

**Operating Guidelines, Procedures and Standard Conditions for
Financial Assistance of South Carolina Transportation Infrastructure Bank
(Including Strategic Initiative Additions)**

*See LAC Responses #10 and #16**

Purpose

The purpose of these Operating Guidelines, Procedures and Standard Conditions for financial assistance is to compile, summarize, formalize and expand upon the procedures and practices that have been used by the Bank to ensure the proper and effective use of its resources.

1. Terms

“Bank” means the South Carolina Transportation Infrastructure Bank.

“Board” means the Board of Directors of the Bank.

“IGA” means the intergovernmental agreement required by the Bank as a condition of the Bank providing financial assistance to a project or the parties involved with the project.

“Operating Guidelines” means these Operating Guidelines, Procedures and Standard Conditions for Financial Assistance.

“Project sponsor or owner” means the project applicant or other entity that is primarily responsible for the project as determined by the Bank.

“SCDOT” means the South Carolina Department of Transportation.

2. Project Budget

The application for a project shall include an estimated budget for the project that includes all sources of funds. An updated budget shall be prepared by the applicant and shall be attached to the IGA for the project if it is approved for

financial assistance. The budget and expenditures shall be updated by the project sponsor or owner at least each quarter during the life of the project, or on such other schedule as the Bank shall direct. The budget shall include at a minimum the following itemized expense categories and shall be in a form and with contents acceptable to the Bank:

- Preliminary Engineering and Design
 - Environmental Permitting
 - Other Permitting
 - Environmental Mitigation
 - Environmental or Permit Litigation or Proceedings (with attorneys' fees stated separately)
 - Final Engineering and Design
 - Right of Way Acquisition (with attorneys' fees stated separately)
 - Construction (with utility relocation and storm water costs stated separately)
 - Contingency (including all factors used and explanation of how calculated)
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3. Cost Sharing and Pre-Construction Costs

- A. The project sponsor or owner must share in the funding of project costs and expenses. At a minimum, a portion of planning, engineering, permitting, right of way acquisition, legal, litigation and other non-construction related costs and expenses as determined by the Bank will be the responsibility of the project sponsor or owner.
- B. All or a significant portion of the pre-construction costs of the project, such as those for planning, design, engineering, right of way acquisition, environmental review, permitting, legal, and litigation activities, will be funded by the project sponsor or owner until all necessary permits for construction are obtained and a contract for construction is awarded. At that time, the Bank may reimburse the project sponsor or owner for the percentage or amount of financial assistance for eligible pre-construction costs to be provided by the Bank as stated in the IGA for the project that have not been previously reimbursed by the Bank.
- C. The foregoing paragraphs A and B of this policy do not apply to projects owned by SCDOT (a) for improvements to or on mainline interstates or

the exchanges for such interstates; (b) for rehabilitation or replacement of bridges; or (c) so designated as exempted by the Bank.

D. The Bank may require that the other sources of funds for the project be spent before any financial assistance from the Bank is expended or that all such sources of funds be applied to project expenditures on the proportional or other basis established in the IGA.

4. Certain Project Costs

A. The Bank will not pay for or reimburse the following costs, expenses and disbursements on a project:

- Legal or litigation costs or expenses, settlements, awards or judgments for inverse condemnations or regulatory takings or for any other similar claims, proceedings or lawsuits of any kind that are not direct condemnations commenced by a condemnor under S.C Code Sections 28-2-10 to 28-2-510.
- Legal or litigation costs or expenses, settlements, awards or judgments for claims, lawsuits or administrative proceedings concerning a permit required for a project, except to the extent, if any, allowed in the IGA on the project (see paragraph B below);
- Legal or litigation costs or expenses, settlements, awards or judgments for claims, lawsuits, or proceedings on contract disputes concerning construction, design, services, materials or supplies for the project, except to the extent, if any, allowed in the IGA on the project (see paragraph B below);
- Excessive or unreasonable condemnation or right of way acquisition costs, expenses, awards, judgments or settlements, including attorneys' fees, as determined by the Bank;
- Costs, expenses, awards, judgments, or settlements for acquisition of rights of way or real property not needed for or

not used in the construction of the project as determined by the Bank;

- Excessive or unreasonable attorneys', engineering or other professional fees, charges or expenses as determined by the Bank;
- Expenses or costs for public relations or similar activities to increase public support for a project other than the costs of giving the required notices of mandatory public meetings concerning a project; and
- Landscaping and beautification on a project other than for required grassing or other erosion control measures or to replace landscaping removed for construction of the project with like materials.

If the Bank determines that it has paid or reimbursed any of the foregoing costs or expenses, it may require the project sponsor or owner to reimburse it for such costs.

- B. In the IGA on the project, the Bank may in its discretion exclude or set ceilings, or require specific prior approvals from the Bank, for any type or kind of eligible costs, expenses, disbursements or financial assistance it will provide, pay or reimburse, including, but not limited to, those for lawsuits, litigation, right of way acquisitions, attorneys' fees, administrative proceedings, arbitration and mediation proceedings, permits required for the project, environmental mitigation, environmental proceedings and litigation, and contract or other disputes concerning the project.

5. Surplus Property

The Bank shall have the right to direct the sale or disposition of any real property interests or rights of way acquired by any entity for a project that are paid for, in whole or in part, with financial assistance provided by the Bank that are not needed for or used in constructing the project or that are declared surplus. The Bank shall be entitled to receive the proceeds from the sale or disposition of those real property interests or rights of way regardless in which entity's name they are

held. In lieu of the foregoing, the Bank may require the project sponsor or owner to reimburse it for the amount of financial assistance paid or reimbursed by the Bank for acquiring such real property interests or rights of way.

6. Financial Assistance Approval Conditions

All motions and approvals by the Bank Board for financial assistance or additional financial assistance for a project shall include, without the necessity of any reference thereto being made, the Bank's established standard conditions for the receipt of financial assistance from the Bank and a copy of those conditions shall be attached to the minutes of the meeting at which such financial assistance was approved. The Board may add any additional conditions on such approvals as it deems appropriate. These conditions shall be incorporated into the IGA for the project.

7. Intergovernmental Agreement-Execution *See LAC Response #8**

The project sponsor or owner and any other necessary parties as determined by the Bank must sign and enter into an IGA with the Bank to receive financial assistance for a project from the Bank within forty-five (45) days of being presented the final version of the IGA by counsel for the Bank. Upon request by the project sponsor or owner or other proposed party to the IGA, the Bank Chairman, in his or her discretion, may grant an extension of time in which the project sponsor or owner or other party may sign and enter into the IGA, but the extension may not exceed thirty (30) days. In the event, the IGA is not signed and entered into by the project sponsor or owner or other party within the aforesaid period of time, the application for the project will be deemed withdrawn by the applicant and the project will not be eligible for any financial assistance unless the applicant files a new application with the Bank for consideration. Each IGA and amended IGA must be in a form and with contents and provisions acceptable to the Bank upon the advice of the Bank's counsel. An amended or new IGA is required for any additional financial assistance approved by the Bank for an existing project and is subject to the provisions of the this paragraph. Financial assistance or additional financial assistance for a project shall not be available until the IGA or amended or new IGA is signed by all parties.

8. Intergovernmental Agreement-Bank Protections *See LAC Response #8**

The Bank is a financing entity. It is not a project sponsor or owner. Accordingly, the IGA shall contain, to the maximum extent possible, contractual provisions that will protect the Bank and its Board members, officers, employees, funds and assets from any and all claims, actions, lawsuits, proceedings, awards, or judgments that may arise in any way from a project for which it has approved financial assistance of any kind and that will place the responsibility for those matters with the project sponsor or owner. The Bank's counsel is directed to address these requirements in preparing each IGA and shall consult with the Bank Chairman and Board as needed regarding them. These contractual provisions shall be uniform to the extent feasible.

9. Commencement of Work and Progress on Project

- A. If the project sponsor or owner fails to commence work as specified in the IGA on the project by the date stated in the IGA or abandons the project or ceases work on the project for any reason at any stage, the project sponsor or owner shall reimburse the Bank for all financial assistance provided by it for the project and fully protect the Bank from all liabilities arising from such abandonment or cessation. The project sponsor or owner may submit a new application to the Bank for consideration if it wishes to continue the project.
- B. If the project sponsor or owner fails to pursue the project with due diligence as specified in the IGA or complete the project as specified in the IGA, the Bank may cease providing financial assistance for the project and/or direct the project sponsor or owner to reimburse it for the financial assistance provided by the Bank for the project. In making its decision on whether to cease financial assistance, the Bank will take into consideration whether any delays are caused by matters beyond the control of project owner or sponsor or its contractors. The project sponsor or owner shall fully protect the Bank from all liabilities arising from such lack of due diligence or failure to complete the project. In lieu of requiring such reimbursement, the Bank in its discretion may resume providing financial assistance for the project if the project sponsor or owner satisfies all conditions established by the Bank.

C. If a federal or South Carolina court, regulatory authority or other governmental entity with appropriate jurisdiction and authority as determined by the Bank directs that work on the project be suspended or stopped, all financial assistance being provided by the Bank shall be suspended and the project sponsor or owner shall assume responsibility for paying all projects expenses and costs until work on the project resumes. If such work resumes, the Bank may in its discretion resume providing financial assistance for the project subject to such conditions as it shall require. If work is not allowed to resume, the project sponsor or owner shall reimburse the Bank for all financial assistance provided for the project by the Bank.

10. Project Maintenance

The application must contain a plan for maintenance of the completed project for a minimum of forty (40) years after completion, including an explanation of whether the project upon completion will become part of the State Highway System. If the completed project does not become part of the State Highway System, the applicant must have a viable and binding plan for such maintenance that is satisfactory to the Bank. If the project is approved for financial assistance, the IGA for the project must contain provisions that obligate the responsible party to perform such maintenance if the project will not, or may not be, accepted into the State Highway System.

11. Interpretation and Application

The Bank will have the sole and exclusive authority to determine the interpretation and application of the provisions in these Operating Guidelines. The Bank will consult with the project sponsor or owner and SCDOT as appropriate prior to making a determination on such an interpretation or application. The Bank may determine that certain projects owned by SCDOT are not subject to certain provisions of these Operating Guidelines based on applicable laws of the United States of America or the State of South Carolina or the needs of SCDOT or the State of South Carolina.

In addition to the existing IGA's that already contain some or many of the foregoing provisions, these Operating Guidelines are applicable to all new applications and pending applications awaiting approval by the Bank. Further, all or some of those provisions may be applied to additional financial assistance for a project approved by the Bank on which the new or amended IGA has not been accepted by the Bank or executed by the parties, if the Bank determines that such action is in the best interests of the use of the resources made available to it by the State.

12. Application Procedures and Evaluation *See LAC Responses #5, #6, and #7**

- A. The Bank will invite submissions of applications from local governments for financial assistance once per calendar year (if sufficient financial assistance capacity is available) by a date set by the Board. The Bank will evaluate the applications and projects, which are determined to be eligible and qualified, based on the Bank's application criteria and render decisions on those applications by a date set by the Board.

For the 2016, applications will be requested by June 30 with the Board's decisions issued by September 30, unless the schedule is altered by the Chairman. The Bank will include any active applications previously received by the Bank that have not been acted upon by the Bank in this initial round of the receipt and review of applications. Thereafter, the submission date will be approximately January 1 and the decision date will be approximately September 1. These schedules will not apply to applications or requests submitted by SCDOT.

- B. Upon receipt of an application, the Chairman will submit the application to the Evaluation Committee to determine if the application is complete and to request that the applicant provide any omitted or needed information or documents by a set date.

The Committee first will make an initial decision on each project's eligibility under the SCTIB Act as soon as feasible.

The Board will make a final determination on the project's eligibility if an applicant submits a request to the Board within a time period set by the Board stating the reasons why the initial decision by the Committee on eligibility was incorrect. The Board reserves the right to make a final decision on a project's eligibility on its own initiative.

The Committee will evaluate each eligible project based on the criteria in the SCTIB Act and the Bank's application criteria and recommend a score or ranking on each project to the Board and the type and form of financial assistance for the project, if any, determined to be qualified for financial assistance. As part of its evaluation, the Committee will request and consider the recommendations or comments of SCDOT on the project.

The Board will review the recommendations of the Committee and render its decisions on whether the project is qualified, the scoring or ranking of the project, and the type and amount of financial assistance to be provided by the Bank, if any.

The Board may decline to provide financial assistance on all projects or any project.

C. Local matches or loan payments on a project consisting of payments to the Bank that may be pledged to revenue bonds will be scored higher than other forms of matches or payments. Next in order of scoring will be local matches that consist of payments of project costs or loan payments that may not be pledged to revenue bonds. Local matches that are in kind or consist of the local government improving roads that are collateral to or not part of the project may not be considered. *See LAC Response #11**

D. The focus of the Bank will be to provide one-time financial assistance on projects it determines are eligible and qualified.

Adopted May 26, 2016

**All remarks in RED are for purposes of House Legislative Oversight Committee Discussion*