

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX-99-09, and should be submitted by May 17, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-1999-5381]

#### Fiscal Year (FY) 2000 Implementation Guidance for Ferry Boat Discretionary Program Funds

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; FHWA solicitation memorandum for FY 2000 funds; request for comments on selection criteria for FY 2001 and beyond.

**SUMMARY:** This document provides implementation guidance on the Ferry Boat Discretionary (FBD) program for FY 2000 and beyond. A memorandum on this topic was issued to division offices soliciting candidate projects from State transportation agencies for FY 2000 Ferry Boat Discretionary (FBD) funding. The memorandum also contains information on the selection criteria used by the FHWA in evaluating candidate projects. This document seeks comments from all interested parties on the selection criteria and their continued use by the FHWA for FY 2001 and beyond.

**DATES:** Comments on the selection criteria for FBD funding for FY 2001 and beyond must be received on or before June 25, 1999.

**ADDRESSES:** Your signed, written comments on project selection criteria for FBD funding for FY 2001 and beyond must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All

comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for candidate projects for FY 2000 funding should be submitted to the FHWA Division Office in the State of the applicant in accordance with the guidance provided in the solicitation memorandum.

**FOR FURTHER INFORMATION CONTACT:** Jack Wasley, Office of Program Administration, (202) 366-4658; or Wilbert Baccus, Office of the Chief Counsel, (202) 366-1396; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://www.dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

The solicitation memorandum is available on the FHWA web site at <http://www.fhwa.dot.gov/discretionary>.

##### Background

On March 4, 1999, the FHWA issued a memorandum to its division offices, located in each State, the District of Columbia and Puerto Rico, soliciting from the State transportation agencies candidate projects for FY 2000 FBD funding. This memorandum is published for informational purposes. The memorandum contains information on the FBD program, eligible activities, the application process, and the selection criteria used by the FHWA in evaluating candidate projects.

Also, the purpose of this document is to invite comments on the selection criteria used by the FHWA for evaluating candidate projects for FY 2001 and beyond. The attachment to the

March 4, 1999, memorandum presents the selection criteria that the FHWA will be using for FY 2000. These criteria reflect areas which are given preference when evaluating candidate projects; however, any project submitted by a State transportation agency which meets the eligibility requirements for this discretionary program can potentially be selected for funding. These are the same general selection criteria that the FHWA has used for several years to evaluate candidates for this discretionary program. Occasionally, a selection criterion may be added for an individual year that reflects a special emphasis area, but for the most part the selection criteria have remained unchanged.

The FHWA plans to continue to use these same basic selection criteria for FY 2001 and beyond for this discretionary program. However, before doing so, the FHWA is interested in the views of the States or others on these selection criteria. Accordingly, comments are invited to this docket on the selection criteria that the FHWA will use for the FBD program for funding available during FY 2001 and beyond.

Publication of the implementation guidance for the ferry boat discretionary program satisfies the requirement of section 9004(a) of the TEA-21 Restoration Act, Pub. L. 105-206, 112 Stat. 685, 842 (1998).

**Authority:** 23 U.S.C. 129(c) and 315; 49 CFR 1.48.

Issued on: April 16, 1999.

**Gloria J. Jeff,**

*Federal Highway Deputy Administrator.*

The text of the FHWA solicitation and implementation guidance memorandum follows:

**Action:** Ferry Boat Discretionary (FBD) Program, Request for Projects for FY 2000 Funding, March 4, 1999 (Reply Due: July 1, 1999)

Henry H. Rentz for Vincent F. Schimmoller, Program Manager, Infrastructure, HIPA, Division Administrators

Section 1207 of the Transportation Equity Act for the 21st Century (TEA-21) reauthorizes the funding category for the construction of ferry boats and ferry terminal facilities created by section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991. With this memorandum, we are requesting submission of eligible candidate projects for FY 2000 FBD funding.

The TEA-21 authorizes \$38 million for the FBD program for FY 2000. The TEA-21 requires that \$20 million be set-aside for marine highway systems that

<sup>10</sup> 17 CFR 200.30-3(a)(12).

are part of the National Highway System for use by the States of Alaska, New Jersey, and Washington. As a result, only \$18 million is authorized for open competition among all States. Estimating the deduction for section 1102(f) of TEA-21 and the increase due to the revenue aligned budget authority (RABA) under section 1105 of TEA-21, approximately \$14 million of FBD funds will be available for open competition among all States in FY 2000.

Attached to this memorandum are the program guidelines that contain information on eligibility, selection criteria, and submission requirements. Please provide this information to your State and work with them to identify viable, quality candidate projects for this program.

We ask that you pay particular attention to the submission requirements listed in the attached guidelines. Many of the candidates submitted last year did not provide all of the necessary information. With the elimination of the region offices, we are relying on you to ensure that all of the applications from your State are

completed in accordance with the appropriate submission requirements. This is important to ensure that all candidates receive a fair evaluation. Due to the shortened time frame last year because of the late passage of TEA-21, we were not able to return incomplete applications, and our evaluation was based on insufficient information in some cases. This year we will return incomplete applications, which could jeopardize consideration of the candidate projects if the applications are not resubmitted in time.

We are requesting that candidate project submissions be received in Headquarters no later than July 1, 1999. *Projects received after this date may not receive full consideration.*

Because the available funding is always far less than the demand, we ask that submissions include only candidate projects that, if funded, can be obligated in FY 2000. Any allocations in FY 2000 will be made on the assumption that the proposed projects are viable and the implementation schedules are realistic. Any unobligated balances remaining on September 15, 2000, will be withdrawn

and used for funding future fiscal year requests.

If there are any questions, please contact Mr. Jack Wasley (202-366-4658) of our Office of Program Administration. Attachment

### **Ferry Boat Discretionary Program: Program Guidelines**

#### **Background**

The Ferry Boat Discretionary (FBD) Program, which provides a special funding category for the construction of ferry boats and ferry terminal facilities, was created by Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (1991 ISTEA, Public Law 102-240). Section 1207 of the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178) reauthorized the FBD funding category through FY 2003.

#### **Statutory References**

23 U.S.C. 129(c); sec 1064, Pub. L. 102-240, 105 Stat. 1914 (1991) (ISTEA); sec. 1207, Pub. L. 105-178, 112 Stat. 107 (1998) (TEA-21).

#### **FUNDING**

[In millions]

Fiscal Year .....	1998	1999	2000	2001	2002	2003
Competitive .....	\$30	\$18	\$18	\$18	\$18	\$18
NHS Set-aside .....	.....	20	20	20	20	20

TEA-21 provides \$30 million in fiscal year 1998 and \$38 million in each of fiscal years 1999 through 2003 for the construction of ferry boats and ferry terminals in accordance with 23 U.S.C. 129(c). The TEA-21 requires that \$20 million from each of fiscal years 1999 through 2003 be set-aside for marine highway systems that are part of the National Highway System for use by the States of Alaska (\$10 million), New Jersey (\$5 million), and Washington (\$5 million). As a result, for each of fiscal years 1999 through 2003, the amount of FBD funding available for open competition among all States is \$18 million with a non-competitive amount of \$20 million set-aside for Alaska, New Jersey, and Washington.

The \$18 million available for open competition is also impacted by any obligation limitation imposed on the Federal-aid highway program under the provisions of TEA-21 Section 1102(f), Redistribution of Certain Authorized Funds. Under this provision, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated for the FBD program, but are

redistributed to the States by formula as STP funds.

After these reductions, it is expected that approximately \$14 million will be available for candidate projects each of fiscal years 2000 through 2003. This available funding may also increase or decrease each year depending on the obligation limitation calculation and on the estimated receipts to the Highway Trust Fund.

#### **Federal Share**

In accordance with section 1064(b) of the 1991 ISTEA, the Federal share of the costs for any project eligible under this program is 80 percent.

#### **Obligation Limitation**

The FBD discretionary funds are subject to obligation limitation; however, 100 percent obligation authority is normally provided with the allocation of funds for the selected projects. The obligation limitation reduces the available funding for the program under the provisions of TEA-21 section 1102(f) discussed above. For FY 1999, obligation of the FBD funds is controlled by a special requirement included in the FY 1999 Omnibus Appropriations Act (Public Law 105-

277). The Act limits obligation of FBD funds during FY 1999 to \$38 million. Consequently, there is not enough obligation authority to cover both fiscal years 1998 and 1999 funding allocated to the States. Therefore, distribution of the FY 1999 obligation authority is on an "as needed" basis.

#### **Eligibility**

As specified in section 1064(b) of the 1991 ISTEA, this program is for the construction of ferry boats and ferry terminal facilities in accordance with 23 U.S.C. 129. Proposals should meet the basic eligibility criteria in 23 U.S.C. 129(c).

Competitive FBD funds are available for improvements to ferry boats or ferry boat terminals where:

- The ferry facility is providing a link on a public road (other than Interstate) or the ferry facility is providing passenger only ferry service.
- The ferry and/or ferry terminal to be constructed or improved is either publicly owned, publicly operated, or a public authority has majority ownership interest where it is demonstrated that the ferry operation provides substantial public benefits.

- The ferry does not operate in international water except for Hawaii, Puerto Rico, Alaska and for ferries between a State and Canada.

The set-aside discretionary funds for marine highway systems for use by the States of Alaska, New Jersey and Alaska are available for the construction or refurbishing of ferry boats and ferry terminals and their approaches that are part of the NHS. In general, a proposed project must meet the eligibility criteria set forth in 23 U.S.C. 129(b) and (c), with the following requirements specifically applying to location of the projects and the type of activity eligible for funding:

- For a ferry facility that provides a direct link on the NHS, both the ferry boat (must transport four wheel vehicles) and the ferry terminals, including approaches, are eligible for funding.
- For a ferry facility that lies at the end of an approved connector to the NHS, only the ferry terminal (can serve either vehicle or passengers) and approach is eligible for funding. The ferry boats serving the ferry terminal are not eligible for funding.

#### Selection Criteria

Several criteria are used to evaluate the submitted candidates for selection for the competitive portion of the FBD program. Although there are no statutory criteria and FHWA has not established regulatory criteria for selection of FBD projects, the following criteria are considered in the evaluation of candidates for this program:

- **Expedition completion of project**—Consideration is given to requests that will expedite the completion of a viable project. This is a project's ability to expeditiously complete usable facilities within the limited funding amounts available.
- **Leveraging of private or other public funding**—Because the annual requests for funding far exceed the available FBD funds, commitment of other funding sources to complement the requested FBD funding is an important factor.
- **Amount of FBD funding**—The requested amount of funding is a consideration. Realizing the historically high demand of funding under this program, modest sized requests for funding (generally less than \$2 million) to allow more States to receive funding under this program are given added consideration.
- **State priorities**—For States submitting more than one project, consideration is given to the individual States priorities, if specified.

- **National geographic distribution of funding within the FBD program**—Consideration is given to selecting projects over time among all the States competing for funding.

Because the concept of equity was important in the development of TEA-21, project selection will also consider national geographic distribution among all of the discretionary programs as well as congressional direction or guidance provided on specific projects or programs.

#### Solicitation Procedure

Each year, usually around March, a memorandum is sent from the FHWA Headquarters Office of Program Administration to the FHWA division offices requesting the submission of candidate projects for the following fiscal year's funding. This solicitation is also published in the **Federal Register**. The FHWA division offices provide this solicitation request to the State transportation departments, who are the only agencies that can submit candidates. The State transportation departments coordinate with local agencies within their respective States in order to develop viable candidate projects. The State transportation departments submit the candidate applications to the FHWA division offices, who send them in to the Office of Program Administration. Candidate projects are due in FHWA Headquarters usually around the first of July.

The specific timetable for the solicitation process for any particular fiscal year is provided in the solicitation memorandum. The most recent solicitation is provided in these Guidelines for reference.

The candidate project applications are reviewed and evaluated by the Office of Program Administration and an allocation plan is prepared for presentation of the candidate projects to the Office of the Federal Highway Administrator, where the final selection of projects for funding is made. The announcement of the selected projects and the allocation of funds is usually accomplished by the middle of November.

Set-aside FBD funds are allocated directly to the three named States with no solicitation.

#### Submission Requirements

Only State transportation departments may submit applications for funding under this program. Although there is not a prescribed format for a project submission, the following information must be included to properly evaluate the candidate projects. With the exception of the project area map, all of

the following must be included to consider the application complete. Those applications that do not include these items are considered incomplete and returned.

1. State(s) in which the project is located.
2. County(ies) in which the project is located.
3. U.S. Congressional District No.(s) in which the project is located.
4. U.S. Congressional Member's Name(s) for each District.
5. Facility or Project Name commonly used to describe the facility or project.
6. Service Termini and Ports.—

Describe the ferry boat operation including the name of water crossing. A statement must be included for ferry boat operations carrying motorized vehicles, describing the link in the roadway system. Clearly identify any "passenger only" ferry service, and explain how the ferry service is linked to public transportation or is part of a transit system. Also, for each project indicate if the project is part of an existing link or service or if it is new service. Also identify if the ferry operates in domestic, foreign or international waters.

7. **Ownership/Operation**—Specify which of the following apply:

- The boat or terminal is publicly owned. The term "publicly owned" means that the title for the boat or terminal must be vested in a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality.
- The boat or terminal is publicly operated. The term "publicly operated" means that a public entity operates the boat or terminal.
- The boat or terminal is "majority publicly owned" (as opposed to public owned). This means that more than 50 percent of the ownership is vested in a public entity. If so, does it provide substantial public benefits?

Documentation of substantial public benefits, concurred in by the division office, is required for ferry facilities that are in majority public ownership.

8. **Current and Future Traffic**—Provide the functional classification of the route that the project is located on along with a general description of the type and nature of traffic, both current and design year average daily traffic or average daily passenger volumes, on the route if available. The general description could include information on year round or seasonal service; commuter, recreational or visitor ridership; traffic generators and attractions.

9. **Proposed Work**—Describe the project work to be completed under this

particular request, and whether this is a complete project or part of a larger project.

10. Amount of Federal FBD Discretionary Funds Requested—The total cost for the proposed work should be shown along with the requested amount of FBD funding (this should reflect that the maximum Federal share for this program is 80 percent). A State's willingness to accept partial funding should be indicated.

11. Commitment of Other Funds—Indicate the amounts and sources of any private or other public funding being provided as part of this project. Only indicate those amounts of funding that are firm and documented commitments. The submission must include written confirmation of these commitments from the entity controlling the funds.

12. Previous FBD Discretionary Funding—Indicate the amount and fiscal year of any previous FBD discretionary funds received for this project, terminals or ferry boats operating on this route or transit system.

13. Future Funding Needs—Indicate the estimated future funding needs for the project or facility, if known. Also, provide estimated time schedules for implementing future projects. This information will be used to identify funding commitments beyond the presently proposed project and in outlying years.

14. Talking Points Briefing—Each State's request for ferry boat discretionary funds must be accompanied by a talking points paper for use by the Office of the Secretary for the congressional notification process should a project be selected for funding. A sample paper is included in these Guidelines.

15. Project Area Map—A readable location/vicinity map showing the ferry route and terminal connections is helpful if available.

#### State Transportation Agency Responsibilities

1. Coordinate with State and local agencies within the State to develop viable candidate projects.

2. Ensure that the applications for candidate projects meet the submission requirements outlined above.

3. Establish priorities for their candidate projects if desired.

4. Submit the applications to the local FHWA division office on time so that the submission deadline can be met.

#### FHWA Division Office Responsibilities

1. Provide the solicitation memorandum and this program information to the State transportation agency.

2. Request candidate projects be submitted by the State to the FHWA division office to meet the submission deadline established in the solicitation.

3. Review all candidate applications submitted by the State prior to sending them to FHWA Headquarters to ensure that they are eligible, complete and meet the submission requirements.

4. Submit the candidate applications to FHWA Headquarters by the established submission deadline.

#### FHWA Headquarters Program Office Responsibilities

1. Solicit candidates from the States through annual solicitation memorandum.

2. Review candidate project submissions and compile program and project information for preparation of allocation plan.

3. Submit allocation plan to the Office of the Federal Highway Administrator for use in making final project selections.

4. Allocate funds for the selected projects.

#### FHWA Headquarters Program Office Contact

Jack Wasley, Highway Engineer, Office of Program Administration, Phone: (202) 366-4658, Fax: (202) 366-3988, E-mail: jack.wasley@fhwa.dot.gov

#### Sample Talking Points Briefing for Secretary

**Note:** These talking points will be used by the Office of the Secretary in making congressional notification contacts. Since some of the recipients of the calls may not be closely familiar with the highway program, layman's language should be used to the extent possible. Information contained in the talking points may be used by a member of Congress in issuing a press release announcing the discretionary allocation.

#### Ferry Boat (FBD) Discretionary Funds

Grantee: State Transportation Agency <List full name>.

Project: Nouthport to Fort Bischer Ferry—purchase of a ferry boat, construction of necessary docking facilities, and approach work. <short name/description of project>.

FHWA Funds: \$1,500,000. <requested FBD funds>.

- This project is needed to replace the MV Good Times which is currently running at the Nouthport Operation. This operation provides service across the Little Pike River <add name of the body of water> and is a link between SR 21 and U.S. 52. <add the name of roads/ or public transit>.

- This project is part of Nouthport's \$12 million waterfront development project. <add name of larger

undertaking—note FBD projects are stand alone and its overall cost is separate but it may also be an element of a much larger undertaking>.

- The project will be advertised for construction in June/2001 <month/year> and is scheduled for completion in February/2002 <month/year>.

- This high speed ferry boat will incorporate the latest technology to eliminate backwash and beach erosion. <If there is anything innovative about the project be sure and mention in layman's terms>.

- The project is part of the State's ferry boat program. Annually the State spends \$19 million to operate seven ferry routes, and receives an average of \$1.5 million annually in tolls from three of these routes.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 99-5541; Notice 1]

#### Vectrix Corporation, Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Vectrix Corporation of New Bedford, Massachusetts, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request is that "the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety level of that vehicle," 49 U.S.C. Sec. 30113(b)(3)(B)(iii).

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

According to the application, the Vectrix Electric Scooter is "powered exclusively by an electric motor which draws current from ten 12-volt lead-acid batteries wired in series," and is a "low-emission vehicle" within the meaning of the statute.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Vectrix would like to use the left handlebar as the control for the rear