

# 119<sup>th</sup> Congress—Federal Priorities: Highways, Funding & Related Issues



*TxDOT Government Affairs Division*

## SUMMARY

The Texas Department of Transportation (TxDOT) appreciates the opportunity to provide input on transportation policies for consideration by the 119th United States Congress. As a recognized leader among state departments of transportation, TxDOT looks forward to addressing the shared goal of, among others, securing predictable funding, improving the nation's infrastructure, and achieving our priorities of safety, delivery, innovation, and stewardship to achieve our mission: *Connecting you with Texas*. While TxDOT believes now is good time to begin rethinking the federal role in transportation, below are key items and policy priorities related to highways, federal formula funding, grants, and related items for consideration as Congress develops a surface transportation reauthorization bill and other transportation-related legislation. Additional information on each bulleted item below can be found in the [Priorities Narrative](#), beginning on page three.

### Key Issues

- Maintain and grow federal funding levels for infrastructure to compensate for severe inflationary impacts.
- Eliminate federal overreach and unfunded mandates by the U.S. Department of Transportation (USDOT).
- Grant state departments of transportation (state DOTs) the flexibility to implement the Manual on Uniform Traffic Control Devices (MUTCD) based on the needs and proven best practices of their respective states.
- Resolve the increasing amount of the Federal Highway Administration's (FHWA) annual August Redistribution to state DOTs.
- Reduce the number of discretionary grants administered by USDOT and prioritize formula-based funding.
  - For any retained discretionary grants, increase transparency in the grant selection process.
- Increase flexibility and efficiency of federal funding and programs by merging or eliminating redundant programs, enabling states to have greater authority to flex federal funds, and eliminating the growth in suballocated programs.
- Distribute bridge program funds based on performance that reflects the magnitude of bridge needs in a state.

### Ensure Texas' Fair Share of Federal Funding

- Update apportionment formulas using 2020 census data, the most currently available lane mileage and vehicle miles traveled to accurately represent federal Highway Trust Fund participation.
- Work with TxDOT to select projects when determining Community Project Funding requests.
- Remove the prohibition on tax-exempt advance refunding of municipal bonds.

### Federal Grants

- Require the owner of the facility that is the subject of the grant request, to approve applications before they are submitted, including local governments' applications for projects on state-owned facilities.
- Provide administrative funds to state DOTs when asking them to take on a direct recipient role on behalf of a local government (or other entity) for federal grants.

## **Increase Flexibility and Efficiency of Federal Funding and Programs**

- Merge or eliminate redundant or unnecessarily separate federal programs such as NEVI, Congestion Mitigation and Air Quality, and Carbon Reduction.
- Allow states greater authority to flex funding out of federal programs to better address different priorities.
- Eliminate the growth of sub-allocated programs that are historically slow to spend out.
- Provide cash-flow flexibility in the administration of the State Transportation Improvement Program (STIP).
- Provide flexibility in qualifications and use of Highway Safety Improvement Program (HSIP) funds.
- Expand on and clarify funding eligibilities for innovative transportation technologies and data analytics.
- Establish federal laws addressing autonomous vehicles and advanced driver assistance systems.
- Continue allowing opportunities for the delegation of certain program-wide Federal Highway Administration (FHWA) responsibilities to states.
- Increase the threshold and eliminate or revise the requirement for project management plans for Major Projects.
- Establish phase-in periods of newly adopted rules.
- Increase the role of state DOTs in federal rulemaking.
- Provide an exception to the Indefinite Delivery/Indefinite Quality (IDIQ) maximum term limit of five years to allow for the completion of projects.
- Remove non-state-owned roads from National Performance Management Measures, specifically for Pavement Performance Measure.
- Eliminate or update thresholds that trigger Value Engineering (VE) requirements.
- Require FHWA to adopt design standards and code revisions in a timely manner.

## **Improve Disadvantaged Business Enterprise (DBE) & Workforce Development Programs**

- Remove bidder list reporting requirements.
- Retain investments in workforce development.
- Revise FHWA standards to offer more targeted programs and guidelines.
- Update DBE size standards regularly to account for changes in various factors.
- Expand allowable DBE participation and performance.

## **Modernize FHWA's Emergency Relief Program**

- Direct FHWA to update its decade-old Emergency Relief program manual to reflect current needs and adverse weather conditions.
- Extend the available time for state DOTs to make permanent repairs following the occurrence of a significant emergency event.
- Provide guidance on determining the beginning and end of an ongoing weather event.
- Authorize TxDOT to direct travelers to TxDOT.org or DriveTexas.org through dynamic message signs (DMS) during major weather events.

## **Update Department of Labor Requirements Impacting Transportation**

- Direct the Department of Labor (DOL) to approve TxDOT's update for wage rates on existing projects.
- Define "de minimis" in the revised Davis Bacon October 2023 final rule.

## PRIORITIES NARRATIVE

### KEY ISSUES

#### ***Increase formula funding levels to meet inflationary cost increases.***

Congress must continue to maintain and grow federal funding levels for infrastructure to compensate for severe inflationary impacts. The Infrastructure Investment and Jobs Act (IIJA) cannot serve as a singular solution to our infrastructure funding challenges. Given the heightened demands on the supply chain and rising inflationary costs, the federal government must uphold its commitment to funding our interstates, highways, and bridges, despite a user-pays system based on a tax rate set 30 years ago. With double-digit year-over-year increases in the Highway Cost Index, funding must also rise to align with these costs.

#### ***Eliminate federal overreach and unfunded mandates.***

Congress should limit efforts by USDOT to impose regulatory overreach and administrative burdens beyond statutory authority. Since the beginning of 2021, TxDOT has witnessed increasing and ongoing intervention and overreach by USDOT to progressively manage Texas' transportation infrastructure projects and application of the IIJA. Many of these increased administrative burdens have resulted in unfunded mandates either through forcing Texas to implement portions of the IIJA otherwise designated to USDOT, or through unnecessary requirements. Examples include:

- ***Non-statutory Grant Requirements:*** New USDOT-mandated criteria and requirements for grant applications are inconsistent with congressional legislative intent. For example, applicants must demonstrate how proposed projects will aid in the reduction of greenhouse gases, equity (increased opportunities for transit, bike, and pedestrian activity), and resiliency.
- ***Burden of Increased Reporting:*** Due to increased reporting requirements by the FTA, TxDOT's Public Transportation Division estimates there will be an increased burden of over 200 working hours per year to TxDOT and five to ten additional working hours per month for each of Texas' 50 small urban and rural transit agencies.
- ***Needlessly Stalling Approved Projects:*** USDOT headquarters personnel scrutinize decisions approved by its predecessors or division staff, causing project delays, and leading to increased costs. This has impacted many TxDOT projects, including the North Houston Highway Improvement Project (NHHIP) and various bridge maintenance projects throughout the state.
- ***Rulemaking Overreach:*** In December 2023, the FHWA issued a rule requiring state DOTs and Metropolitan Planning Organizations (MPOs) to establish goals for the reduction of greenhouse gas (GHG) emissions. State DOTs have no ability to reduce their state's GHG emissions. This is an unreasonable requirement, especially for states with fast-growing populations like Texas. Not only did the FHWA have no authority from Congress to issue the rule, but Congress also rejected including such authority in the IIJA. Texas filed a lawsuit against the rule, and on March 27, 2024, a Lubbock Federal District Court judge vacated the rule. This action was followed with the same outcome by a federal judge in Kentucky in response to a similar multi-state lawsuit. TxDOT is concerned that there will be attempts to grant FHWA authority to impose this or a more stringent GHG emissions rule in the future.

***Require FHWA to provide flexibility in implementing parameters set forth by the Manual on Uniform Traffic Control Devices (MUTCD).***

State DOTs should be granted the flexibility to implement the MUTCD according to the needs and proven best practices of their respective states. The MUTCD encourages state DOTs to exercise their “engineering judgment” when reviewing and implementing the parameters set forth within. However, in practice, FHWA has prevented TxDOT and other state DOTs from exercising their “engineering judgment” to inform the updated practices and scope of their respective state MUTCDs. While TxDOT recognizes the need for consistency across the country when it concerns traffic signals, signs, markers, etc., it is vital that states be granted the flexibility to adapt the MUTCD’s guidance according to the needs of their states. For example, the MUTCD no longer allows the use of “Clearview” font, except in certain cases, although TxDOT has long benefited from the use of “Clearview.”

It is disappointing that FHWA has not considered the National Committee on Uniform Traffic Control Devices (NCUTCD) recommendations advocating for the continued allowed use of the “Clearview” font. The NCUTCD, whose purpose is to provide FHWA and other appropriate agencies with proposed edits and interpretations to the MUTCD, must have their voice heard when considering changes to the manual. TxDOT recommends that if FHWA opts not to incorporate the NCUTCD’s recommendations, they be required to provide in writing to the appropriate House and Senate committees of jurisdiction and make publicly available on FHWA’s website their justifications for not considering or adopting the NCUTCD’s guidance.

***Resolve the increasing amount of the FHWA’s annual August Redistribution to state Departments of Transportation (DOTs).***

Annually, in August, the FHWA carries an increasingly large balance of obligation limitation (unused funds that will expire at the end of the fiscal year). To prevent these funds from lapsing, they redistribute this obligation limitation to state DOTs—leaving states with four to six weeks (until September 30) to obligate these funds. The amount redistributed then gets deducted from the state DOTs obligation limitation for the next fiscal year. The USDOT’s increasing obligation limitation balance results from underutilized programs such as TIFIA and is increasingly due to the large amount of grant funding they have not obligated. Texas, which received less than two percent of available USDOT discretionary grant funds awarded in 2023, was forced to absorb these funds—over \$1 billion for TxDOT in FY 2024—and obligate it in a few short weeks, only to have the same amount deducted from TxDOT’s FY 2025 obligation limitation. This constant shuffling of available funding makes long-term planning difficult for state DOTs. The amount of funds available through August Redistribution has grown significantly in recent years—a total of more than \$8 billion in FY 2024. State DOTs are restricted in the use of the funds and will unlikely be able to obligate the anticipated amounts they are being asked to absorb in future years, which would result in these funds lapsing.

***Reduce the number of discretionary grants administered by USDOT and prioritize formula-based funding.***

- ***For any retained discretionary grants, increase transparency in the grant selection process and reporting on the use of discretionary grant funding.***

TxDOT strongly supports formula funding being prioritized over discretionary funding (grants). The Federal-aid Highway Program has a decades-long track record of distributing funding to states via formula. This mechanism ensures funds are distributed in a stable and predictable manner and allows the efficient delivery of projects that have been identified and prioritized through appropriate and required planning processes. Congress is encouraged to continue to recognize the importance of prioritizing formula funding over discretionary funding. Discretionary funds are uncertain by nature, slow to spend out, and insert subjective selection criteria into the project delivery process resulting in Texas never receiving its fair share of these funds. The American Association of State Highway and Transportation Officials and others have agreed that this is an

inefficient and ineffective way to distribute federal transportation dollars. Additionally, USDOT has shown that it cannot effectively manage the increased number of its discretionary grant programs.

Should USDOT continue executing discretionary grant programs, it should be required to publish/post on a public-facing website a list of all applicants and projects and how they were selected, with the amount of funds received if awarded. USDOT should also track and publish in realtime the total amount and the percentage of funds provided to each state for all awarded grants in a calendar or fiscal year. Also, USDOT needs to improve its debrief process for non-selected applicants to be more transparent and to foster a dialogue between applicants and USDOT (including an economist) instead of the one-sided, no-questions-answered process it is now.

***Distribute supplemental appropriations for bridge funds based on performance that accounts for the magnitude of need.***

TxDOT requests that adjustments to annual Senate supplemental funding for bridges be based on performance metrics for FY 2023 rather than the current (FY 2025) proposed appropriations formula. If additional funds are going to be appropriated for bridge rehabilitation, they should be included in the Bridge Formula Program. The FY 2024 Omnibus appropriations bill transfers \$200 million in TIFIA contract authority to fund a new competitive bridge program. (This \$200 million is to be matched with \$50 million of general fund money, for a \$250 million total bridge appropriations program.)

The eligibility requirements to receive funding from this additional formula program are very prescriptive. It is limited to states with 115 persons per square mile that have “(i) less than 26 percent of total bridges classified as in good condition; or ii) greater than or equal to 5.2 percent of total bridges classified as in poor condition.” It also stipulates that any state with more than 14 percent of bridges in poor condition is to receive a minimum of \$32.5 million. Texas meets the population requirement (115 persons per square mile) but does not meet the other requirements.

Despite having by far the greatest number of bridges in the country, with approximately 1 percent in poor condition, Texas receives no funds from this program. Continued funding with this model and previous Senate Appropriations Committee formulas distributes bridge money to owners with bridges in the worst condition and encourages a worst-first asset management approach. Instead, consideration of the full magnitude of preservation, rehabilitation, and replacement of all bridges in the nation’s inventory would be more in line with the direction given in the National Performance Program (23 U.S.C. 119(e)(1), MAP-21 § 1106).

**Ensure Texas’ Fair Share of Federal Funding**

***Apportionment formulas should be updated using 2020 census data, the most current available lane mileage, and vehicle miles traveled to accurately represent federal Highway Trust Fund (HTF) participation.***

In the development of the next surface transportation reauthorization bill (upon expiration of the IIJA), TxDOT requests that apportionment formulas be updated using 2020 census data, the most current available lane mileage, and vehicle miles traveled to accurately represent federal Highway Trust Fund (HTF) participation.

Historically, Texas has had the lowest rate of return in funding from the federal HTF relative to what the state has contributed in gas tax receipts. A major reason for this structural funding inequity is that the IIJA and previous bills did not update apportionment formulas. TxDOT requests that these apportionment formulas be updated using 2020 census data, the most current available lane mileage, and vehicle miles traveled to accurately represent current HTF participation.

Key apportionment formulas are tied to a state's population in the 2000 census and the state's lane mileage and vehicle miles traveled. In subsequent years, the formulas were not updated to reflect the 2010 census, newly added lane mileage, or increased driving. Thus, the substantial growth that Texas has experienced since 2000 has not been factored into funding distributions to Texas.

In addition, the current HTF formulas are tied to earmarks that were granted to states in The Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the 2005 reauthorization legislation. The funding for these one-time earmarks continues to be factored into how much money a state receives from the HTF every year, preventing those states without major earmarks in SAFETEA-LU from receiving an equitable share of HTF dollars.

***When deciding Community Project Funding (CPF) requests, work with TxDOT to select projects.***

TxDOT wants to be a strong partner with our Congressional Delegation. When selecting projects for CPF requests, TxDOT asks that Members' staff discuss transportation projects being considered with TxDOT's Government Affairs Division. Selecting projects that are currently on an approved TxDOT funding plan will make sure that the CPF funds are used in the most efficient and effective manner, and on projects that are most likely to come to fruition sooner.

***Remove the prohibition on tax-exempt advanced refunding of municipal bonds.***

In 2017, Congress passed H.R. 1, the Tax Cuts and Jobs Act (Act), which included a provision eliminating tax exemption for the advanced refunding of bonds. Under the Act, interest on the advanced refunding of bonds issued after 2017 is taxable. An advance refunding of a bond is a bond that was issued more than 90 days before the date that the bond it will refund can be redeemed. In effect, issuers sell new bonds to "retire" or buy back outstanding bonds. Primarily, borrowers advance refunds of their outstanding debt to take advantage of favorable interest rate environments and to lower the interest on their debt. The reauthorization of the issuance of tax-exempt advance refunding of bonds would benefit TxDOT by providing more opportunities to access lower interest rates and/or restructure debt payments, thereby providing interest cost savings and cash flow relief by lowering and restructuring debt service payments and freeing dollars for additional projects.

## **Federal Grants**

While TxDOT supports **eliminating federal discretionary grants** and applying those funds for distribution via formula, should they be retained, we suggest:

- ***Require facility owners to approve grant applications:*** The owner of the facility that is the subject of the grant request should have approval discretion for applications before they are submitted, including local governments' applications for projects on state-owned facilities. Many local entities, including MPOs, have been submitting grant applications for projects on state-owned facilities. TxDOT only learns of these projects if a letter of support is requested (at the end of the application process), or when an award by USDOT is made. If the applicant is not the owner of the facility that is the subject of the application, they should have written approval by the owner to move forward with the application.
- ***Provide administrative funds to state DOTs when asked to take on a direct recipient role on behalf of a local government (or other entity) for federal grants:*** USDOT has awarded an increasing number of federal discretionary grants to local transportation partners. In many cases, the local partners do not have the capacity to deliver the project and USDOT is asking state DOTs to step in and become the direct recipient of the grant funds. State DOTs should be compensated with administrative funds when required to administer grants that other entities were awarded.



## **Increase State Flexibility and Efficiency**

### ***Increase Flexibility and Efficiency of Federal Funding and Programs.***

Merge or eliminate redundant or unnecessarily separate federal programs such as the National Electric Vehicle Infrastructure (NEVI) program, Congestion Mitigation and Air Quality (CMAQ), and Carbon Reduction, and PROTECT. Each state is unique and faces its own transportation challenges; some states face diverse challenges within their state. Burlington, VT, does not share the same infrastructure needs as McAllen, TX. Houston's infrastructure needs (hurricane resiliency) can be vastly different from Amarillo's (ice storm preparation). These differences demonstrate why state DOTs should determine where and how their funds are most needed. Redundant federal programs, such as NEVI, CMAQ, and Carbon Reduction all share the same goal, yet Congress prescribes these and several other "buckets" of funding and stipulates to state DOTs how they can be spent. Then USDOT adds its rulemakings which can restrict states' self-determination even further. Congress should **consider de-federalizing how states spend their federal transportation dollars** so that they are spent on what is needed most.

### ***Enable states to have greater ability to flex federal funds.***

Currently, state DOTs' federal formula funds are spread across nine mandatory categories or "buckets" (10 if NEVI is included). State DOTs must spend these funds as dictated by the FHWA based on surface/highway transportation authorization bills passed by Congress. If the "buckets" cannot be eliminated, then more flexibility should be given to state DOTs to move money between them. Currently, state DOTs have only limited means of moving a certain percentage of funds out of some "buckets" and into others. Providing state DOTs flexibility to transfer funds between "buckets" would result in federal funds going where they are most needed as determined by each state.

### ***Eliminate the growth of suballocated programs that are historically slow to spend out.***

Historically, Metropolitan Planning Organizations (MPOs) have faced challenges in efficiently utilizing the sub-allocated funding at their disposal. Their expenditure rate tends to lag that of state DOTs, resulting in funds frequently expiring before they can be allocated to specific projects. To address this issue, Congress needs to consider reducing the portion of funding allocated to MPOs. Currently, MPOs receive 55 percent of the State Transportation Block Grant funding, which constitutes the most flexible pool of funds for project delivery within states. However, MPOs often hold significant amounts of these funds without utilizing them efficiently. It's important to note that funds sub-allocated to MPOs are not accessible to states during the August Redistribution of funds.

### ***Provide cash-flow flexibility in the administration of the State Transportation Improvement Program.***

To develop more projects, TxDOT needs increased flexibility to fund them over time until construction is complete under the current cash-flow model. To maintain a steady volume of projects ready for construction, TxDOT must stagger needs identification, planning, and project development in the cash-flow model. The current challenge to maintain fiscal constraint creates a risk in meeting our statewide project letting goals. TxDOT believes in the spirit of cooperation, there needs to be an increased level of trust and flexibility with our federal partners that allows us to spend flexibly to leverage state funds as they become available. This will help ensure we advance projects to construction when they are ready to let — as funding becomes available — instead of trying to constrain the program to annual targets dictated by fiscal constraint policies.

### ***Provide flexibility in qualifications and use of federal traffic safety funds.***

TxDOT requests that state DOTs have more flexibility to qualify for and use federal traffic safety funds. Federal law restricts how certain funds, such as Highway Safety Improvement Program (HSIP) and Highway Safety Plans (HSP) monies can be used, leaving potential safety solutions off

the table; for example, HSIP does not include the use of technologies that can improve roadway safety among its eligible uses. Further, there are instances when Texas does not qualify for non-competitive, criteria-based federal funds due to requirements enacted by the Texas Legislature. A state DOT should not be penalized through the disqualification of formula grant funds for decisions that are the purview of other state agencies or legislative bodies. Texas does not currently qualify for grant funds such as Comprehensive Distracted Driving grants, Ignition Interlock Law grants, 24-7 Sobriety Program grants, and Graduated Driver Licensing Law grants.

***Ensure formula programs continue to allow for intelligent transportation technologies.***

Allowing the use of formula funding for existing and emerging transportation technologies, innovations, digital infrastructure, data, and data ecosystems is vital. TxDOT proposes that federal formula funding programs ensure that all forms of existing and emerging intelligent transportation technologies continue to be eligible for funding through existing programs. This includes the installation of intelligent transportation systems, digital- and vehicle-to-everything infrastructure, communications equipment, transportation data and data ecosystems to manage transportation operations, planning, design, development, asset management, cybersecurity, and analytics as eligible expenditures under all formula funding programs. Current eligibilities for expenditures on transportation technology remain unclear and have been and could continue to be interpreted as being subject to limitations.

***Establish federal laws addressing safety standards for autonomous vehicles and advanced driver assistance systems.***

As autonomous vehicle (AV) technologies and advanced driver assistance systems (ADAS) continue to improve and evolve, and are now deploying across the country, TxDOT encourages Congress, the National Highway Traffic Safety Administration (NHTSA), and other USDOT modal administrations to advocate for enhanced oversight. Clarity on the respective roles of regulating federal and state entities is lacking in this space, specifically in terms of system performance, licensing and registration, standard rules for safety, cybersecurity, liability, and accessibility. A common framework from NHTSA and other relevant USDOT agencies will be required for implementation of multi-state AV corridors and will provide Infrastructure Owner Operators, as well as AV developers, with a better understanding of a national AV framework for more seamless deployments. This framework should enable reciprocity between states and other nations on AV regulations, which will be instrumental in multi-jurisdictional corridors. Additionally, the framework should consider adopting safety standards that include Society of Automotive Engineers (SAE) classes for cooperative driving automation, as well as levels of automation.

***Increase the threshold and revise or eliminate the requirement for project management plans for Major Projects.***

TxDOT requests that the definition of Major Projects be adjusted to reflect the size of a state's program and be updated to allow states to provide Major Project management documentation through current statewide manuals. The FHWA defines Major Project as projects using federal funding of over \$500 million and they require several planning documents. Other projects are those using \$100 million or more in federal funds and require an annual financial plan.

These thresholds trigger additional items of work for Major Projects that include project management plans, financial plans, risk workshops, and annual updates throughout construction, all of which take significant time and resources to complete. TxDOT has by far the most Major/Other projects than any other state, and often these additional processes/items of work do not add much value, as our processes are already robust enough to fund and manage projects of this size. TxDOT recommends eliminating or instituting different thresholds based on states' different sizes/portfolios. A percentage based on portfolio size or volume could be used to determine thresholds as opposed to a specific dollar threshold.



**Note:** Prior to the enactment of SAFETEA-LU in August 2005, projects with over \$1 billion in construction costs were designated as "Mega Projects." SAFETEA-LU lowered the monetary threshold from an estimated total cost of \$1 billion to \$500 million or greater, and the term "Mega Project" has since been eliminated and replaced with the term "Major Project."

**Establish phase-in periods for newly adopted rules.**

If a deadline is not statutorily required, TxDOT asks that agencies provide a phase-in period before a final rule becomes effective to allow for the development of guidance for the rule. Agencies often issue final rules that become effective on the same day or within one month of issuance. These rushed effective dates do not allow USDOT's modal agencies time to develop corresponding guidance, which impacts state DOTs. In many cases, consideration of a grace period is needed to implement the changes. It is not unusual for it to take several years to implement the new requirements.

**Increase the role of state DOTs in federal rulemaking.**

TxDOT requests that state DOTs be afforded a more active role in federal rulemaking, especially for those related to delegated programs. As state DOTs assume more responsibilities previously held by the federal government, the role of state officials when developing federal rulemakings should be strengthened. Two examples include: the recent assumption of NEPA responsibilities and rules pertaining to Equal Employment Opportunity (EEO) program implementation. As FHWA developed regulations for changes in environmental streamlining policies included in MAP-21 and the FAST Act, states with NEPA assignment were not consulted beyond their submission of comments to the Federal Register.

It would be beneficial for federal agencies to consult state DOTs before drafting regulations and beginning the formal public comment period. This would strengthen federal and state relations, reduce confusion when rules are posted, and dissuade any unnecessary or unforeseen issues. TxDOT recommends working groups either through the American Association of State Highway and Transportation Officials (AASHTO), the National Association of State Aviation Officials (NASAO), or other industry organizations to gather ideas and open dialogues on how rules may impact states differently. The Environmental Protection Agency (EPA) already consults with states on some rulemakings. USDOT's modal administrations should similarly consult with states.

**Provide an exception to the Indefinite Delivery/ Indefinite Quantity (IDIQ) maximum term limit to allow for the completion of projects.**

TxDOT requests that Congress direct FHWA to provide state DOTs flexibility in managing projects under an IDIQ contract. IDIQ procedures are driven by 23 CFR § 635.605(a)(4), which does not allow work orders to begin without completion of the NEPA process. The CFR also states that "authorization or agreement under this paragraph may apply to work in multiple locations." The current IDIQ procedures are inefficient and require additional levels of paperwork that only delays the work being conducted and does not change the work to be done. The process requires updates to the Federal Project Authorization Agreement (FPAA), updating Environmental Software, as well as issuing a Change Order to allocate work to a specific Control-Section-Job (CSJ) for federal accounting of construction engineering costs.

TxDOT recommends clarifying that the authorization or agreement process is not to be specific to a section of roadway but rather a general area under TxDOT's responsibility. If that is unobtainable, TxDOT recommends that an authorization or agreement applying to multiple locations may be reconciled at the end of a project with accounting costs applied to TxDOT.

**Remove non-state DOT owned roads from National Performance Management Measures, specifically for the Pavement Performance Measure.**

Under 23 CFR 490.105 state DOTs are required to establish performance targets for the conditions of pavements on the National Highway System regardless of ownership. It is not an accurate management measure to include roads not maintained by the state. State DOTs do not have the ability to improve upon non-state-owned roads making this measure not only inaccurate but misleading.

***Eliminate or update thresholds that trigger Value Engineering (VE) requirements.***

Federal regulation requires VE for federally funded National Highway System projects. Thresholds for the VE requirement are for bridge projects with a cost greater than \$40 million and for roadway system projects with a cost of greater than \$50 million. According to the regulation, other projects greater than \$25M are encouraged to do value analysis. Cost thresholds are based on the definition of a project per the environmental document. TxDOT recommends that these low thresholds be eliminated or increased for both bridge and roadway system projects, and that their thresholds be the same.

***Require FHWA adopt design standards and code revisions in a timely manner.***

AAHSTO and FHWA work together on publishing updates to AASHTO Load and Resistance Factor Design (LRFD) Bridge Design Specifications through a committee process where each state has a vote for each revision in the document. Revisions to the specifications are balloted and approved annually but published every three years. After adoption through the committee, FHWA is required to approve the revision before optional state adoption. In practice, FHWA takes over a year to approve revisions and allows some state DOTs and not others to adopt the updates before their official approval. TxDOT urges FHWA to adopt updated specifications and code within 90 days of the AASHTO committee's adoption.

**Improve the Disadvantaged Business Enterprise (DBE) and Workforce Development Programs**

***Remove bidder list reporting requirements.***

The USDOT amended its DBE program regulations effective May 2024. Among the revisions, 49 CFR 26.11 requires recipients to obtain expanded information at the time of bid regarding all DBEs and non-DBEs who bid as a prime contractor and subcontractors for each federally assisted contract; this data must be reported in USDOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded. According to the Federal Register (Volume 89, Issue 69, Page 24898), a significant majority of commenters, primarily federal recipients, opposed the proposal. The requirement that the data must be submitted with the bid increases the administrative burden for bidding. This will likely reduce the number of bidders, increase the number of nonresponsive bidders, and hinder competition. Validation of the data collected is not realistically possible, negating the benefit of the proposed rule. TxDOT recommends removing this reporting requirement.

***Retain investments in workforce development.***

TxDOT recommends retaining funding and incentives for participation in the federal On-the-Job Training (OJT), On-the-Job Training Supportive Services (OJT/SS), and career education programs, like those administered by the National Traffic Safety Institute (NTSI), that are proven successful and critical for helping to provide a skilled workforce to the transportation industry. USDOT is focused on rebuilding and refurbishing the country's critical infrastructure. Current legislation recognizes the need to invest in workforce development programs to give workers the skills to find living wage transportation jobs and to develop a strong workforce to build and maintain future infrastructure. However, there is a need to revise the goal setting process, the crafts that are eligible, and the wraparound services needed to get people back to work in engineering and construction transportation jobs.

***Revise FHWA standards to offer more targeted programs and guidelines.***

TxDOT requests revised FHWA standards to allow for more targeted programs and guidelines to the DBE program. While TxDOT is leading the nation in contracts and payments for DBEs, TxDOT wants to ensure all available opportunities are promoted to grant full access to participation. FHWA standards should be revised to offer more targeted programs and guidelines to allow steered participation with specific DBEs who are not fully accessing the current program.

***Expand allowable DBE participation and performance.***

DBE performance should be addressed relative to payments as opposed to the dollar amount of contract awards. Allowing DBE participation on state-funded contracts to offset deficits in annual performance and reduce the need for the submission of shortfall analyses would incentivize and encourage states to utilize non-federal funding. TxDOT requests that USDOT expand allowable DBE participation.

**Update FHWA's Emergency Relief Program**

***Direct FHWA to update its decade-old Emergency Relief (ER) Program manual to reflect current needs and adverse weather conditions.***

FHWA's ER Program manual has not been updated since 2013. The ER manual needs to provide straightforward guidance and training at federal expense for state DOTs, USDOT, and FHWA. It also needs to include clear guidance regarding the measurement of debris and signals to meet thresholds in the occurrence of weather events. This should be determined through the rulemaking process. Currently, the FHWA Texas Division provides only a verbal interpretation that cannot be found in the existing manual or elsewhere. Their guidance has been that there must be \$5,000 worth of damage in a quarter-mile radius to receive federal reimbursement. It can be difficult to prove this threshold in terms of debris and signal repairs.

***Extend the available time for state DOTs to make permanent repairs following the occurrence of a significant emergency event.***

The current deadline to repair or re-construct an asset within two years of the event can be difficult when there are federal permitting requirements. TxDOT requests that this be changed to require the two-year deadline after all federal permits have been received. After Hurricane Harvey TxDOT waited five years for permits to be issued by the Corps and USCG to repair a bridge.

***Provide guidance on determining the beginning and end of an ongoing weather event.***

Currently, there is no agreed upon threshold to determine the start and end date for a weather event. Often weather events are ongoing which has not been recognized by FHWA Texas Division. TxDOT requests that FHWA collaborate with state DOTs on an event's timeline during ongoing weather events to ensure proper reimbursement.

***Allow flexibility in the use of DMS signage during an emergency.***

TxDOT requests legislative authorization to highlight *TxDOT.gov* or *DriveTexas.org* on DMS signs in anticipation of and during major weather events to promote public safety and clear communication before and during major weather events, in accordance with the safety mission of the Dynamic Message Sign (DMS) signage program. While this was allowed on a one-time basis during Hurricane Harvey, seeking exemptions during an emergency is not sufficient. TxDOT also requests that FHWA allow state DOTs to direct motorists to their webpages (i.e. *txdot.gov*) to get the most up-to-date traffic information prior to a prediction of and during emergencies.

## Update Department of Labor Requirements Impacting Transportation

### ***Direct the Department of Labor (DOL) to approve TxDOT's update for wage rates on existing projects.***

29 CFR 1.6(c)(2)(iii) requires the latest wage rate decisions to be incorporated into an existing project when there is a change in scope on the project. This creates an additional administrative burden due to the increasing complexity of change orders for each scope change. This also introduces the risk of having to update all existing bid prices to the latest wage rates. TxDOT requests that the interpretation of 29 CFR 1.6(c)(2)(iii) be delegated to federal aid recipients. In 2023, TxDOT conducted a federal wage rate survey and provided it to DOL for implementation. TxDOT requests DOL review and approve the labor wage rates as presented.

### ***Define "de minimis" in the revised Davis-Bacon October 2023 final rule.***

The DOL amended its Davis-Bacon and Related Acts regulations effective October 2023. Among the revisions, 29 CFR 5.2 codifies that truck drivers are exempt from wage rates when "de minimis" time is spent on the job. In addition, the final rule expanded Davis-Bacon requirements to contractors that use their own material supply operations on Davis-Bacon covered projects but exempts companies that only provide material supplies from Davis-Bacon requirements.

The final rule creates administrative burdens in implementation and affects competitive bidding. The Federal Register states that "de minimis" is to be reviewed on a case-by-case basis. TxDOT incurs administrative burdens in recording the time a truck driver is on the project site so that wage rates may be collected. Additional administrative burden is incurred determining what payrolls apply to a specific project when a contractor also supplies materials to various projects not all associated with TxDOT. TxDOT requests that the interpretation of "de minimis" be explicitly delegated to state DOTs and that payroll reporting for entities mainly providing supplies be submitted separately from individual projects. TxDOT would like to set standards in defining "de minimis" to aid in uniform bidding between contractors and the collection of data among state DOT staff.