

Expedited Project Delivery (EPD) Pilot Program

Report to Congress

September 13, 2021

The Joint Explanatory Statement for the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) requests the Federal Transit Administration (FTA) to submit a report to the U.S. House and Senate Committees on Appropriations on the selection process, the status of issuance of funding opportunities, and future funding needs of the Expedited Project Delivery (EPD) Pilot Program.

The EPD Pilot Program, as authorized by Section 3005(b) of the Fixing America's Surface Transportation Act (FAST Act), provides FTA the authority to award up to eight grants through a discretionary process. The Federal share of project costs under this program is limited to 25 percent. The FAST Act requires FTA to perform an expedited review of an application and notify the applicant in writing no later than 120 days after the date FTA receives an application as to whether the grant request has been approved or disapproved, including a detailed explanation of the reasons for disapproval.

Eligible projects are new fixed guideway capital projects, small start projects, or core capacity improvement projects that have not entered into a Full Funding Grant Agreement with FTA. The law defines these types of eligible projects for the EPD Pilot Program in a manner similar to, but not the same as, FTA's Capital Investment Grants program. New fixed guideway capital projects or small start projects may include the acquisition of real property, the initial acquisition of rolling stock for the system, the acquisition of rights-of-way, and relocation. Core capacity improvement projects may include the acquisition of real property, the acquisition of rights-of-way, double tracking, signalization improvements, electrification, expanding system platforms, acquisition of rolling stock associated with corridor improvements increasing capacity, construction of infill stations, and such other capacity improvements as FTA determines are appropriate, to increase the capacity of an existing fixed guideway system corridor by not less than 10 percent. Eligible projects must also be supported, in part, through a public-private partnership.

Eligible recipients are State or local governmental authorities that demonstrate:

- legal, financial, and technical capacities to carry out the eligible project, including the safety and security aspects of the eligible project;
- satisfactory continuing control over the use of the equipment or facilities;
- the technical and financial capacity to maintain new and existing equipment and facilities;
- that they have qualified advisors providing guidance on the terms and structure of the project who are independent of investors in the project; and
- that the existing public transportation system is in a state of good repair. This requirement may be waived by FTA if the project meets the definition of a core capacity improvement project, and FTA determines that the eligible project will allow the applicant to make substantial progress in achieving a state of good repair.

Implementation and Announcement of Funding Opportunity:

On September 12, 2018, FTA published a Federal Register Notice (FRN) soliciting expressions of interest in the EPD Pilot Program. In response to the FRN, four project sponsors, representing a total of seven projects, submitted expressions of interest. FTA held an EPD Pilot Program roundtable with these four sponsors on May 30, 2019 and followed up with those project sponsors to obtain their feedback on potential steps and alternative approaches FTA could use to streamline the EPD Pilot Program evaluation process.

FTA made an allocation totaling \$125 million to the Santa Clara Valley Transportation Authority (VTA) in San Jose, California, for the Bay Area Rapid Transit (BART) Silicon Valley Phase II project, on August 28, 2019, for \$125 million. FTA made a second allocation to the BART Silicon Valley Phase II project on January 11, 2021, in the amount of \$100 million.

On July 28, 2020, FTA published a Notice of Funding Opportunity (NOFO) in the Federal Register announcing the opportunity for eligible recipients to apply for the EPD Pilot Program. At the time of the publication of the NOFO, \$225 million was available for grant awards under the EPD Pilot Program. The NOFO indicated that FTA may award additional funds if made available by Congress for the program. All interested project sponsors, including those who submitted expressions of interest in response to the September 2018 FRN, or have received an allocation, were required to apply based on the requirements of the NOFO before they could be considered for a construction grant agreement. Project sponsors who did not previously express an interest in the EPD Pilot Program were also eligible to apply, consistent with the eligibility and application requirements of the NOFO.

To engage with all potential project sponsors, FTA held an EPD Pilot Program webinar on August 26, 2020, with 266 registrants participating. This webinar gave an overview of the EPD Pilot Program, the requirements of the NOFO, the process for applying via FTA's electronic application, and the grant evaluation process. FTA answered questions during the webinar regarding the requirements of the NOFO and the EPD Pilot Program process. Follow-up conversations with individual grant recipients occurred after the conclusion of the webinar.

FTA developed an EPD Pilot Program website that includes an overview, objectives, eligible projects and recipients, application process, and funding information. The website also contains Standard Cost Category Workbooks developed for the EPD Pilot Program. FTA updates the content on this webpage as information changes.

Application and Selection Process:

FTA provides extensive technical assistance to potential grant applicants as soon as they express interest in the EPD Pilot Program. To date, technical assistance has been provided regarding the program and application requirements and process of the EPD Pilot Program; assistance in the development of the project's Simplified Trips-on-Project Software (STOPs) model for ridership forecasting; and review of Public-Private Partnership and Critical Third Party contractual agreements. Per the NOFO, applications must be submitted electronically via FTA's EPD Pilot Program secure application submission site and must include responses to all sections of the forms unless indicated as optional. The information on the forms and attachments are used to determine applicant and project eligibility for the program and to evaluate proposals based on the criteria described in the NOFO. Once an application is submitted, FTA reviews the completeness

of the application. This is a high-level review to determine if any requested information is missing or incomplete. If the submitted application is missing requirements, or requirements are not complete, then the application will be denied. The project sponsor may resubmit its application once it believes it has addressed the missing or incomplete item(s). FTA will review an application that is deemed “complete” within the 120-day statutorily required phase, which includes a detailed review of the application and coordination with the Office of the Secretary of Transportation for its consideration of FTA’s recommended action. Within 120 days, FTA will notify the project sponsor if the project is approved or disapproved. If an application does not meet the requirements of the NOFO, FTA’s written notice will include a detailed explanation of the reasons for the disapproval.

Funding Needs:

To date, Congress has appropriated \$325 million for the EPD Pilot Program; \$100 million in Fiscal Year (FY) 2021, \$100 million in FY 2020, \$100 million in FY 2019, \$20 million in FY 2017, and \$5 million in FY 2016. All \$325 million is available for a grant award, of which \$100 million currently remains available for allocation.

Current Applications:

VTA submitted an EPD Pilot Program application for the BART Silicon Valley Phase II project and entered the 120-day statutory required phase on May 14, 2021. The project’s estimated capital cost, per VTA’s April 7, 2021 application is \$6.941 billion, with a proposed 25 percent EPD Pilot Program share of \$1.735 billion. In June 2021, FTA provided VTA with an updated project capital cost, based on FTA’s risk assessment, of \$9.148 billion. FTA intends to obligate either \$2.287 billion (25 percent of the updated Project cost) or 25 percent of the final project cost, whichever is less. As the project has advanced, FTA has allocated a total of \$225 million in appropriated funds to the project. Upon VTA’s submission of a complete application that is approved, followed by steps to execute an EPD Pilot Program Full Funding Grant Agreement between FTA and VTA for the Silicon Valley Phase II project, the \$225 million allocated would be awarded in a grant to VTA. During the application review process the project’s estimated capital cost will be reviewed and is subject to change as the project’s design increases and construction bids are acquired. Additional appropriations and allocations would be required to complete the Federal EPD Pilot Program funding commitment for the project. FTA Administrator Nuria Fernandez is recused from VTA’s EPD Pilot Program application.

Although FTA has engaged with other potential project sponsors, to date, FTA has not received any other applications for the EPD Pilot Program. FTA is open to having conversations with congressional staff to discuss ways to get more applicants.