1) a description of the items or activities for which Advance Costs will be incurred; (2) the amount to be incurred; and (3) a justification for advancing the identified activities under 2 CFR 200.458, including an explanation of how incurring the costs before grant obligation is necessary for the efficient and timely performance of the scope of work. FRA may deny approvals to project sponsors that do not follow these steps.

After reviewing the Written Request for Advance Cost incurrence, RRD may, at its discretion, approve the incurrence of Advance Costs for these activities. The nature of FRA's response will vary, and it may convey an approval, disapproval, or request for additional information. Additionally, FRA will exercise oversight through pre-selection coordination, including communicating concerns to the project sponsor regarding the likelihood of reimbursement or eligibility for project match or project selection as they arise.

## **III. Content of Written Notices and Written Requests**

### **a. Written Notice for Preliminary Engineering, Preliminary Environmental Investigation, and Preliminary Real Property Investigation Activity Costs.**

Project sponsors should submit a Written Notice to RRD at [FRA-Grants@dot.gov](mailto:FRA-Grants@dot.gov) outlining the scope of Advance Costs for activities to be undertaken in support of the project at the task level. Project sponsors should title the Written Notice according to the following convention "Advance Cost Incurrence Written Notice - Project Title". These tasks can be approximate and may change, but should be consistent with FRA's template statement of work and reflect the best-available information at the time of submission. The Written Notice for costs incurred before obligation should include:

1. Project description and description of activities to be undertaken;
2. Advance Cost incurrence estimate by Federal and non-Federal share;

3. Proposed date for incurrence of the Advance Costs, which should not pre-date the issuance of the Inventory in which the project has an Anticipated Obligation;
4. Coordination to date and plan for future coordination with involved parties (e.g., operators, local government authorities, potential cost sharing partners, right-of-way owners, and other interested parties);
5. Ownership interest in property necessary for the project now, and anticipated ownership post construction;
6. Anticipated operation and ownership agreements and partners; and
7. Acknowledgment that the Advance Costs are in support of activities eligible for incurrence upon a Written Notice, and that Advance Costs incurred for future work in support of later project lifecycle stages may require a separate Written Request and will not be undertaken without FRA's express notice to proceed.

**b. Written Request for NEPA Documentation, Real Property Acquisition and Equipment and Construction Materials Acquisition, Final Design, and Construction Activity Costs.**

Project sponsors should submit a Written Request to RRD at [FRA-Grants@dot.gov](mailto:FRA-Grants@dot.gov) outlining the scope of Advance Costs for activities to be undertaken in support of the project at the task level and requesting an FRA response. Project sponsors should title the Written Request according to the following convention "Advance Cost Incurrence Written Request - Project Title". These tasks can be approximate and may change, but should be consistent with FRA's template statement of work and reflect the best-available information at the time of submission. The Written Request should contain a comprehensive package of information documenting completion of the necessary prerequisites to advance to the pre-award activities including, at a minimum:

1. Project description and description of the activities to be undertaken during the period before selections and/or awards.
2. Cost Information:
  - Estimate of Advance Costs to be incurred, showing Federal and non-Federal share;
  - Project cost estimate developed for the project materials and labor;
  - Proposed date for incurrence of the Advance Costs, which should not pre-date the publication of the Inventory in which the project has an Anticipated Obligation.
3. Project Development Information:
  - A description of the preliminary engineering activities undertaken;
  - NEPA Decision Document, including any necessary reevaluations to confirm the decision is still valid;
  - Evidence that all required permits and other authorizations necessary to initiate construction (if appropriate, based on activities being requested to progress) have been secured;

- Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1907 (Uniform Act) compliance information for any real property acquired for the project.
4. Final Design:
    - If applicable, documentation showing FRA review and acceptance of final design drawings (plan sheets), specifications, studies, reports, plats, maps, and other engineering and surveying work products;
    - Plan Cover Sheet signed by FRA's Office of Railroad Planning & Engineering and senior executives with signatory authority from all appropriate railroad owners and operators;
    - Route and Aspect Chart (if necessary);
    - Staging Plan (if necessary).
  5. Construction Schedule
  6. Ownership and Operation:
    - Ownership interest in property necessary for the project now, and anticipated ownership post construction;
    - Anticipated operation and ownership agreements and partners;
    - Coordination to date and plan for future coordination with involved parties (e.g., operators, local government authorities, potential cost sharing partners, right-of-way owners and other interested parties).
  7. Acknowledgment that Advance Costs incurred for future work in support of later project lifecycle stages may require a separate Written Request and approval, and will not be undertaken without FRA's express notice to proceed.

**For NEPA Documentation Activities, also provide:**

1. Information demonstrating sufficient Preliminary Environmental Investigation to inform FRA's class of action determination;
2. Demonstration that the project sponsor has the resources necessary to initiate and complete the NEPA Process;
3. For projects anticipated to be covered by a Categorical Exclusion (CE), a completed Draft CE worksheet; and
4. For projects anticipated to require an Environmental Assessment or Environmental Impact Statement, a proposed schedule, draft public involvement/interagency coordination plan, and other investigatory documents and preliminary work sufficient to support the NEPA process and class of action determination.

**For Real Property Acquisition and Equipment and Construction Materials Acquisition, also provide:**

1. Description of the necessity of material pre-purchase;
2. Description of the plan for acquisition, storage, and maintenance of construction materials;

3. Attestation that real property acquisition meets the requirements of the Uniform Act and/or applicable state regulations and that the project sponsor has a Real Property Acquisition and Management Plan consistent with FRA Guidance;
4. Unit costs, quantities, subtotals, and Federal/non-Federal shares of the costs of materials; and
5. Plan for resale of materials should FRA later deem the purchase ineligible.

**c. Documentation of Costs Incurred**

The project sponsor should maintain documentation demonstrating that the Advance Costs are for a project that is later selected for a grant and must be included in the grant scope of work. The grant agreement will require the project sponsor to: 1) submit supporting documentation consistent with the requirements of the grant agreement, such as invoices, and 2) document, subject to FRA review and approval, that such costs are reasonable, allowable, and allocable to a grant agreement, and that they were incurred in conformance with the agreement. Upon approval of Pre-Award Costs after obligation, and review of supporting documentation, FRA will reimburse the project sponsor or allow the costs to be counted towards local match.

## **APPENDIX I**

### **Coordination**

For Advance Costs to be eligible for reimbursement or to count as match, project sponsors should coordinate with FRA. This coordination includes providing information to FRA demonstrating how the Advance Costs are for eligible activities that would fall within the Project's grant agreement scope of work if selected and enables FRA to exercise oversight of the activities. The nature and extent of oversight coordination will vary depending on the project and the nature of the activity.

Within 10 days of submitting a Written Notice or Written Request, the project sponsor will contact FRA's project manager, within FRA's Office of Amtrak and Northeast Corridor Program Delivery (within RRD), to discuss and agree to a coordination approach. The following summarily describes anticipated coordination for different categories of activities.

#### **I. Coordination following a Written Notice**

In response to an Advance Cost Incurrence Written Notice, FRA's Project Manager will communicate with the project sponsor including any concerns regarding the likelihood of reimbursement or project selection as they arise. FRA will require the following coordination, at a minimum, in response to a Written Notice. FRA may require further coordination.

##### **A. Preliminary Engineering Pre-Award Activities:**

1. Project sponsors may begin Preliminary Engineering work before coordination with FRA.
2. FRA's Project Manager will review the Written Notice and will conduct oversight consistent with 2 CFR Part 200 and FRA engineering policy and may, at its discretion, conduct such oversight in the same manner that it would conduct oversight of a project post award.

##### **B. Preliminary Environmental Investigation**

1. Project sponsors may begin Preliminary Environmental Investigation work before coordination with FRA.
2. FRA's Project Manager will review the Written Notice and conduct oversight consistent with 2 CFR Part 200, 23 CFR Part 771, and FRA environmental policy, and may, at its discretion, conduct such oversight in the same manner that it would conduct oversight of a project post award.

##### **C. Preliminary Real Property Investigation**

1. Project sponsors may begin Preliminary Real Property Investigation work before coordination with FRA.
2. FRA's Project Manager will review the Written Notice and will conduct oversight consistent with 2 CFR Part 200, 23 CFR Part 771, and FRA environmental policy,



and may, at its discretion, conduct such oversight in the same manner that it would conduct oversight of a project post award.

## **II. Coordination Following a Written Request**

In response to Advance Cost Incurrence Written Requests, FRA's Project Manager will approve, deny, or request more information. FRA expects the following coordination, at a minimum, in response to a Written Request.

### **A. NEPA Documentation Pre-Award Activities**

The project sponsor will contact FRA's Office of Environmental Program Management to determine the appropriate class of action and to schedule a NEPA kick-off meeting before undertaking any formal actions under NEPA. If FRA approves of the project sponsor's request to initiate the NEPA process, FRA will assign an environmental protection specialist and outline further required coordination. Consistent with 23 CFR 771.113, project sponsors may not advance property acquisition, Final Design, or Construction activities until the completion of the environmental review process. Project sponsors with questions regarding this limitation should contact FRA's Office of Environmental Program Management.

### **B. Real Property Acquisition and Equipment and Construction Materials Acquisition Written Request**

1. Project sponsors must coordinate with FRA's Project Manager on Real Property Acquisition and Equipment and Construction Materials Acquisition to ensure compliance with relevant regulations and requirements as provided in FRA's Guidance on Development and Implementation of Railroad Capital Projects.
2. For projects that have not completed NEPA, project sponsors may only purchase railroad components or materials that can be used for other projects or resold. (See 23 CFR 771.113(d).)
3. For projects that have completed NEPA, project sponsors must submit a complete list of construction material to be acquired.

### **C. Final Design Coordination**

FRA's Project Manager will conduct oversight consistent with 2 CFR Part 200 and FRA policy, and may, at its discretion, conduct such oversight in the same manner and up to the same level that it would conduct oversight of a project post award.

### **D. Construction Coordination**

FRA's Project Manager will conduct oversight consistent with 2 CFR Part 200 and FRA policy, and may, at its discretion, conduct such oversight in the same manner and up to the same level that it would conduct oversight of a project post award.