



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Eligibility of
Construction and Highway Safety Equipment
Acquisition Costs as a Direct Charge

Date: December 14, 2018

From: /s/ Derrell E. Turner
Acting Associate Administrator for
Infrastructure

In Reply Refer To:
HIF-1/HSA-1

/s/ Elizabeth Alicandri
Associate Administrator for Safety

To: Division Administrators
Directors of Field Services

Purpose

The purpose of this memorandum is to clarify the guidance provided on September 8, 2017, to the Federal-aid division offices concerning the eligibility of construction and highway safety equipment acquisition costs as a participating direct charge to a single Federal-aid project when certain conditions are met. *The italicized sections have been revised since the original memorandum.*

Background

The FHWA's policy for participation in costs associated with equipment acquisition is based on the Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards in 2 CFR Part 200. States may request participation in such costs through: a) an approved indirect cost rate plan or b) on a project basis through an approved depreciation rate (amortized cost) analysis based on costs that are necessary, reasonable, and allocable to a specific Federal-aid project. Federal-aid funds will participate only in the portion of the amortized cost directly attributable to the time the equipment is used on a specific Federal-aid project.

The FHWA expects that States will continue to follow this general policy. However, the Division Administrator may approve the direct charge to an eligible Federal-aid program funding source for the up-front acquisition cost of equipment if a State's request for prior written consent [2 CFR 200.439(b)(1)] provides sufficient documentation supporting a Federal highway or transportation interest. This direct cost option provides additional flexibility to the States for costs that benefit the Federal-aid highway program.

Guidance

As defined in 2 CFR 200.33, equipment means the tangible personal property (including information technology systems) having a useful life of more than 1 year and

a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. Under these regulations, capital expenditures for equipment used in a Federal grant are generally unallowable as a direct charge to the Federal grant program except with the prior written approval of the Federal awarding agency.

If a State requests to charge the full cost of equipment acquisitions as a direct charge to a single project rather than allocating the amortized acquisition costs over the useful life of the equipment, it must provide FHWA with adequate assurances that there is a Federal highway or transportation interest in doing so. These assurances include:

- *For NHPP and STBG eligible equipment purchases, a certification that the equipment will be used on an authorized Federal-aid project within 3 months. For HSIP eligible safety equipment purchases, a certification that the equipment will be used within 3 months on **any public road** or highway consistent with the definition of a Highway Safety Improvement Project.*
- A certification that the equipment will be used for its intended purpose over the useful life of the equipment. The certification must include a discussion on the expected useful life of the equipment and the annual number and types of projects that would benefit from the use of this equipment.
- A certification that the contracting agency has in place sound internal controls for documenting and monitoring its efficient use on eligible activities. The Division Administrator may require a report from the State documenting the use of the equipment as part of its monitoring program.
- A certification that the equipment will be maintained and not lie idle for extended periods of time making it inefficient as a direct cost activity.
- Evidence that adequate internal controls are in place and reasonable assurances that Federal-aid funds are not participating in unallowable costs.

The State must also provide documentation concerning compliance with FHWA's construction contracting requirements related to equipment, including but not limited to:

- Use of publicly owned equipment (23 CFR 635.106),
- Material or product selection requirements (23 CFR 635.411), and
- Buy America requirements¹ (23 U.S.C. 313 and 23 CFR 635.410).

If the Division Administrator determines that the State's request is eligible and approves the request, the approval must be provided by the Division Administrator in writing and may not be delegated. If direct cost participation is not supported, States may continue to perform an amortization of purchase costs as is normally done for equipment and assign the allocable costs to the projects, utilizing an approved equipment usage rate.

¹ The Buy America provisions of 23 U.S.C. 313 apply to any obligation of funds under Title 23, and therefore FHWA's Buy America requirements apply to all Federal-aid projects, not just highway construction projects.

If direct cost participation is approved, a separate Federal-aid project (*i.e. a standalone project*) must be established for the sole purpose of acquiring equipment. The contracting agency must certify that the equipment will be used in accordance with the eligibility criteria for the applicable Federal-aid funding.

National Highway Performance Program and Surface Transportation Block Grant Program Projects

The FHWA participates in the costs of construction as defined in 23 U.S.C. 101. This includes all costs incidental to the construction or reconstruction of a highway on Federal-aid projects. The costs of equipment used in highway construction, or equipment used by the State to administer the Federal-aid project, are eligible project costs. However, the equipment must be necessary for the implementation of a Federal-aid project. Examples of equipment that may meet eligibility criteria as a direct charge under certain conditions include the acquisition of equipment used to construct the project or equipment used by the contracting agency to administer the project. National Highway Performance Program and Surface Transportation Block Grant Program funds cannot participate in unallowable costs, such as routine maintenance or law enforcement that is typically performed with State funds (or projects where there is no Federal highway or transportation interest).

Highway Safety Improvement Program (HSIP) Projects

The FHWA Division Administrator may approve HSIP funding for the direct charge of equipment as a highway safety improvement project, provided the activity is consistent with the State strategic highway safety plan (SHSP), and: (i) corrects or improves a hazardous road location or feature; or (ii) addresses a highway safety problem [23 U.S.C. 148(a)(4)].

The specific HSIP eligibility criteria are clarified in the [HSIP Eligibility Guidance](#), dated February 26, 2016. One of the basic foundations of the HSIP is the direct linkage between the data-driven priorities established in the SHSP and the identification, development, and implementation of HSIP projects, specifically listed in 23 U.S.C. 148(a)(4)(B). The purpose of the linkage is to ensure that the limited HSIP funds are used effectively to achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

As stated above, for the purchase of highway safety equipment a state's authorization of the up-front purchase of safety equipment qualifying as a stand-alone Highway Safety Improvement project or activity under 23 U.S.C. 148 shall be by execution of a separate, stand-alone project agreement. For HSIP eligible safety equipment purchases, the State shall provide a certification that the equipment being purchased will be used within 3 months on any public road or highway consistent with the definition of a highway safety improvement project (23 CFR 924.3).

After the initial purchase of the equipment using HSIP funds, the State may use the equipment for its intended safety purpose on any public road (including local roads) for

any project (e.g. Federal-aid or non-Federal-aid, capital improvement or maintenance, etc.).

Summary

In summary, if the Division Administrator determines that the cost of equipment is reasonable and necessary for a Federal-aid project(s) and the State provides adequate assurances of a Federal highway or transportation interest as described above, the cost of equipment acquisition may be approved as a direct charge. Otherwise, States may continue to perform an amortization of purchase costs as is normally done for construction equipment.

If you have any questions about this policy, please contact Gerald Yakowenko, Team Leader, Office of Program Administration (202-366-1562) or Karen Scurry, Office of Safety (609-637-4207).