

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Funding Opportunity (NOFO) for the U.S. Department of Transportation's Nationally Significant Federal Lands and Tribal Projects Program for Fiscal Year 2023

AGENCY: Federal Highway Administration (FHWA), U.S. Department of
Transportation (DOT)

ACTION: NOFO for the Fiscal Year (FY) 2023 Nationally Significant Federal Lands and
Tribal Projects Program, Number 693JJ3-NSFLTP-FY23.

SUMMARY: The purpose of this notice is to solicit applications for the Nationally Significant
Federal Lands and Tribal Projects (NSFLTP). Funds for the FY NSFLTP grant program are to
be awarded on a competitive basis to projects of national significance for construction,
reconstruction, or rehabilitation of transportation facilities within, adjacent to, or providing
access to Federal or Tribal lands.

DATES: Applications must be **submitted by 11:59 P.M. EST on September 6, 2023**. Late
applications will not be accepted.

ADDRESSES: Applications must be submitted through <https://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT

Frances Ramirez, Office of Federal Lands Programs, FHWA, Office of Federal Lands
Highway, 22001 Loudoun County Parkway, Building E1, Suite 150, Ashburn, VA
20147, email: NSFLTP-Program@dot.gov

In addition, FHWA will regularly post information about the NSFLTP Program on its Website
at <https://flh.fhwa.dot.gov/programs/nsfltp/>.

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for NSFLTP Program grants. Applicants should read this notice in its entirety to submit eligible and competitive applications.

N/A	SUMMARY INFORMATION
A	PROGRAM DESCRIPTION
B	FEDERAL AWARD INFORMATION
C	ELIGIBILITY INFORMATION
D	APPLICATION AND SUBMISSION INFORMATION
E	APPLICATION REVIEW INFORMATION
F	FEDERAL AWARD ADMINISTRATION INFORMATION
G	FEDERAL AWARDED AGENCY CONTACTS
H	OTHER INFORMATION

Section A (Program Description) describes FHWA’s goals and purpose in making awards, and Section E (Application Review Information) describes how FHWA will select from eligible applications.

A. PROGRAM DESCRIPTION

1. Overview

The Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114-94, as extended) established the NSFLTP Program. The Infrastructure Investment and Jobs Act (Pub. L. 117-58, also known as the “Bipartisan Infrastructure Law” (BIL)) provided \$55 million per year in contract authority funding from the Highway

Trust Fund and authorized up to an additional \$300 million per year from the General Fund, subject to appropriation, for each of FYs 2022 through 2026. The BIL also modified the NSFLTP Program in several ways, such as:

- Reducing minimum project sizes from \$25 million to \$12.5 million;
- Requiring exactly half of the funding go to projects on Tribal transportation facilities;
- Increasing the Federal share of projects on Tribal transportation facilities to 100 percent;
- Allowing all Federal funds, including those made available under Titles 23 and 49 of the United States Code (U.S.C.), to serve as the non-Federal share of the project; and
- Requiring the funding of at least one eligible project submitted by the National Park Service for a unit of the National Park System with 3 million annual visitors or more.

The NSFLTP NOFO makes \$88.29 million in FY 2023 funding available for award. The FY 2023 funding will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order (EO) 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64355).

The purpose of the NSFLTP grants is to provide Federal funding to projects of national significance for construction, reconstruction, or rehabilitation of transportation facilities within, adjacent to, or providing access to Federal or Tribal lands. Assistance listing 20.205, Highway Planning and Construction, applies.

2. NSFLTP Grant Priorities

This section briefly discusses priorities specific to NSFLTP and those related to FHWA's overall mission that are reflected in the selection criteria and NOFO requirements. Please note that project applications for projects on Federal lands transportation facilities or Federal lands access transportation facilities are required to address all statutory and discretionary criteria described below. However, in order to streamline the application process for projects on Tribal lands, applications for Tribal transportation facilities do not need to address Discretionary criteria II, III, IV, and V. FHWA does not require and will not consider these discretionary criteria when reviewing applications for projects on Tribal transportation facilities. For projects on Federal lands transportation facilities or Federal lands access transportation facilities. FHWA seeks projects that:

- Further the goals of DOT, which include safety and the state of good repair;
- Improve the quality of life for a local community and/or the traveling public;
- Improve physical or operational deficiencies of the facility;
- Use new technologies and innovations; and
- Support economic vitality at the national and regional level.

Prioritizing Safety in All Investments and Projects

The National Roadway Safety Strategy (NRSS), issued January 27, 2022, commits DOT to respond to the current crisis in roadway fatalities by 'taking substantial, comprehensive action to significantly reduce serious and fatal injuries on the Nation's roadways,' in pursuit of the goal of achieving zero roadway deaths through a Safe System Approach. The outcomes that are anticipated from the

projects funded by NSFLTP should align with the NRSS.

Grant Priorities/Section Criteria for Applications for projects off of Tribal Transportation Facilities

For applications for projects off of Tribal transportation facilities, FHWA will seek projects that:

- Ensure equitable investment in the needs of underserved communities;
- Align with FHWA's mission and with priorities such as equity, climate and sustainability, and economic strength and global competitiveness; and
- Support the creation of good-paying jobs with the free and fair choice to join a union, and the incorporation of strong labor standards and workforce programs.

Climate Change and Sustainability

DOT seeks to fund projects under the NSFLTP Program that reduce greenhouse gas (GHG) emissions in the transportation sector, incorporate evidence-based climate resilience measures and features, reduce the lifecycle GHG emissions from the project materials, and avoid adverse environmental impacts to air or water quality, wetlands, and endangered species, and address the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with EO 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619).

Section E provides more information on the specific measures a project located on a Federal lands transportation facility or Federal lands access transportation facility may undertake to support these goals.

Equity and Justice⁴⁰

DOT seeks to award projects under the NSFLTP that will create proportional impacts to all populations in a project area, remove transportation related disparities to all populations in a project area, and increase equitable access to project benefits, consistent with EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009). DOT also seeks to award projects that address equity and environmental justice, particularly for communities that have experienced decades of underinvestment and are most impacted by climate change, pollution, and environmental hazards, consistent with EO 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619). Section E provides more information on the specific measures a project located on a Federal lands transportation facility or Federal lands access transportation facility may undertake to support these goals.

Workforce Development, Job Quality, and Wealth Creation

DOT intends to use the NSFLTP Program to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, in project planning stages, consistent with EO 14025, Worker Organizing and Empowerment (86 FR 22829), and EO 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335). DOT also intends to use the NSFLTP Program to support wealth creation, consistent with the DOT's Action Plan through the inclusion of local inclusive economic development and entrepreneurship such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-

owned Businesses, or 8(a) firms. Section E provides more information on the specific measures a project located on a Federal lands transportation facility or Federal lands access transportation facility may undertake to support these goals.

3. Additional Information

DOT and FHWA are committed to considering project funding decisions holistically among the various discretionary grant programs available in BIL. DOT and FHWA also recognize that applicants may be seeking funding from multiple discretionary grant programs and opportunities. An applicant may seek the same award amounts from multiple DOT discretionary opportunities or seek a combination of funding from multiple DOT opportunities. The applicant should identify any other DOT programs and opportunities they intend to apply for (or utilize if the Federal funding is already available to the applicant), and what award amounts they will be seeking, in the appropriate sections of this NOFO.

B. FEDERAL AWARD INFORMATION

1. Amount Available – For FY 2023, per BIL, the Secretary may award up to \$88.29 million. This includes \$55 million in contract authority authorized from the Highway Trust Fund for the NSFLTP, which is reduced to \$48.29 million due to the imposition of the FY 2023 obligation limitation contained in the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), and an additional \$40 million in FY 2023 General Funds appropriated in the Consolidated Appropriations Act, 2023. Of the amounts made available to carry out this program, 50 percent shall be used for eligible projects on

Federal lands transportation facilities and Federal lands access transportation facilities (as those terms are defined in Section 101(a) of Title 23 U.S.C.); and 50 percent shall be used for eligible projects on Tribal transportation facilities (as that term is defined in Section 101(a) of Title 23 U.S.C.). In addition, for the \$40 million made available by the Consolidated Appropriations Act, 2023, at least \$20 million must be set-aside for grants to Tribal governments.

2. Award Size – The NSFLTP Program provides discretionary funding for projects that have an estimated construction cost of at least \$12.5 million. FHWA reserves the right to award less than the maximum amount presented in the application. The Federal Government is not obligated to make any Federal award as a result of the announcement, and the announcement of an award does not guarantee funding to the successful applicant. FHWA will only obligate funds to successful applicants upon execution of a grant agreement.
3. Availability of Funds – The funds provided for this program for FY 2023 are available for obligation until September 30, 2026.

C. ELIGIBILITY INFORMATION

1. Eligible Applicants
 - a. Per the FAST Act, Section 1123(b), entities eligible to receive funds under the Federal Lands Access Program (23 U.S.C. § 204), the Federal Lands Transportation Program (23 U.S.C. § 203), the Tribal Transportation Program (23 U.S.C. § 202), and the Federal Lands

Planning Program (23 U.S.C. § 201) may apply for funding under the NSFLTP Program, except that a State, county, or unit of local government may apply for funding under the NSFLTP Program only if sponsored by an eligible Federal Land Management Agency (FLMA) or federally recognized Tribe.

- b. FLMA and Tribes will provide a list of project applications they are sponsoring from their organization on behalf of State or local governments.
 - I. To promote effective communication and coordination, an FLMA or Tribe should identify one individual within their organization who will serve as Sponsorship Coordinator.
 - II. The Sponsorship Coordinator is responsible for providing the list of sponsored projects to the NSFLTP Program contacts listed on page 1 of this NOFO. The use of Grants.gov permits a wide range of eligible applicants to enter project applications. The Sponsorship Coordinator role ensures applications have been coordinated through and approved by FLMA and/or Tribal leaders.
 - III. The list of sponsored projects should provide enough detail so that FHWA can match the projects to those received via Grants.gov.
 - IV. A list of Sponsorship Coordinators can be obtained from the NSFLTP Program contacts listed on page 1 of this NOFO, or at

the following Website –

<https://flh.fhwa.dot.gov/programs/nsfltp/>.

- c. FLMAs and Tribes may sponsor applications on behalf of:
 - I. A State or group of States;
 - II. A metropolitan planning organization (MPO);
 - III. A unit of local government or group of local governments;
 - IV. A political subdivision of a State or local government;
 - V. A special purpose district or public authority with a transportation function, including a port authority;
 - VI. A group of FLMAs;
 - VII. A consortium of Tribal governments; or
 - VIII. A multi-State or multijurisdictional group of public entities.
- d. Recipients of NSFLTP Program funding are responsible for meeting reporting requirements.

2. Cost Sharing and Matching

- a. The Federal share of the total cost of projects on a Tribal transportation facility shall be up to 100 percent, meaning that no cost sharing or matching funds are required for Tribal transportation facility projects. For projects on all other facilities, the Federal share shall be up to 90 percent, meaning the recipient must provide at least 10 percent in matching funds.
- b. The non-Federal share can be:

- I. Any other Federal funds¹;
- II. Any private or public source;
- III. Donations of funds, materials, services, right-of-way acquisition, or utility relocation; or
- IV. Tapered match, which is a form of Federal-aid matching flexibility that allows a project's Federal share to vary over the life of the project as long as the final contribution of Federal funds does not exceed the project's maximum authorized share. Applicants should indicate that a tapered match will be sought within the project narrative when describing how the non-Federal share will be funded.

- c. Matching funds are subject to the same Federal requirements as NSFLTP Program funds and requirements in 2 CFR 200.306, Cost sharing or matching. Funds used for preliminary engineering including highway design, may not be applied as match as these are ineligible activities under this program. The application and project agreement must document the match requirement and any related commitments. Costs incurred prior to the grant agreement award are not eligible as matching funds, without prior approval from FHWA.
- d. Toll credits under 23 U.S.C. §120(i) cannot be used to satisfy the statutory cost sharing requirement of a NSFLTP award.

3. Grant Eligibility Requirements - To meet the minimum statutory requirements

¹ Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58) § 11127(2); FAST Act § 1123(g)(2)

for eligibility, a project must meet all the following conditions:

- a. The project is a single continuous project;
- b. The project meets at least one of the following definitions of transportation facilities from 23 U.S.C. § 101, except that such facilities are not required to be included in an inventory described in 23 U.S.C. § 202 or 23 U.S.C. § 203:
 - I. “Federal lands transportation facility,” which means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government;
 - II. “Federal lands access transportation facility,” which means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, Tribal, municipal, or local government; or
 - III. “Tribal transportation facility,” which means a public highway, road, bridge, trail, or transit system that is located on or provides access to Tribal land;
- c. The project demonstrates completion of all activities required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 et seq.) through:

- I. A record of decision, if the NEPA class of action is an environmental impact statement;
 - II. A finding of no significant impact, if the NEPA class of action is an environmental assessment; or
 - III. A determination that the project is a categorical exclusion (CE) under the lead Federal Agency's NEPA procedures;
- d. The project must have estimated construction costs, based on the results of preliminary engineering, equal to or greater than \$12,500,000; and
 - e. The project will use NSFLTP Program funds only for construction, reconstruction, or rehabilitation of transportation facilities. Project design activities are not eligible for NSFLTP Program funds or allowable toward match requirements. In addition, activities involved in the construction, reconstruction, or rehabilitation of transportation facilities do not include maintenance activities. For example, constructing publicly accessible facilities for a transit system, such as a bus shelter for awaiting passengers, would qualify as a construction activity. Building a maintenance structure for buses as part of a transit facility would qualify as a maintenance activity and would be ineligible for funding.
- 4. The project may be in either an urban or rural area. For purposes of this notice, FHWA will consider a project to be in a rural area if the entirety of the project

is located outside of an urban area², as defined under 23 U.S.C. § 101(a)(36).

Rural and urban definitions differ in some other DOT programs, including the Transportation Infrastructure Finance and Innovation Act and the Nationally Significant Freight and Highway Projects Program.

D. APPLICATION and SUBMISSION INFORMATION

1. Address to Request Application – Applications must be accessed at and submitted to Grants.gov.
2. Content and Form of Application Submission – Applicants must include in the application package the following:
 - a. Standard Form 424 (Application for Federal Assistance);
 - b. Standard Form 424C (Budget Information for Construction Programs);
 - c. Standard Form 424D (Assurances for Construction Programs);
 - d. Grants.gov Lobbying Form (Certification Regarding Lobbying)
 - e. Disclosure of Lobbying Activities form (SF-LLL)
 - f. A cover page, including the following chart:

Project Name	
Total Project Cost	\$
NSFLTP Program Grant Request Amount	\$
Federal (DOT) Funding including Program Funds Requested	\$
Total non-Federal Funding	\$

² [Defining Census Bureau Urban Areas](https://www.census.gov/library/video/2022/defining-census-bureau-urban-areas.html) - <https://www.census.gov/library/video/2022/defining-census-bureau-urban-areas.html>.

Is the project within, adjacent to, or accessing Federal and/or Tribal land	Yes/No
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- g. Completed NEPA document;
- h. A project narrative – The application must include information required for FHWA to determine that the project satisfies the eligibility requirements described in Section C above. The project narrative should include basic project information, a detailed project budget, information for FHWA to assess the applicable project merit criteria specified in Section E.1.a and E.1.b, and information for FHWA to assess the project readiness of the project. FHWA recommends the project narrative adhere to the following basic guidelines to clearly address the program requirements and make critical information readily apparent. While applicants are not required to follow the specific format described here, this organization, which addresses each relevant aspect of project readiness, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, FHWA encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application. If possible, Website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted,

applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. FHWA recommends a table of contents and using appropriately descriptive final names (e.g., “Project Narrative,” “Maps,” “Memoranda of Understanding and Letters of Support,” etc.) for all attachments. To the extent practicable, applicants should provide supporting data and documentation in a form that is publicly available and directly verifiable by FHWA. FHWA may share application information within DOT or with other Federal Agencies if FHWA determines that sharing is relevant to the respective program’s objectives.

- I. Project Description – Describe what activities the requested NSFLTP Program funds and matching funds will support, how the project is nationally significant based on authorized criteria and the Secretary’s and FHWA’s objectives, information on the expected users of the project, a description of the transportation challenges the project aims to address, how the project will address these challenges, the project’s history, and a description of any previously incurred costs.
- II. Project Location – Provide a detailed description of the location of proposed project and geospatial data, if available, for the project, as well as a map of the project’s location and its connections to existing transportation infrastructure.

III. Project Parties – Provide information about who is involved and their respective roles in supporting the project.

IV. Grant Funds, Sources, and Uses of Project Funds –

i. Funding – Describe the project’s budget in detail and the plans for covering the full cost of the project from all sources, including the Federal share and any applicable matching share. Document the funding that will be used to construct this project, including past or pending Federal funding requests for this project. Include the size, nature, and source(s) of the required match for those funds, if applicable. For projects on non-Tribal transportation facilities, demonstrate that the requested NSFLTP Program funds do not exceed 90 percent of project costs. For Tribal transportation facilities, the entire project may be funded with NSFLTP funds with no match or cost sharing required.

ii. Budget – Provide a detailed project budget containing a breakdown of how the funds will be spent. The budget should estimate – by dollar amount and percentage of cost – the cost of construction work for each project component. The budget should identify other Federal funds the applicant is applying for or

has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: (1) non-Federal; (2) NSFLTP Program funding being requested; and (3) other Federal funding with specific amounts from each funding source. The budget should be detailed enough to demonstrate that the project satisfies the NSFLTP Program cost-sharing requirements described in Section C.2, if those are applicable, and those associated with any additional category of Federal funding. The budget should clearly identify any expenses expected to be incurred between the applicant being selected for award, and obligation of NSFLTP Program funds because such expenses, except as authorized by FHWA, are not eligible for reimbursement and may not be used toward the non-Federal match requirements.

iii. Criteria

- Statutory Criteria – The project narrative should include sufficient information for FHWA to evaluate how well the project aligns with the statutory criteria described in Section E.1.a. below.
- Discretionary Criteria – The project narrative should

include sufficient information for FHWA to evaluate how well the project aligns with Discretionary Criteria described in Section E.1.b. As noted previously, applications for projects on Tribal transportation facilities are exempt from addressing Discretionary Criteria II, III, IV, and V. FHWA will not require nor consider those criteria in evaluating proposed projects on Tribal transportation facilities.

V. Indicate if this project is urban or rural, per the definition of these terms provided in Section C.

VI. To the extent practicable, provide data and evidence of project merits in a form that is verifiable or publicly available. FHWA may ask any applicant to supplement data in its application but expects applications to be complete upon submission.

VII. Project Readiness – This section of the application should include information that, when considered with the project budget information presented elsewhere in the application, is sufficient for FHWA to evaluate whether the project is reasonably expected to begin construction well within the period of funding availability. To assist FHWA’s project readiness assessment, the applicant should provide the information requested on technical feasibility, project schedule, project approvals, and project risks, each of which is described in greater detail in the following

sections. Applicants are not required to follow the specific format described below, but this organization, which addresses each relevant aspect of project readiness, promotes a clear discussion that assists project evaluators. Guidance describing how FHWA will evaluate a project's readiness is described in Section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

- i. Technical Feasibility. The applicant should demonstrate the technical feasibility of the project with engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the NSFLTP application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk- mitigation measures.

Applicants should include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

- ii. Project Schedule. The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (programming on the

Statewide Transportation Improvement Program), 100 percent design completion; right-of-way acquisition; approval of plans, specifications and estimates; procurement; project partnership and implementation agreements including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

- All necessary activities will be complete to allow NSFLTP funds to be obligated sufficiently in advance of the statutory deadline (September 30, 2026, for FY 2023 funds), and that any unexpected delays will not put the funds at risk of expiring before they are obligated;
- The project can begin construction quickly upon obligation of NSFLTP funds, and that the grant funds will be spent expeditiously once construction starts; and
- All real property and right-of-way acquisition will be completed in a timely manner in accordance with Title 49, Code of Federal Regulations (CFR), part 24, 23 CFR part 710, and other applicable legal requirements or a statement that no acquisition is necessary. A

plan for securing any required right-of-way agreements should be included.

iii. Required Approvals.

- Environmental Permits and Reviews. The NEPA review must be complete at the time of application submittal. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits, other than NEPA, necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State, and local requirements. Specifically, the application should include:

- Information about the NEPA documentation of the project. An applicant should indicate the date of completion of the NEPA process and provide a Website link or other reference to the final CE, Finding of No Significant Impact, Record of Decision, and any other NEPA documents prepared. If the last

Agency action with respect to NEPA documents occurred more than 3 years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA reconsideration requirements.

- Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies³, indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State, or local requirements, and when such approvals are expected. Applicants should provide a Website link or other reference to copies

³ Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

of any reviews, approvals, and permits prepared.

- Environmental studies or other documents— preferably through a Website link—that describe in detail known project impacts, and possible mitigation for those impacts.
- A description of discussions with the appropriate FHWA field or Headquarters office regarding the project’s compliance with NEPA and other applicable Federal environmental reviews and approvals.
- A description of public engagement about the project that has occurred. Successful public engagement shows involvement with the general public, governmental entities - including cities, local governments, regional and MPOs - federally recognized Tribes, labor organizations, private sector/industry representatives, representatives of the transportation and freight logistics industries, State public transportation

agencies, and especially, rural, underserved and disadvantaged communities. Applications should include details on the degree to which public comments and commitments have been integrated into project development and design, as well as information about how engagement opportunities have been made accessible for persons with disabilities and persons with limited English proficiency.

- State and local approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning approvals and State Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP) funding. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

VIII. Assessment of Project Risks and Mitigation Strategies. Project risks, such as procurement delays, environmental uncertainties,

increases in real estate acquisition costs, uncommitted local match, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake to mitigate those risks. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

3. Unique entity identifier and System for Award Management (SAM) –

a. Each applicant must:

- I. Be registered in SAM.gov before submitting its application;
- II. Provide a valid unique entity identifier in its application; and
- III. Continue to maintain an active SAM.gov registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding Agency. FHWA may not award a grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM.gov requirements and, if an applicant has not fully complied with the requirements by the time FHWA is ready to make a grant, FHWA may determine that the applicant is not qualified to receive a grant and use that determination as a basis for making a grant to another applicant.

4. Submission Dates and Times –

- a. Deadline – Applications must be submitted by 11:59 P.M. EST on the date identified on Page 1 of this NOFO. Information regarding awards and available funding will be posted to the Website cited on page 1 of this NOFO.
- b. To submit an application through Grants.gov, applicants must:
 - I. Register at www.SAM.gov and obtain a Unique Entity Identifier;
 - II. Create a Grants.gov username and password; and
 - III. Respond to the registration email sent to the applicants E-Business point of contact (POC) from Grants.gov and login at Grants.gov to authorize the applicant as the Authorized Organization Representative (AOR).
- c. Please note there can be more than one AOR for an organization. Applicants are encouraged to submit applications in advance of the application deadline; however, applications will not be evaluated, and awards will not be made until after the application deadline.
- d. Please note the Grants.gov registration process usually takes 2-4 weeks to complete and FHWA will not consider late applications that are the result of failure to register or comply with Grants.gov applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at <http://www.grants.gov/web/grants/applicants/applicant-faqs.html>. If applicants experience difficulties at any point during the registration or

application process, please call the Grants.gov Customer Service Support Hotline at 1(800) 518-4726, Monday-Friday from 7:00 a.m. to 9:00 p.m. EST.

- e. Consideration of Applications – Only applicants who comply with all submission deadlines described in this notice and electronically submit valid, sponsor-approved applications through Grants.gov will be considered for award. Applicants are strongly encouraged to make submissions in advance of deadlines. FHWA may, but is not required to, request additional information to allow an applicant to confirm, correct, or complete missing information in the project application.
 - f. Late Applications – Applications received after the deadline will not be considered.
5. Intergovernmental Review – The NSFLTP Program is not subject to the Intergovernmental Review of Federal programs under EO 12372.
6. Funding Restrictions – Developmental phase activities including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering, design, and other preconstruction activities are not eligible for funding under the NSFLTP Program.
7. Other Submission Requirements –
- a. Include a table of contents, maps, and graphics, as appropriate, to make the information easier to review.
 - b. FHWA recommends that the project narrative not exceed 10 pages, excluding supporting documentation, and be prepared with as a

single- spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins.

- a. Provide Website links to supporting documentation rather than copies of these supporting materials. If supporting documents are submitted, clearly identify the relevant portion of the project narrative that each document supports.
- b. FHWA recommends using appropriately descriptive names (e.g., “Project Narrative,” “Maps,” “Memoranda of Understanding and Letters of Support,” etc.) for all attachments.
- c. The complete application must be submitted via www.Grants.gov. In the event of system problems or the applicant experiences technical difficulties, contact Grants.gov technical support via telephone at 1-800-518-4726 or email at support@grants.gov.

E. APPLICATION REVIEW INFORMATION

FHWA will award the NSFLTP Program funds based on the selection criteria and policy considerations outlined below,

1. Criteria
 - a. Statutory Criteria – In accordance with the FAST Act, Section 1123, when selecting projects for funding under the NSFLTP Program, FHWA will consider the extent to which the project:
 - I. Furthers the goals of DOT, including safety, state of good repair, economic competitiveness, and quality of life, by considering:

- i. The project's safety improvements compared to a baseline in which the project is not done;
 - ii. Technical data provided about existing facilities in poor repair or, where the project is new construction, the extent to which the existing conditions demonstrate a need for new transportation facilities;
 - iii. The project's economic benefits – such as travel time savings, vehicle operating cost savings, and emissions reductions – compared to a baseline in which the project is not done;
 - iv. How the project is expected to improve the quality of life for a local community and/or the traveling public, providing data and analysis where relevant and feasible, such as estimates of trips and/or vehicle miles traveled.
- II. Improves the condition of critical transportation facilities, including multimodal facilities. FHWA will evaluate this criterion by considering the extent to which the project improves the condition of a transportation facility, whether the facility is multimodal, and the critical nature of the facility. Examples may include but are not limited to: a bridge in poor condition that may be subject to closure in the absence of funds; or a primary transportation facility that provides access to critical community services, high use recreation destination areas, or

other economic generators within Tribal and/or Federal lands.

III. Needs construction, reconstruction, or rehabilitation. FHWA will consider data provided by the applicant documenting any physical or operational deficiencies of the existing facility that would warrant construction, reconstruction, or rehabilitation, and how the proposed project will address those deficiencies.

IV. Has costs matched by funds that are not provided under the NSFLTP Program, giving preference to:

- i. Projects with over 50 percent in non-NSFLTP Program funding, with additional preference given to projects that exceed even this threshold; followed by
- ii. Projects with between 30 percent and 50 percent in non-NSFLTP Program funding; followed by
- iii. Projects with between 10 percent and 29 percent in non-NSFLTP Program funding; followed by
- iv. Projects with 10 percent or less in non-NSFLTP Program funding.

V. Is included in or eligible for inclusion in the National Register of Historic Places. A project that meets this criterion will be more competitive than a project that does not.

VI. Uses new technologies and innovations that enhance the efficiency of the project. FHWA will assess the extent to which the applicant uses innovative strategies promoted by

FHWA's Every Day Counts initiative. For more information on the Every Day Counts initiative, see:

<https://highways.dot.gov/federal-lands/programs-tribal/partners-resources/every-day-counts>.

VII. Is supported by funds, other than funds received under the NSFLTP Program, to construct, maintain, and operate the facility.

FHWA will consider what other funds exist, besides those available for match, to aid in maintenance and operation of the facility, as well as the reasonable expectation that those funds will remain available. Historical trends, current policy, or future feasibility analyses can be used as evidence to substantiate or support the claims in the application.

VIII. Spans two or more States. A project that meets this criterion will be more competitive than a project that does not.

IX. Serves land owned by multiple Federal Agencies or Tribes.

A project that meets this criterion will be more competitive than a project that does not.

- b. Discretionary Criteria – After applying the above preferences, FHWA will consider the following key objectives. As noted previously, FHWA will not require nor consider the below Discretionary Criteria II, III, IV, and V when reviewing applications for projects on Tribal transportation facilities. FHWA will still consider the below Discretionary Criteria I when reviewing applications for projects on Tribal transportation

facilities.

- I. The project's demonstrated project readiness. During application evaluation, FHWA will consider project readiness to assess the likelihood of a successful project. In that analysis, FHWA will consider three evaluation ratings: Environmental Risk, Technical Capacity, and Financial Capacity. The Environmental Risk assessment analyzes the project's environmental approvals and likelihood of the necessary approval affecting project obligation. The Technical Capacity assessment will review the applicant's capacity to successfully deliver the project in compliance with applicable Federal, State, and local requirements based on factors including, but not limited to, the recipient's experience working with Federal Agencies, previous experience with DOT discretionary grant awards, and the technical experience and resources dedicated to the project. Technical capacity will also consider the project schedule with an emphasis on the completion of plans, specifications and estimates and projected timeframe to advertise the construction phase of the project. The Financial Capacity assessment will review the availability of matching funds and whether the applicant presented a complete funding package. Risks do not disqualify projects from award, but competitive applications clearly and directly describe

achievable risk mitigation strategies. A project with mitigated risks or with a risk mitigation plan is more competitive than a comparable project with unaddressed risks.

- II. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, whether the project is located in an underserved community, as defined in EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Sections 2(a) and (b). Applicants are encouraged to use Climate & Economic Justice Screening Tool (CEJST), a new tool by the White House Council on Environmental Quality, that aims to help Federal Agencies identify disadvantaged communities as part of the Justice40 initiative to accomplish the goal that 40 percent of benefits from certain Federal investment reach disadvantaged communities. Applicants should use CEJST as the primary tool to identify disadvantaged communities (Justice40 communities). Applicants are strongly encouraged to use the USDOT Equitable Transportation Community (ETC) Explorer to understand how their community or project area is experiencing disadvantage related to lack of transportation investments or opportunities. Through understanding how a community or project area is experiencing transportation-related disadvantage, applicants are able to address how the

benefits of a project will reverse or mitigate the burdens of disadvantage and demonstrate how the project will address challenges and accrued benefits. FHWA will NOT require nor consider this criterion when reviewing applications for projects on Tribal transportation facilities.

III. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, the extent to which the project reduces GHG emissions and improves environmental justice as defined in EO 14096 section 2b.⁴. FHWA will NOT require nor consider this criterion when reviewing applications for projects on Tribal transportation facilities. FHWA encourages applicants for projects located on a Federal lands transportation facility or Federal lands access transportation facility to consider reducing GHG emissions and improving environmental justice in project planning efforts and to incorporate project elements dedicated to reducing GHG emissions and improving environmental justice.

- i. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, the project will be assigned a Climate Change and environmental justice rating based on how it addresses

⁴ <https://www.federalregister.gov/d/2023-08955/p-11>

these areas.

- Applications that focus on reducing GHG emissions and improving environmental justice in both planning activities and specific project elements will receive a high rating.
- Applications that focus on reducing GHG emissions or improving environmental justice in planning activities or project elements, but not both, will receive a medium rating.
- Applications that address this criterion in neither planning activities nor project elements will receive a low rating.

ii. Applicants choosing to address the planning portion of this criterion should describe in detail, provide supporting documentation, or otherwise demonstrate how they meet at least one of the options below:

- A Local/Regional/State Climate Action Plan which results in lower GHG emissions has been prepared and the project directly supports that Climate Action Plan;
- A Local/Regional/State Equitable Development Plan has been prepared and the

project directly supports that Equitable Development Plan;

- The project sponsor has used tools such as the CEJST to identify disadvantaged communities or the USDOT ETC Explorer to understand how their community or project area is experiencing disadvantage related to lack of transportation investments or opportunities; or
- A Local/Regional/State Energy Baseline Study has been prepared and the project directly supports that study.

iii. Applicants choosing to address the project

components portion of this criterion should describe how they meet at least one of the options below:

- The project application demonstrates that the project will result in significant GHG emissions reductions relative to a no-action baseline and to other reasonable alternatives;
- The regional TIP or STIP primarily focuses on funding for state of good repair, and clean transportation options, including public transportation, walking, biking, micro-mobility;
- The project sponsor demonstrates that they have

considered improving EJ in a meaningful way by demonstrating consideration of EJ in alternatives analysis and final project design;

- The project supports a modal shift in freight or passenger movement to reduce GHG emissions or reduce induced travel demand;
- The project utilizes demand management strategies to reduce congestion, induced travel demand, and GHG emissions;
- The project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both;
- The project funds the purchase of zero-emission vehicles or low-emission vehicles;
- The project supports the installation of electric vehicle charging stations;
- The project promotes energy efficiency;
- The project serves the renewable energy supply chain;
- The project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in GHG, improved stormwater management, or improved

habitat connectivity;

- The project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm (e.g., brownfield redevelopment);
- The project supports or incorporates the construction of energy- and location-efficient buildings;
- The project proposes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both;

IV. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, the extent to which the project will advance the Racial Equity and Barriers to Opportunity Program objective. FHWA will NOT require nor consider this criterion for projects located on Tribal transportation facilities.

- i. FHWA is committed to delivering the benefits of Federal investments in climate and sustainable transportation to disadvantaged communities. To further this goal, FHWA encourages applicants for projects located on a Federal lands transportation facility or Federal lands access transportation facility

to describe credible planning and actions to address potential inequities and barriers to equal opportunity in the project as reflected in EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and Section A.2 of this NOFO.

- ii. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, the application will be assigned a Racial Equity and Barriers to Opportunity rating based on how it addresses racial equity and barriers to equal opportunity in (1) planning and policies and (2) project investments.

- Applications that address both planning and policies and project investments will receive a high rating.
- Applications that address either planning and policies or project investment, but not both, will receive a medium rating.
- Applications that do not address racial equity and barriers to opportunity in either their sponsors' planning and policies or project investment will receive a low rating.

iii. Applicants intending to address the planning and policies component portion of the racial equity and barriers to opportunity criterion will have addressed this area if the NSFLTP application incorporates any of the following, although these are not the only bases that FHWA may use to determine an application addresses this area:

- An equity impact analysis has been completed for the project;
- The project sponsor has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies designed to ensure equity in the overall project delivery and implementation;
- The project sponsor has conducted meaningful public engagement on an adopted equity program/plan or project, with an explanation of how the engagement was processed and incorporated into transportation planning, ensuring that underserved communities are provided a full and equitable opportunity to be involved in the planning processes and that all public engagement opportunities are accessible for persons with

disabilities and persons with limited English proficiency.

iv. Applicants intending to address the project investments component portion of the racial equity and barriers to opportunity criterion will need to explain how the project either proactively address racial equity and barriers to opportunity or redress prior inequities and barriers to opportunity, and whether those investments are documented by previously incurred and/or future costs of the project. Examples of Racial Equity and Barriers to Opportunity Project Investment include, but are not limited to:

- Project investments that improve or newly connect underserved communities to proactively address barriers to opportunity or redress past inequities and barriers to opportunity. For example:
 - o Physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that are directly related to the project and either redress past barriers to opportunity or that

proactively create new connections and opportunities for underserved communities;

- o New or improved infrastructure for walking, biking, and rolling access for the disabled to reverse the disproportional impacts of crashes on people of color, and mitigate neighborhood bifurcation; and
 - o New or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities.
- Project investments that directly partner with underserved communities to proactively address barriers to opportunity or redress past inequities and barriers to opportunity. For example:
 - o Project sponsor partnerships with land banks or land trusts for equitable and fair transfer of excess right-of-way, and other properties directly related to the project;
 - o Project sponsor partnerships with, or

investments in, multimodal mobility providers to proactively address potential racial equity and barriers to opportunity or redress past inequities and barriers to opportunity directly related to the project;

- Definitions for “equity⁵” and “underserved communities⁶” are found in EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Sections 2(a) and (b).

V. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, the extent to which the project will advance Workforce Development, Job Quality and Wealth Creation. For these projects, FHWA intends to use the NSFLTP Program opportunity to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and workforce programs, in particular registered apprenticeships and labor management partnerships in project planning stages and

⁵ <https://www.federalregister.gov/d/2021-01753/p-5>

⁶ <https://www.federalregister.gov/d/2021-01753/p-6>

program delivery. FHWA will NOT require nor consider this criterion when reviewing applications for projects located on Tribal transportation facilities.

- i. For projects located on a Federal lands transportation facility or Federal lands access transportation facility, the application will be assigned a Workforce Development, Job Quality and Wealth Creation rating based on how many of the following elements the application addresses.

- Applications that address five or more elements will receive a high rating.
- Applications that address one to four elements will receive a medium rating.
- Applications do not address any elements will receive a low rating.

- ii. For the Workforce Development, Job Quality and Wealth Creation objective, the elements FHWA will consider for projects located on a Federal lands transportation facility or Federal lands access transportation facility are that:

- The project application includes project labor agreements (i.e., pre-hire collective bargaining agreements between unions and

contractors that govern terms and conditions of employment for all workers on a construction project);

- The project application includes a description of how the project will expand strong labor standards, including not only compliance with prevailing wage requirements but also non- construction labor provisions that are relevant to the project such as transit, railroad, and Buy America protections;
- The project application attests that notice of workers' rights under the National Labor Relations Act, prevailing wage laws, and EO 11246, Equal Employment Opportunity (EEO), and information on whistleblower protection laws including the right to report safety violations free from intimidation and harassment;
- The project application demonstrates a commitment to create registered apprenticeship positions and use apprentices on the funded project, sometimes called an apprenticeship utilization requirement (e.g.,

requiring that 15 percent of all labor hours will be performed by registered apprentices);

- The project application includes high-quality workforce development programs to help train, place, and retain people in good-paying jobs. This could include project goals or requirements for participation in pre-apprenticeship, registered apprenticeship, or other State approved training programs, if applicants can explain how their program leads workers from underrepresented populations to fill journey worker positions. Workforce development programs could be invested in by the project sponsor or created in partnership with workforce entities like workforce boards or community colleges;
- The project applicant provides supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of

apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking;

- The project applicant demonstrates a commitment to good-paying jobs with the free and fair choice to join a union by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs;
- The project applicant leverages formula and/or discretionary funds, outside of the NSFLTP Program, to support workforce development;
- The project application describes a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hire and preventing harassment on work sites, and that plan demonstrates action to create an inclusive

environment with a commitment to equal opportunity, including:

- o Affirmative efforts to remove barriers to EEO above and beyond complying with Federal law and proactive partnerships with the U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) to promote compliance with the requirements of EO 11246, EEO;
- o No discrimination in the use of criminal background screens and taking affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements;
- o Efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin;
- o The inclusion of training on anti- harassment and third-party reporting procedures, and robust

anti-retaliation measures,
covering employees and
contractors.

- The project application shows an approach to address local inclusive economic development and entrepreneurship such as outreach to and solicitation of small and disadvantaged businesses.

2. Review and Selection Process – FHWA will review all eligible applications received by the deadline. The review and selection process will consist of a Technical Review and Senior Review. All eligible applications will be rated first with statutory criteria. After that, they will be evaluated with applicable discretionary criteria.

a. Technical Review - In the Technical Review, a team comprising technical staff from FHWA will review all eligible applications and rate each project's alignment with the statutory selection criteria, using the following guidelines:

I. Highly Recommended – The project aligns extremely well with the objectives of the statutory criteria under consideration.

Projects with four or more criteria rated as “Strong Alignment” are likely to receive this rating, as well as projects that have “Alignment” with all the statutory criteria.

II. Recommended – The project aligns well with the objectives of

the statutory criteria. Projects with at least one criterion rated as “Strong Alignment” or that have “Alignment” with most of the statutory criteria (5 or more) are likely to receive this rating.

III. Acceptable – The project somewhat aligns well with the objectives of the statutory criterion under consideration.

Projects with no criteria rated as “Strong Alignment” but with several criteria rated as “Alignment” are likely to receive this rating.

IV. Not Recommended – The project does not align well with objectives of the statutory criterion under consideration or does not align with eligibility criteria.

- b. The Senior Review Team, comprising senior leadership from FHWA, will determine which projects to advance to FHWA Administrator.
- c. The final funding decisions will be made by FHWA Administrator.
- d. FHWA may, during the selection process, discuss with an applicant the feasibility of potentially being awarded a lesser amount than originally requested in the application due to the quantity, size, and scope of the applications received in response to this notice and the results of the application review process. Discussions do not obligate FHWA to make an award.

3. Additional Information –

Risk Assessment - Prior to award, each selected applicant will be

subject to a risk assessment required by 2 CFR 200.206. FHWA must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM.gov, currently the Federal Awardee Performance and Integrity Information System (FAPIIS). An applicant may review information in FAPIIS and comment on any information about itself. FHWA will consider comments by the applicant in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants. FHWA reserves the right to deny an award based on the results of the risk assessment.

F. FEDERAL AWARD ADMINISTRATION INFORMATION

1. Federal Award Notices – FHWA will announce awarded projects by posting a list of selected projects at <https://flh.fhwa.dot.gov/programs/nsfltp/>. Notice of selection is not authorization to begin performance or to incur costs for the proposed project. Following the announcement, FHWA will contact the POC listed in form SF-424 to initiate negotiation of a project-specific agreement. If the negotiations do not result in an acceptable submittal, FHWA reserves the right to terminate the negotiation and decline to fund the applicant. Unless authorized by FHWA in writing after FHWA's announcement of NSFLTP Program selections, any costs that a recipient incurs before FHWA executes a grant agreement for that recipient's project are ineligible for reimbursement

and are ineligible match for cost share requirements.

2. Administrative and National Policy Requirements – All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR Part 200, as adopted by DOT at 2 CFR Part 1201. In addition, applicable Federal laws, rules, and regulations of FHWA will apply to the projects that receive NSFLTP Program funds, including planning requirements, agreements, Buy America compliance, and other grant program requirements.
 - a. NEPA of 1969 – Funding recipients must comply with NEPA under 42 U.S.C. part 4321 et seq. and the Council on Environmental Quality’s NEPA implementing regulations at 40 CFR parts 1500-1508, where applicable.
 - b. Other Administrative and Policy Requirements
 - I. As expressed in EO 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Infrastructure projects are subject to the Build America, Buy America Act (Pub. L. No 117- 58, div. G sections 70901–70927), as well as subject to the Buy America requirements (23 U.S.C. § 313) and Buy American requirements (41 U.S.C. § 8301 et seq.), as applicable. FHWA expects all recipients to be able to complete their projects

without needing a waiver. However, to obtain a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project. Projects under this notice may be subject to the domestic preference requirements at 23 U.S.C. § 313, 41 U.S.C. § 8301 et seq. and section § 70914 of the Build America, Buy America Act, as implemented by the Office of Management and Budget (OMB) and FHWA. Except as authorized under waivers issued by FHWA, those statutes generally require the steel, iron, manufactured products, and construction materials used in a project to be produced in the United States. For additional information on 23 U.S.C. § 313, see

<https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>.

- II. NSFLTP Program award applicants should demonstrate that they have a plan for compliance with civil rights obligations and nondiscrimination laws, including the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, and accompanying regulations. Recipients of Federal transportation funding will be required to comply fully with DOT guidance for authorities related to the ADA, 49 CFR part 21 and Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of

1973, and all other applicable civil rights requirements. This should include a current Title VI plan, completed Community Participation Plan, or timeline for completion as referenced in Section E. In addition, to the extent practical, FHWA encourages projects funded with NSFLTP Program funds to adhere to the proposed Public Rights-of-Way Accessibility Guidelines. FHWA's Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

- III. In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT and FHWA; and applicable Federal financial assistance and contracting principles promulgated by OMB. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If FHWA determines that a recipient has failed to comply with applicable Federal

requirements, FHWA may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

IV. Federal Contractor Compliance – As a condition of receiving a grant award and consistent with EO 11246, all federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on the geographic area in which the project is located for construction work hours and for work being performed by people of color.⁷ Under Section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of 7 percent workers with disabilities. The DOL’s OFCCP is charged with enforcing EO 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974. The OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Through the program, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts

⁷ dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf

compliance evaluations, and helps to build partnerships between the project sponsor, prime contractor, subcontractors, and relevant stakeholders. Additional information on how OFCCP makes their sections for participation in the Mega Construction Project Program is outlined under “Scheduling” on the DOL Website:

<https://www.dol.gov/agencies/ofccp/faqs/construction-compliance>.

- V. Critical Infrastructure Security and Resilience – It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for NSFLTP Program grant funding must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by FHWA, will be required to do so before receiving funds or will be required to complete related actions consistent with Presidential Policy Directive 21 – Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical

Infrastructure Control Systems, found at <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>.

VI. Program Evaluation – As a condition of grant award, NSFLTP

Program grant recipients may be required to participate in an evaluation undertaken by DOT or FHWA or another Agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. FHWA may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT or FHWA staff.

Recipients and subrecipients are also encouraged to incorporate program evaluations, including associated data collection activities, from the outset of their program design and implementation to meaningfully document and measure their

progress. Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Pub. L. No. 115-435 (2019) urges Federal awarding Agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, improve equitable delivery, and elevate program service and delivery across the program lifecycle. Under the Evidence Act, evaluation means “an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.” Evidence Act section 101 (codified at 5 U.S.C. § 311). Credible program evaluation activities are implemented with relevance and utility, rigor, independent and objectivity, transparency, and ethics (OMB Circular A-11, Part 6, Section 290).

For NSFLTP Program grant recipients, evaluation expenses are allowable costs (either as direct or indirect costs), unless prohibited by statute or regulation, and such expenses may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation. (2 CFR Part 200).

3. Reporting – Each recipient of NSFLTP Program funding must submit the Federal Financial Report (SF-425) on the financial condition of the project and the project’s progress bi-annually, as well as an Annual Budget Review and

Program Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the NSFLTP Program. FHWA reserves the right to request additional information, if deemed needed, to better understand the status of the project. The successful applicant will provide additional financial reporting beyond the semi-annual reporting if such statements are necessary to address FHWA's Stewardship and Oversight responsibility of the funds. The successful applicant also agrees to allow periodic project inspections and FHWA will provide notice for such inspections.

4. Reporting Matters Related to Integrity and Performance – If the total value of a selected recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding Agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the information reported to SAM.gov and FAPIIS, about civil, criminal, or administrative proceedings. This is a statutory requirement under Section 872 of Pub. L. 110-417, as amended (41 U.S.C. § 2313). As required by Section 3010 of Pub. L. 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. FEDERAL AWARDING AGENCY CONTACT(S)

For further information concerning this notice please contact:

1. Frances Ramirez, NSFLTP Program Manager, via email at NSFLTP-Program@dot.gov. Office hours are

from 8:00 a.m. to 3:30 p.m. EST, Monday through Friday, except Federal holidays.

2. For legal questions, please contact Mr. David Serody, Office of the Chief Counsel, via email at david.serody@dot.gov, or by phone at (202) 366-4241. Office hours are from 9:00 a.m. to 5:30 p.m. EST, Monday through Friday, except Federal holidays.

H. OTHER INFORMATION

1. Protection of Confidential Business Information – All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methods that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following (1) note on the front cover that the submission “Contains Confidential Business Information (CBI)”; (2) mark each affected page “CBI”; (3) highlight or otherwise denote the CBI portions; and (4) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. FHWA protects such information from disclosure to the extent allowed under applicable law. In the event FHWA receives a Freedom of Information Act (FOIA) request for information that

the applicant has marked in accordance with this section, FHWA will follow DOT procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under 49 CFR 7.29 will be exempt from disclosure under FOIA.

2. FHWA Feedback on Applications – FHWA will not review applications in advance, but FHWA staff are available for technical questions and assistance. FHWA strives to provide as much information as possible to assist applicants with the application process. Unsuccessful applicants may request a debrief after the selected funding recipients are publicly announced.
3. Rural Applicants – User-friendly information and resources regarding DOT’s discretionary grant programs relevant to rural applicants can be found on the Rural Opportunities to Use Transportation for Economic Success Website at www.transportation.gov/rural.

Authority: Section 1123 of [Public Law 114-94, as amended by Section 11127 of Public Law 117-58](#).