

Texas Administrative Code

TITLE 43
PART 1
CHAPTER 15
SUBCHAPTER E
RULE §15.52

TRANSPORTATION
TEXAS DEPARTMENT OF TRANSPORTATION
FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS
FEDERAL, STATE, AND LOCAL PARTICIPATION
Agreements

This section describes the contents of the department's funding agreement with a local government for a highway improvement or other transportation project and the responsibilities of the parties to such an agreement. The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement entered into under this subchapter.

(1) Right of entry. If the local government is the owner of the project site, it shall permit the department or its authorized representative to occupy the site to perform all activities required to execute the work. If the department is the owner of the project site, it shall permit the local government or its authorized representative to occupy the site to perform all approved activities required to execute the work.

(2) Right of way and utility relocations and adjustments. The local government will provide all necessary right of way and utility relocations and adjustments, whether publicly or privately owned, in accordance with §15.55 of this subchapter (relating to Construction Cost Participation). Existing utilities will be relocated and adjusted by the local government with respect to location and type of installation in accordance with the requirements of the department under §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title relating to Utility Accommodation).

(3) Responsibilities of the parties. The local government and the department shall identify in the agreement the responsibilities of each party. Responsibilities assigned to the local government must comply with subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.

(A) Local government performance and management of projects. For state highway improvement projects and other transportation projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:

- (i) perform a highway improvement project on the state highway system using employees under the direct control of the local government;
- (ii) outsource preliminary project engineering and design, bid opening, contract award, and construction management of an improvement project for which federal or state reimbursement is requested;
- (iii) contract for highway construction; or
- (iv) perform other projects and programs as authorized by law.

(B) Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the executive director must authorize the local government to perform that act. The executive director may also approve the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, driveway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.

(C) Conditions. A local government may perform an act described in subparagraph (A) of this paragraph only if the following conditions are met:

- (i) the local government must commit in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agree to forfeit any claim to federal and state reimbursement if it fails to comply;
- (ii) the project must be authorized by the commission in the current Unified Transportation Program, Statewide Transportation Improvement Program, or a specific minute order;
- (iii) a project on the state highway system performed or managed by a local government must be operationally beneficial to the state;
- (iv) a roadway construction project requested by the local government that is to be on the state highway system, and for which local management is proposed, must be funded at least 50 percent from a non-federal and non-state source, unless a lesser percentage is approved by the executive director;
- (v) a project that includes the local government improving freeway mainlanes on the state highway system must have the express written approval of the executive director;
- (vi) the local government must agree to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and
- (vii) the department must review and approve all plans, contract awards, and change orders.

(D) Approval. Prior to execution of the funding agreement, a local government must receive written approval by the executive director to perform or manage one or more elements of a highway improvement or other transportation project. In determining whether to recommend approval or disapproval of a project, the department will evaluate the following criteria:

- (i) availability of department resources to perform or manage the highway improvement or other transportation project in an efficient and timely manner;

manner, consistent with federal, state, and department regulations, standards, and specifications;

(iii) the percentage of total project cost to be provided by the local government;

(iv) the department's determination of cost effectiveness of local performance of the work as compared to the department's performance of the project; and

(v) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(4) **Funding arrangement.** The agreement will specify the funding arrangement designated by the department. Funding arrangements in the agreement shall include any adjustments required by §15.55 of this subchapter. The funding arrangement for drainage construction costs will be as specified under §15.54(e) of this subchapter (relating to Construction). Available funding types are as follows:

(A) **Fixed price.** The fixed price amount will be based on the department's estimated cost of the work to be performed.

(i) In determining the fixed price amount, the department will consider:

(I) eligibility of local government requested work for federal or state cost participation;

(II) the department's experience in performing or managing the proposed type of work;

(III) the clarity of defining the local government's proposed work scope and the department's ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(ii) A local government is responsible for the fixed price amount, which is not subject to adjustment unless:

(I) differing site conditions are encountered;

(II) further definition of the local government's requested scope of work identifies greatly differing costs from those estimated;

(III) work requested by the local government is determined to be ineligible for federal participation; or

(IV) the adjustment is mutually agreed to by the department and the local government.

(B) **Specified percentage.** The local government is responsible for a specified percentage of actual project costs.

(i) Minimum percentage participation amounts for preliminary engineering, construction engineering, construction, right of way, and eligible utilities for various state and federal funding programs will be designated by the department. In addition to the designated specified percentages, with this funding type, the local government is also responsible for the direct cost of any work included in the project which is ineligible for federal or state participation and all project costs that are greater than the maximum state and federal participation specified in the funding agreement between the department and the local government.

(ii) For federally funded non-construction programs, the local government is responsible for any required match and for any work included that is ineligible for federal or state participation.

(C) **Periodic.**

(i) The executive director may approve a local government to make periodic payments of its funding share only if:

(I) the periodic payments sought are based on the estimated cost for the work for which the funds are received and the local government proposes a schedule to repay the entire amount; and

(II) the local government does not have a delinquent obligation to the department, as defined in 5.10 of this title (relating to Collection of Debts).

(ii) In approving a request for periodic payments, the executive director will consider:

(I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) needs of the department for delivery of the project to proceed in advance of receiving local funding participation;

(IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and

(V) any other considerations relating to the benefit of the state, the public, and the operations of the department.

(D) **Off-State Highway System Bridge Program Fixed Amount.** For projects funded in the Off-State Highway System Bridge Program, the local government is responsible for a fixed amount that is based on the specified percentage of the estimated direct costs for preliminary engineering, construction engineering, and construction, and for the actual direct costs for right of way and eligible utilities. The estimated direct costs that will be used to establish the fixed amount under this subparagraph, are based on the department's estimate of the eligible work at the time the agreement is executed. The local government is responsible for the estimated direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Highway Bridge Program, 23 U.S.C. §144 and Highway Bridge Replacement and Rehabilitation Program, 23 C.F.R. §650 Subpart D. The fixed amount under this subparagraph will be adjusted through the execution of an amendment to reflect additional costs resulting from changes made at the request of the local government, either during preliminary engineering or construction.

into, and retained in, the state treasury.

(6) Amendments. In the case of significantly differing site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department, and the local government will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government.

(7) Payment provision. The agreement will establish the conditions for payment by the local government, including, but not limited to, the method of payment and the time of payment.

(A) Fixed price. If a fixed price funding arrangement is used, the fixed price amount is not subject to adjustment, except as provided for in paragraph (4)(A)(ii) of this section.

(B) Specified percentage.

(i) Upon execution of the agreement or at a later date, unless periodic payments have been requested by the local government and approved by the executive director, the local government will pay, as a minimum, its funding share for the estimated cost for any right of way and preliminary engineering for the project. Unless periodic payments have been requested by the local government and approved by the executive director, the local government, before the department's scheduled date for construction contract letting, will remit to the department an amount equal to the remainder of the local government's funding share for the project.

(ii) After the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(C) Periodic. After a periodically paid project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

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TITLE 43

PART 1

CHAPTER 15

SUBCHAPTER E

RULE §15.55

TRANSPORTATION

TEXAS DEPARTMENT OF TRANSPORTATION

FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

FEDERAL, STATE, AND LOCAL PARTICIPATION

Construction Cost Participation

(a) Required cost participation. The commission may require, request, or accept from a local government matching or other funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives.

(1) Participation ratios. Except as provided in subsections (b) and (d) of this section, the agreement between the local government and the department must include participation ratios as described in subsection (c) of this section.

(2) In-kind contributions. The department will accept in-kind contributions for local government matching or other funds only under agreements that do not include highway construction.

(b) Economically disadvantaged counties. In evaluating a proposal for a highway improvement project with a local government that consists of all or a portion of an economically disadvantaged county, the executive director shall, for those projects in which the commission is authorized by law to provide state cost participation, adjust the minimum local matching funds requirement after receipt of a request for adjustment under paragraph (4) of this subsection

(1) Commission certification. The commission will certify a county as an economically disadvantaged county on an annual basis as soon as possible after the comptroller reports on the economic indicators listed in Transportation Code, §222.053(a).

(2) Local match adjustment for a county described by Transportation Code, §222.053(a). In determining the adjustment to the local matching funds requirement, and a local government's effort and ability to meet the requirement, the commission will consider a local government's:

(A) population level;

(B) bonded indebtedness;

(C) tax base;

(D) tax rate;

(E) extent of in-kind resources available; and

(F) economic development sales tax.

(3) Local match adjustment for a county described by Transportation Code, §222.053(a-1). The adjustment will be equivalent to the highest adjustment rate set in the last year the county was considered to meet the criteria set out in Transportation Code, §222.053(a).

(4) Request for adjustment. The city council, county commissioners court, district board, or similar governing body of a local government that represents all or a portion of an economically disadvantaged county, shall submit a request for adjustment to the local district office of the department. The request will include, at a minimum:

(A) the proposed project scope;

(B) the estimated total project cost;

(C) a breakdown of the anticipated total cost by category (e.g., right-of-way, utility adjustment, plan preparation, construction);

(D) the proposed participation rate;

(E) the nature of any in-kind resources to be provided by the local government;

(F) the rationale for adjusting the minimum local matching funds requirement; and

(G) any other information considered necessary to support a request.

(5) Timing of determination. The executive director will determine whether to make an adjustment at the time the local government submits a proposal for highway improvement or other transportation project.

(6) Definition. For purposes of this subsection, "executive director" means the executive director or his or her designee, not below the level of district engineer or division or office director.

(c) Participation ratios. The department will establish federal, state, and local cost participation ratios for highway improvement or other transportation projects, subject to the availability of funds to the department. In-kind participation will be valued as described in §15.52(7)(E) of this subchapter (relating to agreements).

(d) Off-state highway system bridge program.

otherwise.

(A) Bridge--For an equivalent-match project, a bridge or other mainlane cross-drainage structure, including low water crossings (with or without conduit).

(B) Deficient bridge--A bridge having a structural load capacity or other safety condition that is inadequate.

(C) District engineer--The chief executive officer in each designated district office of the department.

(D) Equivalent-match project--A project in which the local government will improve the structural load capacity or other safety condition of off-state system bridges utilizing 100% local funds.

(E) Participation-waived project--An off-state system bridge project in which the state agrees to pay for local participation for eligible preliminary engineering, construction, and construction engineering costs as shown in subsection (c) of this section. This project must be authorized for development only, or for development and construction, on the department's approved Unified Transportation Program, satisfy minimum standards established by the department for off-state system bridges, and meet the additional requirements of this subsection.

(F) Safety work--Work performed as part of an equivalent-match project that improves the safety of the project. This work may include, but is not limited to, providing improved structural load capacity, improved hydraulic capacity, increased roadway width, adequate bridge rail, and adequate approach guardrail.

(2) Waiver. The district engineer may waive the requirement for a local government to provide the original 10% estimate of direct costs for preliminary engineering, construction engineering, and construction funds on the participation-waived project(s) if the local governmental body commits by written resolution or ordinance, as described in paragraph (4) of this subsection, to spend an equivalent amount of funds for structural improvement or other safety work on another bridge or bridges on the equivalent-match project(s) within its jurisdiction or the jurisdiction of a geographically adjacent or overlapping governmental unit. An equivalent amount includes, but is not limited to, expenditures for direct or indirect costs for structural improvement or other safety work on bridge(s) in the equivalent-match project(s). Work on one or more equivalent-match projects may be credited to one or more participation-waived projects.

(3) Eligibility. A local government is eligible for a waiver if:

(A) the construction contract for the participation-waived project has not been awarded;

(B) work on the equivalent-match project has not begun prior to approval of the waiver (approval of the waiver does not guarantee that the participation-waived project agreement will be executed);

(C) the local government is in compliance with load posting and closure regulations as defined in the National Bridge Inspection Standards under 23 C.F.R. §650.303;

(D) the bridge on the proposed equivalent-match project(s) is a deficient bridge, or a bridge that is weight restricted for school buses; and

(E) the equivalent-match project increases the structural load capacity of the existing bridge, replaces the bridge with a new bridge, or otherwise increases safety, with a minimum upgrade to safely carry expected school bus loading.

(4) Request for waiver. To request a waiver, a local government must provide a written request to the district engineer that includes the location(s), description of structural improvement or other safety work proposed, estimated cost for the equivalent-match project(s), and a copy of the local governmental body's resolution or ordinance. The resolution or ordinance must acknowledge assumption of all responsibilities for engineering and construction and complying with all applicable state and federal environmental regulations and permitting requirements for the bridge(s) on the equivalent-match project(s).

(5) Considerations. In approving a request for waiver, the district engineer will consider:

(A) the type of work proposed for the equivalent-match project(s);

(B) regional transportation needs; and

(C) past performance under this subsection.

(6) Approval. The district engineer will submit a letter to the local government indicating the district engineer's approval or disapproval of the waiver. If disapproved, the letter will state the reasons for disapproval. If the waiver is approved, the letter will state that the local government, for the equivalent-match project(s) will assume:

(A) all costs of the work;

(B) responsibility for complying with all applicable state and federal environmental regulations and permitting requirements; and

(C) responsibility for the engineering and construction necessary for completion of the work.

(7) Agreement and conditions.

(A) If the district engineer approves the waiver, the local government and the department will enter into an agreement for the participation-waived project as specified in §15.52 of this subchapter. One or more participation-waived project agreements can utilize one or more common or independent equivalent-match projects if the total equivalent-match project amount equals or exceeds the total remaining local participation amount being waived at the time the agreement is executed, and the common agreements are adequately cross-referenced. Previously executed agreements may be amended to incorporate these participation waiver provisions, or to utilize an additional equivalent-match project(s) for any outstanding amount not previously waived, provided the construction contract for the participation-waived project has not been awarded and the equivalent-match work has not begun.

other safety improvements on the equivalent-match project(s). If more than one participation-waived project utilizes a common equivalent-match project, the time period allowed for completion of the equivalent-match project(s) will begin when the first of the participation-waived projects is awarded. The district engineer may specify a period less than three years for completion of equivalent-match projects if project specific conditions warrant. If specified, the shortest allowable work period must be explicitly stated in the agreement(s). No later than 30 days after completion, documentation of completion of the equivalent-match project(s) requirement will be provided by letter to the district engineer. If the local government fails to adequately complete the equivalent-match project(s), it will be excluded from future waivers under this subsection for a minimum of five years. The district engineer may grant an extension to the three-year completion requirement if a contract for the equivalent-match project(s) has been executed within that three years and the contract timeline for completion is reasonable. In the absence of information suggesting that a shorter or longer period is appropriate, two years or less will be presumed to be a reasonable time, for a maximum of five years to complete the equivalent-match project(s) following award of the programmed bridge. The granting of an extension to the three-year time limit must be done in writing in response to a written request to the district engineer from the local government. The extension approval must specify a new required completion date.

(C) With the approval of the district engineer, an equivalent-match project(s) may be substituted by subsequent amendment to the participation-waived project agreement(s). A substitution may be allowed for unforeseen circumstances, including but not limited to, an equivalent-match project that is selected for replacement under some other program of work. Work on the substituted equivalent-match project(s) must be completed within a maximum of three year after the award of the construction contract for the original participation-waived project.

(D) The local government is responsible for all of the direct cost of any participation-waived project cost item or portion of a cost item that is not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program under 23 U.S.C. §144 and 23 C.F.R. §650 Subpart D. The local government is also responsible for any costs resulting from changes made at the request of the local government.

(E) The local government will be responsible for 100% of right of way and utilities for the participation-waived project.

(F) A local government located in an economically disadvantaged county that receives an adjustment under subsection (b) of this section may participate in the provisions of this subsection in the amount of its reduced matching funds requirement.

(G) The department will not reimburse funds already received by the department under the terms of existing agreements. Funds already received for a specific project(s) may be credited against the local government's required participation for the subsequent participation-waived project agreement(s) for that same project(s).

(H) Any equivalent-match project(s) cost that is in excess of the local government's required participation for a specific participation-waived project agreement(s) cannot be credited for use on a future participation-waived project(s).

(I) Each equivalent-match project(s) must be specifically identified in the participation-waived project agreement(s) at the time of execution.

(J) The local government must pay its funding share of the estimated participation-waived project cost, as provided in §15.52(7)(A) of this subchapter, for any local participation balance that is remaining at the time the project agreement(s) is executed. This balance would include any remaining required local participation amount in excess of the amount waived as a result of credit for equivalent-match work to be performed as part of the agreement.

(8) Projects with neighboring states. Local cost participation is not required for a bridge connecting Texas with a neighboring state.

Source Note: The provisions of this §15.55 adopted to be effective September 26, 1996, 21 TexReg 8957; amended to be effective January 1, 1998, 22 TexReg 12090; amended to be effective January 1, 1998, 22 TexReg 12090; amended to be effective February 21, 1999, 24 TexReg 1194; amended to be effective August 20, 2000, 25 TexReg 7781; amended to be effective November 14, 2001, 26 TexReg 9227; amended to be effective September 19, 2002, 27 TexReg 8776; amended to be effective January 9, 2005, 29 TexReg 12241; amended to be effective January 5, 2006, 30 TexReg 8995; amended to be effective August 19, 2010, 35TexReg7084; amended to be effective April 19, 2012, 37 TexReg 2686; amended to be effective May 14, 2014, 39 TexReg 1733; amended to be effective July 17, 2019, 44 TexReg 3551; amended to be effective December 4, 2019, 44 TexReg 7416

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Figure: 43 TAC §15.55(c)

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
Project is on the Interstate Highway System	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State
Project is on the State Highway System (except Farm to Market System, Urban Road System, Principal Arterial Street Program (PASS) or Phase I Trunk System Corridor)	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Project is on the PASS except for existing US, SH, FM and UR system routes	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	50% State 50% Local -or- 80% Federal 10% State 10% Local
Project is not on the State Highway System	100% Local -or- 80% Federal 20% Local	100% Local -or- 80% Federal 20% Local	100% Local -or- 80% Federal 20% Local
Project is on the FM/UR system New FM/UR route	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% Local
Existing FM/UR route	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local

Condition	Preliminary Engineering	Construction and Engineering Funds	Right of Way or Eligible Utilities
Project is on a Phase I Trunk System Corridor, Designated Statewide Mobility Corridor, On-System Turnpike Project, or Hurricane Evacuation Route	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State
State Park Road Program	100% State	100% State	100% State
On-State System Bridge Program	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Off-State System Bridge Program	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1	100% Local
If bridge project connects Texas with a neighboring state	80% Federal 20% State	80% Federal 20% State	
On-State System Safety Program	100% State -or- 90% Federal 10% State	90% Federal 10% State	100% State -or- 90% Federal 10% State
Off-State System Safety Program If included in the Railroad Signal Safety Program	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State
Transportation Enhancement Program #2	80% Federal 20% Local	80% Federal 20% Local	80% Federal 20% Local

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
On-State System Safe Routes to Schools Program	100% State -or- 100% Federal	100% State -or- 100% Federal	100% State -or- 100% Federal
Off-State System Safe Routes to Schools Program	100% Federal	100% Federal	100% Local -or- 100% Federal

All participation ratios shown depict the minimum local participation for eligible costs. For continuous lighting systems or safety lighting on the state highway system, refer to Chapter 25, §25.11 of this title.

NOTES:

#1 If approved in accordance with §15.55(d) of this subchapter.

#2 For projects selected in the Transportation Enhancement Program call, federal participation is limited to the amount authorized by the commission, not to exceed 80% of the eligible costs.