1.0 PURPOSE

The purpose of this Oversight Procedure is to describe the review, analysis and recommended procedures and reporting requirements that the Federal Transit Administration (FTA) expects from the Project Management Oversight Contractor (PMOC) regarding the advancement of project activities that are not otherwise subject to automatic pre-award authority prior to execution of a Full Funding Grant Agreement (FFGA) or Small Start Grant Agreement (SSGA).

2.0 BACKGROUND

Letter of No Prejudice (LONP) or Early Systems Work Agreement (ESWA) may be issued following the completion of all required reviews under the National Environmental Policy Act of 1969 (NEPA). It is frequently in the best interests of projects to advance certain activities prior to the full execution of the FFGA or SSGA. Advancing activities that are on the project schedule critical path and that may require an extended period of time to complete may lead to significant cost savings and may reduce the potential for schedule delays later in the project.

The LONP permits a Project Sponsor to incur costs on a project using non-federal resources with the understanding that the costs incurred after the LONP may be reimbursable as eligible expenses or may be eligible for credit toward local matching share if the project is approved for federal funding at a later date.

Unlike an LONP, an ESWA obligates an amount of available budget authority specified in law. An ESWA covers a period of time the FTA considers appropriate; the period may extend beyond the period of current authorization. If a Project Sponsor does not carry out the project for reasons within its control, the Project Sponsor must repay all government payments made under the ESWA plus reasonable interest and penalty charges the FTA establishes in the agreement.

FTA Policy and Procedures for FY 2013 Grants, 77 Federal Register 200 (October 16, 2012), Section V (B), pages 63701-63703 describes the requirements that Project Sponsors seeking an LONP from FTA must meet.

In addition, FTA Policy and Procedures for FY 2013 Grants specifies that a written request accompanied by sufficient information and justification be delivered to the appropriate FTA regional office. FTA Policy and Procedures for FY 2011 Grants lists the following information to be included with the request:

- Description of the activities to be covered by the LONP or ESWA.
• Justification for advancing the identified activities. The justification should include an accurate assessment of the consequences to the project scope, schedule, and budget should the LONP not be approved.
• Allocated level of risk and contingency for the activity requested.
• Status of procurement progress, including, if appropriate, submittal of bids for the activities covered by the LONP or ESWA.
• Strength of the capital and operating financial plan for the New or Small Starts project and the future transit system.
• Adequacy of the Project Management Plan.
• Resolution of any readiness issues that would affect the project, such as land acquisition and technical capacity to carry out the project.

Review of the Project Sponsor’s compliance with these requirements and readiness to advance the proposed activities is part of FTA’s due diligence review prior to issuing a LONP or ESWA. These reviews protect FTA’s interests by providing a final check that required activities have been completed and required project resources are available. The LONP review for all projects is an update of any prior readiness reviews and risk assessments that ensures proposed spending before grant agreement is a prudent and cost-effective investment of local funds and future federal funds. An ESWA review is more rigorous and is similar to what is required in advance of an FFGA.

3.0 OBJECTIVES

The objective of the review of readiness for an LONP is to verify that the project will maintain its eligibility for the reimbursement of incurred costs. This reimbursement may be with federal funds or crediting of expended funds toward the required local match. The objective of the review of readiness for an ESWA is to verify that the project sponsor is advancing the project in accordance with all approved project management plans and other applicable requirements and that the project is likely to complete the requirements necessary for an FFGA. The review is intended to confirm that:

• All required conditions for issuance of the LONP or ESWA have been completed and the associated documents are complete, accurate and meet all federal requirements;
• The project definition is sufficiently advanced to support proceeding with the proposed activities with minimal risk that changes to either the early work or the remaining construction will be necessary;
• Advancing the proposed activities is justified in terms of controlling project costs, maintaining the project schedule and/or reducing the potential for schedule delays; and/or mitigating potential project risks; and
• The Project Sponsor has sufficient project management capacity and capability to effectively carry out the proposed activities while completing the other work needed to prepare the project for execution of the FFGA.
• The Project Sponsor has identified adequate financial resources to fund the requested activities prior to issuance of an FFGA or SSGA.

4.0 REFERENCES

The following are the principal, but by no means the only, references to federal statutes, legislation, Executive Orders, regulation and guidance with which the PMOC should review and be familiar with
in order to develop a solid understanding of the requirements related to the Project Sponsor’s project work being reviewed under this OP:

4.1 Statutes and Legislation
- Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.
- Federal highway and surface transportation laws, Title 23, United States Code.
- FTA enabling statutes, 49 U.S.C. Chapter VI

4.2 Regulations
- Project Management Oversight, 49 C.F.R. Part 633
- Major Capital Investment Projects, 49 C.F.R. Part 611
- Joint FTA/FHWA regulations, Metropolitan Planning, 23 C.F.R. Part 450
- Joint FTA/FHWA regulations, Environmental Impact and Related Procedures, 23 C.F.R. Part 771
- U.S. DOT regulation, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 C.F.R. Part 24
- Buy America Requirements, 49 C.F.R. Part 661

4.3 FTA Circulars
- FTA Circular 9300.1A Capital Program, Grant Application Instructions, November 1, 2008.
- C4220.1F, Third Party Contracting Requirements
- C5010.1C, Grant Management Guidelines, November 1, 2008
- FTA Master Agreement
- C5800.1, Safety and Security Management Plan, August 1, 2007
• FTA Circular 5200.1, "Full Funding Grant Agreements Guidance," December 5, 2002.

4.4 Guidance

• Guidance for Transit Financial Plans, June 2000
• Quality Assurance and Quality Control Guidelines
• Project and Construction Management Guidelines,
• Value Engineering Process Overview, January 1998
• New Starts Letter of No Prejudice Checklist (latest version). Note: Pre-MAP-21 version (2008) attached as Appendix B

5.0 PROJECT SPONSOR SUBMITTALS

In advance of performing the review, the PMOC should study the project documents listed below. Electronic files should be obtained in native format to allow the PMOC to confirm the accuracy and consistency of calculations. The PMOC should notify FTA of important discrepancies in the project information that would hinder the review. An example would be a mismatch between drawings and cost estimate in which the drawings are current and the cost estimate is not.

• Scope / Project Definition
  o Final environmental documents and NEPA determination (CE, FONSI or ROD)
  o Basis of Design Report, Design Criteria Reports
  o Latest versions of Project Design Drawings, Design Criteria, Standards and Specifications
  o Master Permitting Plan and Schedule
  o Geotechnical Baseline Report
  o Passenger level boarding design documents
  o Transit capacity and operating plan
• Project Management Plan and sub-plans completed including but not limited to:
  o Project Management Capacity and Capability Plan including Project Staffing Plans (focused on staffing for the proposed activities to be advanced)
  o Real Estate Acquisition and Management Plan (RAMP) if real estate will be acquired
  o Rail and/or Bus Fleet Management Plan (RFMP, BFMP) if rolling stock will be acquired
  o List of inter-governmental and third-party agreements accompanied by signed agreements with jurisdictions, railroads, utilities, other third parties for the work to be advanced or performed
  o Risk Assessment, Risk and Contingency Management Plan, current Risk Register
  o Project Delivery Plan, Contract Packaging Plan, Procurement Policies and Procedures
  o Quality Management Plan
• Schedule
  o Schedule Basis and Assumptions or Basis of Schedule Report
  o Cost and resource loaded project schedule in original and SCC format; schedule narrative describing critical path and near-critical activities, expected durations, and logic
• Cost
  o Capital Cost Basis and Assumptions or Basis of Cost Report
o Latest version of the capital cost estimate in original and SCC format, including all cost categories

The PMOC should also obtain and review the results of the most recent oversight reviews conducted prior to the project’s advancement to the current phase of project development, including:

- Project Management Plan Review (OP 20)
- Project Sponsor Project Management Capacity and Capability Review (OP 21)
- Real Estate Acquisition and Management Plan Review (OP 23)
- Project Scope Review (OP 32C)
- Project Delivery Method Review (OP 32D)
- Capital Cost Review (OP 33)
- Project Schedule Review (OP 34)
- Risk and Contingency Management Review (OP 40)
- Readiness Reviews (OP 50 – 54)
- Small Starts Readiness Review (OP 60, if applicable)
- Copies of Monthly Oversight Reports (OP 25)

6.0 SCOPE OF WORK

The scope of this procedure is to confirm that the project definition and all of the documentation and analysis required to advance the project is developed to assure that the proposed activities can be cost-effectively advanced prior to the execution of an FFGA or SSGA with minimal risk. In addition, the review should confirm whether the Project Sponsor has the project management capacity and capability to effectively manage the proposed activities while continuing to advance the remainder of the project in preparation for the FFGA or SSGA. The review should focus on those components of the project that the Project Sponsor seeks to advance.

The usefulness of the review is based on the perception and judgment of the reviewers. Ideally, they should be senior technical managers qualified to actually perform the work being reviewed. Because transit projects are complex and interdisciplinary in nature, the reviewers should have a broad range of knowledge, experience and capabilities. Right-of-way documentation should be reviewed by professionals with right-of-way experience, utility plans and agreements should be reviewed by professionals with experience in utility engineering and coordination, early construction of structures or other specific elements should be reviewed by individuals with experience in those disciplines, and vehicle documentation should be reviewed by individuals with vehicle design and procurement experience. This review is divided into three areas described in tables below. Review items may be modified to accommodate the particular circumstances associated with a project and the activities that the Project Sponsor seeks to advance.

1) Confirmation of the justification for advancing the proposed activities and the Project Sponsor’s readiness for early Engineering work or bidding/procurement of the design activities or contract packages for the components of the project to be advanced, including plans, specifications, and contract provisions;
2) Confirmation that the proposed activities are consistent with the Project Management Plan and relevant sub-plans and NEPA requirements with respect to scope, schedule, and budget;
3) Confirmation of the readiness of the Project Sponsor’s organization with respect to having in place the necessary qualified project staff; consistent project management plans, procurement and construction management procedures; needed interagency, third party, and real estate agreements; and required financial resources to undertake the proposed activities.

The following specific reviews are designed to confirm the readiness for advancement of early engineering activities for the bidding/procurement of the proposed activities or contract packages:

<table>
<thead>
<tr>
<th>Review Item</th>
<th>Review Objective</th>
<th>Review Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justification for advancement of the proposed activities prior to FTA’s approval to enter the next phase or award of a Grant Agreement</td>
<td>Confirm that advancing the proposed elements of the project are justified by the potential time and cost savings.</td>
<td>Review by qualified professionals of the proposed activities and the Project Sponsor’s justification for advancing the activities.</td>
</tr>
<tr>
<td>Construction Plans and Specifications (Utility Plans and Specifications)</td>
<td>Confirm that the Plans and Specifications completely and clearly define the required work.</td>
<td>Review by qualified engineer(s) with expertise in the area(s) of design.</td>
</tr>
<tr>
<td>Design, Construction or Procurement Contracts</td>
<td>Confirm that the Contract(s) completely and clearly defines the terms and conditions under which the Work will be performed and that all permits, real estate and other requirements will be in place to void future claims.</td>
<td>Review by a person or contract administrator with experience in managing construction or procurement contracts of similar scope and complexity.</td>
</tr>
<tr>
<td>Quality assurance records and Quality Management Plans</td>
<td>Confirm that quality assurance checks and reviews of the design have been performed in accordance with the approved Quality Assurance Plan and that sufficient Quality Management Procedures are established for the proposed activities to be advanced.</td>
<td>Review by a person with experience in performing quality assurance reviews or audits.</td>
</tr>
<tr>
<td>Cost Estimate</td>
<td>Confirm that the estimate for the proposed activities is consistent with (1) the overall project cost estimate, and (2) the Plans, Specifications, and Contract General and Special Conditions, and that it is based upon contemporary cost information.</td>
<td>Review by a cost estimator with experience in estimating work of the proposed type, including the estimation of the construction cost impacts of contract special provisions related to risk transfer and construction limitations.</td>
</tr>
</tbody>
</table>

The following reviews and comparisons provide confirmation that the project and proposed activities to be advanced are consistent with the Environmental Documents and previously accepted project management plans:

<table>
<thead>
<tr>
<th>Review Item</th>
<th>Review Objective</th>
<th>Review Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Plans and Specifications; Utility Plans and Specifications; special contract conditions; and Right-of-Way</td>
<td>Confirm that the work to be performed or constructed and the right-of-way to be acquired comply with the Environmental</td>
<td>Comparison, using qualified personnel, of the permitting, design and construction and right-of-way requirements of the</td>
</tr>
</tbody>
</table>
Plans in comparison to Environmental Documents | Verify consistency between the proposed activities and the adopted Contract Packaging Plan. | Compare scope of the proposed activities with contracting plan using qualified personnel. Particular attention should be paid to risk allocation / transfers and interfaces between contacts.

Plans, specifications, and special contract conditions in comparison to Contract Packaging Plan | Verify consistency between the proposed activities and the adopted Contract Packaging Plan. | Compare schedule information for the proposed activities, including availability of right-of-way and any owner furnished equipment or permits, with the Project Master Schedule using qualified personnel. Particular attention should be paid to schedule contingency for delays and the potential impacts to follow-on activities.

Plans, specifications, and special contract conditions with respect to Project Master Schedule | Verify consistency between the proposed activities and the Project Master Schedule. | Compare schedule information for the proposed activities, including availability of right-of-way and any owner furnished equipment or permits, with the Project Master Schedule using qualified personnel. Particular attention should be paid to schedule contingency for delays and the potential impacts to follow-on activities.

Capital Cost Estimate in comparison to Project Budget | Confirm that the estimated costs of the proposed activities, including appropriate contingencies, is affordable within the overall Project Budget. | Compare Capital Cost Estimate for the proposed activities with Project Budget using qualified personnel. Determine if any risks associated with advancing the proposed activities is appropriately accounted for by contingencies and risk mitigation measures.

The final set of reviews provides confirmation that the Project Sponsor has completed all the necessary prerequisites to advancing the proposed activities, and is capable and ready to manage the project and the proposed activities effectively.

<table>
<thead>
<tr>
<th>Review Item</th>
<th>Review Objective</th>
<th>Review Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third Party Agreements and related contractual obligations</td>
<td>Confirm that necessary inter-governmental, interagency, utility and other third party agreements are in place to support the proposed activities.</td>
<td>Review third party agreements in the overall context of the project with qualified personnel. Particular attention should be provided to design standards; inclusion of betterments; and timing of reviews, permits, land transfers, and funds transfers. Review of contract documents by qualified personnel to identify any agreement.</td>
</tr>
<tr>
<td><strong>Real Estate Acquisition and Management Plan and related contractual obligations</strong></td>
<td>Confirm that the RAMP is complete and that the Project Sponsor has the capacity and capability to carry out the real estate program in conformance with the Uniform Act and that required real estate will be available as required to avoid contract claims.</td>
<td>Review of the Real Estate Acquisition and Management Plan (RAMP) by qualified personnel to ensure that the Project Sponsor can effectively implement the real estate program. Review of contract documents by qualified personnel to identify any real estate related Owner obligations.</td>
</tr>
<tr>
<td>Procurement Policies and Procedures</td>
<td>Confirm that the Project sponsor has the technical capacity and capability as well as the Procurement Policies and Procedures in place to execute the proposed activities in compliance with federal policies, ensure a fair bidding environment, and are able to efficiently resolve issues and disputes that may arise.</td>
<td>Review by qualified personnel of Project Sponsor’s Procurement organization and Procurement Policies and Procedures (including procedures related to advertisement, bidding, award, protests, disputes, changes, payment, etc.) for the planned activities.</td>
</tr>
<tr>
<td>Project Staffing Plan</td>
<td>Confirm that the Project Sponsor has adequately implemented a project staffing plan that ensures the necessary qualified staff will be available to manage and support the activities that are proposed to be advanced while managing the project and completing the required activities to support execution of the Grant Agreement.</td>
<td>Review by qualified personnel of Project Sponsor’s plans for hiring or transferring staff or consultants to support the project. If transfers of existing staff are planned, investigate who will replace transferred staff. If hiring of new staff is planned, review reasonableness of the hiring schedule relative to salary schedule and availability of staff locally.</td>
</tr>
<tr>
<td>Financing Plan</td>
<td>Verify that money will be available to pay the costs associated with the proposed activities in addition to on-going project activities.</td>
<td>Review the availability of funds in the context of all project requirements to confirm that adequate funds will be available on the schedule proposed by the Project Sponsor. Confirm the current validity of any underlying assumptions associated with the Financing Plan, e.g., that borrowing will occur at a given time.</td>
</tr>
</tbody>
</table>

### 7.0 REPORT, PRESENTATION, RECONCILIATION

The PMOC’s report shall integrate the findings and recommendations of the reviews above. The report should follow the outline below.

#### 1.0 EXECUTIVE SUMMARY

1.1 Introduction
1.2 Summary of Findings
1.3 Conclusion/Recommendations

2.0 BACKGROUND
2.1 Project Description
2.2 Contract Description Specific to LONP or ESWA Request
2.3 Description of LONP or ESWA Activities
2.4 Methodology
2.5 Documents Reviewed

3.0 REVIEW, ANALYSIS AND ASSESSMENT
3.1 LONP or ESWA Justification
3.2 Consistency with Environmental Documents
3.3 Project Management Capacity and Capability
3.4 Schedule
3.5 Cost
3.6 Third Party Agreements
3.7 Real Estate Acquisition and Relocation Activities

4.0 CONCLUSION/RECOMMENDATIONS

The summary of findings should detail in three pages or less the following information:

a) Justification for advancing the proposed project activities in terms of schedule, cost and risk;

b) Project Sponsor’s readiness to advance the proposed activities;

c) Consistency of the proposed activities with the Environmental Compliance documents for the project;

d) Completeness, accuracy and consistency of the required documentation supplied by the Project Sponsor;

e) Professional opinion regarding the reliability of the scope, schedule and cost for the proposed activities and the ability of the project sponsor to manage the activities; and

f) Recommendation (if PMOC considers a recommendation appropriate) of the project to FTA for approval of the LONP or ESWA based on the findings of the assessment.

After FTA approval, the PMOC should share the report with the Project Sponsor. In the event that differences of opinion exist between the PMOC and the Project Sponsor regarding the PMOC’s findings, the FTA may direct the PMOC to reconcile its findings with the Project Sponsor and provide FTA with a report addendum covering the agreed modifications by the Project Sponsor and PMOC.

The report formatting requirements of OP 01 apply. When necessary, PMOC shall perform data analysis and develop data models that meet FTA requirements using Microsoft Office products such as Excel and Word and use FTA-templates when provided. The PMOC may use other software as required but documentation and report data shall be made available to FTA.