



January 8, 2010

U.S. Department of Transportation
Docket Operations
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Federal Transit Administration Docket Number FTA-2009-0030

Dear Docket Clerk:

On behalf of the 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comment on the Federal Transit Administration's (FTA) Advance Notice of Proposed Rulemaking (ANPRM) concerning Capital Project Management, published September 10, 2009 at 74 FR 46515.

About APTA

APTA is a non-profit international trade association of 1,500 public and private member organizations, including transit systems; high-speed rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comments

We applaud FTA's continuing efforts to seek consensus in advance of formal rulemaking processes and intent to streamline the project management oversight system. FTA's extension of the comment period to facilitate outreach demonstrated its dedication to the collaborative process. In addition to the webinars, we believe FTA would be well served by hosting regional listening sessions prior to drafting a Notice of Proposed Rulemaking (NPRM) to ensure the ultimate draft incorporates the collective knowledge of a broader cross section of grantee personnel than is possible with a webinar.

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As evidenced in the webinars, some of the proposals in this ANPRM would run contrary to FTA's streamlining effort. While we appreciate the importance of protecting the federal investment in transit projects, many of the FTA proposals would be counterproductive, change the federal role from project oversight to project management, increase local costs, and effectively decrease oversight of those projects most in need of strong oversight. Moreover, the ANPRM describes a shift in policy from assuming the competence of FTA grantees to assuming their incompetence and unwillingness to be accountable for their projects. We believe this philosophical shift will prove detrimental to the program, adding expense and time as project sponsors unnecessarily prove baseline competencies and FTA reviews additional submissions.

Applicability of the Rule

The proposed expansion of the applicability of the rule is problematic, both in terms of what projects are covered and the breadth of responsibilities that would shift from project sponsors to FTA and its Project Management Oversight (PMO) contractors. Currently, a "major capital project" is defined as funded through the New Starts or Small Starts programs or a project costing in excess of \$100 million. For these projects, FTA reviews the grantee's technical capacity to assign appropriate oversight resources. As proposed, FTA would shift to a model where it reviews the grantee's technical capacity for any project and uses that analysis to determine whether the project should be deemed a major capital project.

This proposal would greatly expand the number of projects subject to PMO review, including fixed guide-way projects that are outside FTA's statutory authority under 49 USC 5327. Even assuming a greatly expanded interpretation of section 5327 authority exists, expansion of the oversight universe would be counterproductive. Costs to grantees would be increased, FTA's already thinly-stretched contractor and in-house resources would be given even more tasks, and the quality of oversight would likely decline, threatening the success of major capital projects that would otherwise benefit greatly from the advice and assistance of dedicated PMO resources.

Additionally, the proposal would effectively shift FTA participation from project oversight to project management through an expansion of documents and practices that would be subject to FTA review and approval. Subjecting asset management plans to FTA approval, disregarding certifications, expanding use and review of financial plans, expanding FTA review of grantee staffing, and expanding the use of FTA generated check lists all indicate a move from grantee to FTA control of project management. Each of these steps would add time and costs to FTA assisted projects without concurrent improvement in project delivery.

Throughout this section of the ANPRM, FTA has proposed extremely subjective criteria to determine applicability. The concepts of "significant expense," "complexity," "more experienced" grantees, and "routine" projects lend themselves to inconsistent application. This would invariably lead to misapplication of precious oversight resources.

Principles and Requirements for Capital Projects

The provisions of 49 USC 5309(c)(2) specifically accept grantee certifications as sufficient bases for technical capacity and other required determinations. The proposal to move away from certifications would slow the grant making process, and increase costs for both the grantee agencies required to prepare submittals to establish basic competencies and FTA as it expends PMO contractor resources to review these submissions. Instead, FTA should continue to rely on the many tools already available to ensure grantee technical capacity. In addition to annual certifications, FTA gathers pertinent information from quarterly reports and meetings, triennial reviews, milestone progress reports, and other sources and this information is easily sufficient to confirm grantee technical competence.

While we agree that an asset management plan is a useful tool that should be universally used for fixed guide-way capital projects, the development and implementation of such plans should be left within the sole discretion of local project sponsors. Expanding the PMO program to include asset management plans would add costs and time for submissions and FTA review, and would add little to the quality of projects. The statutory requirement in Intermodal Surface Transportation Efficiency Act (ISTEA) for Transit Management Plans was subsequently eliminated and we do not believe it valuable or appropriate to essentially recreate that requirement through FTA review and approval of asset management plans. Additionally, the proposed expansion of checklists to fixed guide-way modernization and other projects would similarly impact project costs and schedules.

The eight proposed volumes of an integrated Project Management Plan (PMP) and the proposed requirement that each serve as a prerequisite of entering Preliminary Engineering (PE) would add unnecessary costs to projects and delay project implementation. Many aspects of these plans are logical products of the PE process rather than prerequisites and attempts to define them prior to PE would be of little or no value. Additionally, requiring FTA approval of sub-elements of the PMP not required by 49 USC 5327(a) would likely add time and costs to projects. Grantees should not be required to update PMPs when updates are unnecessary, as in the case of most state of good repair projects, which are completed in a relatively short time frame. The current practice of updating PMPs only when appropriate as design and construction progress should be maintained. Finally, the proposed integrated approach would once again shift decision making from grantees to FTA and its PMO contractors.

We do not believe fixed guide-way modernization or state of good repair projects can appropriately be grouped with New Starts or Small Starts projects. The former are accomplished by experienced agencies and involve greatly reduced risk for the federal investment. Even when they involve costs in excess of \$100 million, these projects are essentially routine and extensive oversight unnecessary to protect the federal investment.

FTA Oversight

As an overarching theory in prescribing oversight requirements, FTA should always remain mindful of the relative risk borne by and relative investment by FTA and the local sponsor. FTA oversight should not dominate what are largely local efforts and FTA should not substitute its judgment in areas where all or the vast majority of risk is borne by the sponsor. We believe that once the federal investment is capped and cost risk effectively shifted to the local sponsor, FTA actions should not be allowed to increase those costs through delay or otherwise. FTA oversight, while vital to the federal interest, should add value to projects rather than add costs that must be borne by project sponsors.

We believe FTA's risk assessment processes provide an area where streamlining could greatly increase the value of the PMO program. The current sequential nature of risk management reviews serves to delay project implementation. By moving to a real time review model, risk assessment could be an aspect of technical assistance, maintaining the benefit of the reviews without the burden of delay.

We believe much of FTA's financial capacity and technical capacity assessment should continue to be done at a programmatic level through existing tools such as triennial reviews. This is more cost effective and would minimize redundancy, uncertainty and delay, while saving money for both sponsors and FTA while expediting project delivery. Moreover, improvements in management processes and capabilities from a programmatic review would apply to multiple projects, increasing the value of the oversight program.

Recommendations

We believe continuation of the collaborative process can overcome the issues we have identified, strengthen the protection of the federal investment in transit projects, and add value to projects through the oversight process.

We believe regional listening sessions are vital to ensuring the ultimate rule is valuable and comprehensive and to avoid unintended consequences that detract from the PMO program and FTA assisted projects. Regional listening sessions would carry the added benefit of promoting consistency across regions. As with many aspects of nationwide programs, regional differences in interpretations and practices detract from the PMO program and cause uncertainty for grantees and PMO contractors as well.

Additionally, we believe listening sessions in conjunction with APTA events such as the 2010 legislative, bus, and rail conferences would be of great benefit, since those sessions would bring together commentators from across the country, once again supporting consistency in the application of the ultimate rule. We would be pleased to assist FTA in scheduling these sessions.

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As always, we appreciate this opportunity to work with FTA on this important aspect of transit policy. For additional information, please contact James LaRusch APTA's chief counsel and vice president corporate affairs at (202) 496-4808 or jarusch@apta.com.

Sincerely yours,

A handwritten signature in cursive script that reads "William Millar".

William Millar
President

WM/rk