



U.S. Department
of Transportation
Federal Transit
Administration

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

MAR 3 1992

TOA-1 to DART

Chen

Mr. Charles S. Anderson
Executive Director
Dallas Area Rapid Transit
601 Pacific Avenue
Dallas, Texas 75202

Dear Mr. Anderson:

This is in response to your request for guidance regarding the applicability of Federal **cross-cutting requirements** to the acquisition of certain items associated with the Dallas Area Rapid Transit's (DART) proposed construction of the South Oak Cliff segment of the Dallas light rail system, and especially, the procurement of the light rail vehicles.

First, please accept our apologies for any inconveniences caused you by the delay in our response. The issues posed by your request are significant and could not be addressed appropriately until the recent enactment of our reauthorizing legislation.

Through correspondence, DART has stated that the South Oak Cliff segment of the Dallas system is estimated to cost approximately \$360,146,000 and that DART is seeking Federal financial participation in this segment in the amount of \$160,000,000. In accordance with our governing legislation prior to enactment of the Federal Transit Act Amendments of 1991 (1991 Act), the activities associated with the South Oak Cliff segment would have been segregated into two separate budgets: Project Activities and Local Activities. The budgets would have shown the Project Activities funded at the then mandatory statutory percentage of Federal participation and shown the Local Activities funded with 100% local funds. This concept and structure was the premise of your assertion that the light rail vehicles and certain other activities would be purchased without Federal financial assistance, and gave rise to the issues and questions you pose regarding the applicability of the Federal requirements to the locally funded activities.

The Federal Transit Administration (FTA) is implementing changes in its grant process to conform to the recent legislative changes. These changes will include the restructuring of the project and

budget documents in FTA Full Funding Grant Agreements (FFGA). Section 3006(f) of the 1991 Act allows a reduction in the percentage of Federal financial participation in a project where the grantee requests a lower funding ratio. In accordance with this provision, the Federal "Undertaking" in a FFGA will no longer be segmented into Project and Local Activities. All activities related to a Federal undertaking will be identified as the Federal Project. The Federal funds will be distributed among all the activities in the project at a level funding ratio equal to the percentage of Federal financial participation in the entire project. Thus, all the elements and activities of the project as described in a FFGA will be funded, in part, with Federal funds; and, the requirements attached to the use of Federal funds will apply to each such task, unless otherwise exempted as provided for in the applicable laws, regulations and policies.

Given this change in the FTA's governing law and implementing procedures, the circumstances which gave rise to your questions and request are substantially changed. If a FFGA is executed for the South Oak Cliff segment, all tasks and activities identified in a FFGA for the South Oak Cliff segment will be funded with a portion of Federal financial participation. The "Undertaking" concept will not be used and all activities described in the FFGA will be included in the Project Description and the Project Budget. In both form and substance, there will be no activities in the project which are entirely locally funded. Thus all of the requirements applicable to the use of FTA financial assistance will apply to all of the activities described in the FFGA, unless otherwise exempted in accordance with FTA customary procedures and processes.

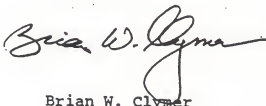
We acknowledge that this change will require greater focus and attention on the description of the activities set forth in the FFGA at the project development stage. In developing and negotiating a FFGA for the South Oak Cliff line, all activities which are physically, visibly and logically part of the South Oak Cliff segment must be identified and included in the FFGA as part of the Federal project. Activities which have an independent utility apart from the South Oak Cliff segment need not be identified in the FFGA. Obviously, the light rail vehicles for the South Oak Cliff line are essential to the operation of the line and must be identified in the FFGA. Consequently, if DART executes a FFGA for the South Oak Cliff segment, the acquisition of the vehicles will be a Federally assisted acquisition and the Federal requirements will apply in all respects and in the same manner as all FTA-assisted acquisitions.

Notwithstanding this change in procedures which results from our new authorizing legislation, the FTA believes that in the 1991 Act, Congress did affirm the FTA's practice of respecting, as nonfederally funded activities, the locally funded transit projects which are physically separate and functionally independent from the federally assisted project. At Section 3011 (a) of the 1991 Act, Congress specifically states that: "Inclusion of a nonfederally funded program element in a program of interrelated projects shall not be construed as imposing Federal requirements which would not otherwise apply to such program elements." Given this legislative statement, the FTA finds no basis in the new law to change the current segmentation of the north, west and south segments of DART's light rail program. As set forth in previous correspondence to DART, the FTA will respect the north and west projects as locally funded operating segments separate from the South Oak Cliff federally funded project.

Since our determination regarding the application of the Federal requirements to the activities associated with the South Oak Cliff segment is contrary to the position DART has advocated in its correspondence on this matter, we recognize that DART may have numerous questions regarding how to implement the Federal requirements. Accordingly, I have instructed our Regional Office and my Headquarters staff to work closely with you to address your questions and concerns with urgency and diligence.

The Dallas community is to be commended for its substantial local financial contribution to mass transportation in its community. Please be assured that the overmatch contribution, both in the funding percentage for the South Oak Cliff segment and in the proposed construction of the locally funded segments, is acknowledged and valued.

Sincerely,



Brian W. Clymer

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