50 WAYS TO LOSE FEDERAL FINANCING
PRE-CONSTRUCTION

- Planning
  - STIP
- Finance
  - FMIS
- Environment
  - NEPA
- Real Estate
  - Uniform Act
FEDERAL RELATIONSHIP

- RIGHT WAY
- WRONG WAY
- FHWA WAY
FEDERAL RULES

- Laws - Congress
  - SAFETEA-LU
- Regulations – Executive Branch
  - 49 CFR – Code of Federal Regulations - Transportation
- Guidance
  - Memorandums
  - Questions & Answers (increased interest payment)
  - Best Practices and Advice
FEDERAL REGULATIONS

- 33 CFR – Army Corps of Engineers (wetlands)
- 40 CRF – EPA (NEPA)
- 50 CFR – Fish and Wildlife Serv. (endangered species)
- 49 CFR – Transportation
- 23 CFR – Federal Highway Administration
FEDERAL REGULATIONS

- Finance
  - 23 CFR Part 140
- Planning
  - 23 CFR Part 450
  - 23 CFR 450.216 - STIP
- Real Estate
  - 23 CFR Part 710 (Prop. Mgt., Advance Acquisition)
  - 49 CFR Part 24 (Appraisal, Acquisition, & Reloc.)
FEDERAL REGULATIONS

- Environment
  - 23 CFR Part 771

- Engineering
  - 23 CFR Parts 620 to 637
  - 23 CFR 635.301 - P,S,&E Package
FEDERAL PARTICIPATION

• Every Item MUST Have
  • Identifiable Presence on STIP
  • Environmental Approval Action
  • Federal Financial Document Approval
FEDERAL FUNDING

• Based on State or Local Match
  • Typically 80/20

• Soft Match
  • Value of something other than cash
  • On a federal-aid project, usually value of property incorporated into the right of way
FEDERAL FUNDING

- FHWA Reaction to Violations
  - Apology and Revised Procedures
  - Loss of Federal Participation - Either on a Small or Large Scale
Federal Funds are Typically NOT Lost

- Funds May Be Used On Other Projects
- STIP Adjustment

Embarrassment Factor
- Agency
- Media
- Legislators
FEDERAL FUNDING

- Based on Formula – On an Annual Basis
- Distributed by Category
- Some Flexibility with Support
- NHS vs. STP
- Urban vs. Rural
- Congressional Authorizations Set Funding Limits and Program Priorities (TE Program)
FEDERAL RELATIONSHIP

- Any Project Funding = Full Project Compliance
  - Can request federal funding in any or all phases, but every phase must be compliant

- Stewardship Agreement
  - Supplemental Document
  - Different Meaning to Different People
PLANNING

- **STIP** – Statewide Transportation Improvement Program
  - Four year planning document

- **CTP** – Capital Transportation Program
  - Six year document

- For all practical purposes, the CTP and the first four years of the STIP are the same.
PLANNING

- Federal regulations push DOT’s towards having a sophisticated business plan.

- Require future project activity to be identified by type of activity and cost, on an annual basis.

- Must be fiscally constrained, and sources of income must be identified.
PLANNING

- STIP
  - Made up of individual TIP’s
  - Typically approved annually
  - FHWA and FTA approval with EPA concurrence
  - Regulations over time have required greater specificity
  - Fiscally Constrained
YOU CANNOT GET FEDERAL FUNDING IF YOUR ACTIVITY CANNOT BE RECOGNIZED AS BEING SET OUT AND APPROVED IN THE STIP IN THAT YEAR
PLANNING

- Amending the STIP
  - Specific rules in place

- Divided into major and minor changes

- PRIOR TO ACTION, THE STIP MUST BE AMENDED TO CONTAIN YOUR ACTIVITY IF IT IS NOT LISTED AND IF YOU WANT FEDERAL FUNDING
FINANCE

- FMIS – Fiscal Management Information System

- PROJECT MUST BE LOADED INTO SYSTEM BEFORE COSTS CAN BE OBLIGATED OR INCURRED
  - Legally responsible for payment
  - 23 CFR 1.9
FINANCE

- The process of loading an activity into FMIS can take time and may be disrupted for many different reasons.

- NEVER ASSUME THAT SOMETHING WHICH HAS BEEN SUBMITTED, HAS ACTUALLY ENTERED INTO THE SYSTEM
FINANCE

- DelDOT is reimbursed for money expended
  - Contractors are not paid directly
  - LPA’s are paid through DelDOT

- FHWA can unilaterally withdraw a previously made payment, if it was made based on incorrect information
ENVIRONMENT

- ANY Expenditure of Federal Funds Must Be Covered Under a National Environmental Policy Act (NEPA) Approved Document
- 23 CFR 771

- Environmental Impact Statement - EIS
- Environmental Assessment - EA
- Categorical Exclusion - CE (CAT EX)
In addition to NEPA, Many Other Environmental Laws Impact Transportation Projects

Most Common Other Impacting Laws
- Clean Air Act
- Clean Water Act - Wetlands
- National Historic Preservation Act
- Endangered Species Act
- Farmland Preservation (Delaware)
ENVIRONMENT

- FHWA Must Approve
  - All EIS
  - All EA
  - Some CE (d) list - 771.117(d)

- DelDOT Can Approve
  - CE (c) list - 771.117(c) (some d)
ENVIRONMENT

- Why Are NEPA Documents So Extensive
  - Environmental Document Challenges Delay (Or Stop) Projects
  - Section 4(F)
  - Environmental Resource Agency Staff Outlook
  - FHWA Staff Outlook
  - Livability, Sustainability, Global Warming
REAL ESTATE

- Cannot Acquire w/Federal Funds Until After NEPA Approval
- Cannot Discuss Price w/Owner Until Offer In Writing
- Cannot Encourage Owner or Tenant To Relocate Until After Acquisition Offer Made
REAL ESTATE

- Cannot Make Any Deals (Land Swaps) Without Supporting Appraisals
- Cannot Condemn From Someone To Help Out Someone Else
- Cannot Adjust Control Of Access Line Without Appraisal
REAL ESTATE

- Early Acquisition – With Federal Participation Before NEPA Approval
- Pre-Selection of Alignment (and Project)
- Federal Approval In Writing
REAL ESTATE

• Early Acquisition

• Protective Purchase – DelDOT Initiated
  • Prevent costly development
  • Prevent limiting alternatives

• Hardship Acquisition – Property Owner Initiated
  • Demonstrated need to sell
  • Demonstrated inability to sell at market value
SITUATION

- Environmental Document Preparation Underway - Approval Expected in 24 Months

- Project P,S,&E Scheduled in 4 Years

- No ROW Acquisition Funds in STIP Until 2 Years

- Property Owner Has legitimate Hardship Acquisition Request
Situation

- Particular Property Has Denial of Access to Major Roadway, and Access Only From Side Road

- Upper Management, In The Interest of State Economic Vitality, Seeks Relinquishment of Access Control

- As Project Manager, What Steps Are Necessary