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June 30, 2009

The Honorable Patty Murray
Chairman
The Honorable Christopher Bond
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable John W. Olver
Chairman
The Honorable Tom Latham
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
House of Representatives

Subject: *Recovery Act: The Department of Transportation Followed Key Federal Requirements in Developing Selection Criteria for Its Supplemental Discretionary Grants Program*

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) was enacted in response to a serious economic crisis.¹ The act aims to preserve and create jobs, promote economic recovery, and invest in transportation infrastructure that will provide long-term economic benefits, among other things. Title XII of the Recovery Act appropriated \$1.5 billion for supplemental discretionary grants for the national surface transportation system. These grants to states, local governments, and transit agencies must be awarded competitively for capital investments in surface transportation projects that will have a significant impact on the nation, a metropolitan area, or a region. Eligible projects include, but are not limited to, highways and bridges, public transportation, passenger and freight rail, and ports.

On May 18, the department published an interim notice in the *Federal Register* describing the criteria it plans to use to assess applications for supplemental discretionary grants.² It asked for comments on the notice by June 1. The deadline for submitting applications is September 15, and the department contemplates

¹ Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

² 74 Fed. Reg. 23226 (2009).

making awards for what it calls “TIGER” (Transportation Investment Generating Economic Recovery) grants as soon as possible thereafter, but no later than February 17, 2010.

This report, prepared under the Comptroller General’s authority to conduct evaluations on his own initiative, assesses the extent to which the department’s interim notice follows key federal guidance in developing funding opportunity information and selection criteria to prospective applicants for its TIGER grants. To carry out our work, we compared the information in the interim notice to the requirements in three key pieces of federal guidance: (1) a 2003 directive from the Office of Management and Budget (OMB) that establishes the information requirements that federal agencies should communicate to applicants for discretionary grants; (2) a March 2009 administration memorandum that provides the overarching goals that executive departments and agencies should follow when developing transparent, merit-based selection criteria to award Recovery Act funds; and (3) a 1994 executive order that outlines several principles that executive departments and agencies should follow when developing and implementing plans for infrastructure investment and management.³ We also discussed with the department how it created the interim notice. Finally, we discussed the interim notice with several transportation stakeholder associations representing highways, ports, and railroads.⁴ On June 17, after we had completed our audit work, the department published a supplemental notice.⁵ This supplemental notice contained additional guidance and clarification, but did not affect our assessment of the extent to which the department followed key federal guidance in developing funding opportunity information and selection criteria to prospective applicants for its TIGER grants. We did not assess the merits of the program’s design or selection criteria.

We conducted this performance audit from April through June 2009 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Recovery Act established relatively few requirements for the design of the TIGER grant program. In addition to the requirements outlined in the opening paragraph of this report, the act requires that the department

- award grants of no less than \$20 million and no more than \$300 million with no more than \$300 million awarded for projects in any one state;⁶

³ 68 Fed. Reg. 37370 (2003), 74 Fed. Reg. 12531 (2009), and 59 Fed. Reg. 4233 (1994), respectively.

⁴ Despite several attempts, we were unable to discuss the interim notice with the primary stakeholder association representing transit.

⁵ 74 Fed. Reg. 28755 (2009).

⁶ The department may waive the \$20 million minimum grant size to fund significant projects in smaller cities, regions, or states.

- give priority to projects that are expected to be completed by February 17, 2012;
- give priority to projects that require a contribution of federal funds in order to complete an overall financing package, although the federal share of the costs for which expenditure is made may be 100 percent; and
- ensure a balance in addressing the needs of rural and urban communities and an equitable geographic distribution of funds.

In its May 18 interim notice, the department created two tiers of selection criteria—primary and secondary. (See table 1.) The primary selection criteria are (1) long-term outcomes (state of good repair, economic competitiveness, livability, sustainability, and safety) and (2) jobs creation and economic stimulus. The secondary criteria are innovation and partnership. Within each criterion, the department has created several factors to be considered, such as how an investment is expected to provide long-term outcomes by improving the asset’s condition (state of good repair) and contribute to community livability.

Table 1: Interim TIGER Grant Primary and Secondary Selection Criteria

Selection criterion	Factors to be considered
Primary	
Long-term outcomes	<ul style="list-style-type: none"> • State of good repair: improving the condition of existing transportation facilities or systems • Economic competitiveness: contributing to long-term, high-value economic activity • Livability: improving qualitative measures of community life • Sustainability: promoting environmentally sustainable systems • Safety
Job creation and economic stimulus	<ul style="list-style-type: none"> • Job creation and equal opportunity measures, such as opportunities for small and disadvantaged businesses • Readiness to proceed rapidly upon receipt of a TIGER grant
Secondary	
Innovation	<ul style="list-style-type: none"> • Use of innovative technology to further long-term outcomes and/or to significantly enhance performance of the transportation system • Innovations that demonstrate new approaches to transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance
Partnership	<ul style="list-style-type: none"> • Partnership with nonfederal entities and use of nonfederal funds • Support from nontransportation public agencies that are pursuing similar objectives

Source: Federal Register.

In assessing long-term outcomes, the department generally plans to require that applicants compare a project’s expected benefits to its costs. The benefit-cost analysis can include factors such as the project’s impact on fuel savings, travel time, greenhouse gas emissions, water quality, and public health. Applicants requesting more than \$100 million are required to provide an analysis of expected benefits and costs, including the methodological standards used for analysis. Applicants seeking between \$20 million and \$100 million are required to include estimates of a project’s

expected benefits for the five factors considered in long-term outcomes. Finally, the department is not requiring a benefit-cost analysis for applicants seeking less than \$20 million. Department officials told us that they adopted a risk-based approach: the size of the prospective grant determines the extent of the benefit-cost analysis required. In addition, they told us that applicants in smaller jurisdictions may not have the capability to perform a rigorous benefit-cost analysis. The department's risk-based approach is similar to the approach the department developed and applied to its New Starts (fixed guideway transit⁷) program, in which the benefit-cost analysis requirement is simplified for smaller-dollar-value projects.

The interim notice states that the department must rate a project as “highly recommended” in at least one of the five long-term outcome factors (or “recommended” in multiple factors) for it to proceed. If the department determines that a project demonstrates a likelihood of significant long-term benefits, it then plans to evaluate the project against the other primary selection criterion—jobs creation and economic stimulus. The department plans to use this primary criterion to assess a project's ability to promote the short- or long-term creation or preservation of jobs and to promote new or expanded business opportunities during the project's construction or thereafter.

After assessing an application against the primary selection criteria, the department plans to use two secondary selection criteria: (1) innovation, which assesses a project's use of innovative technology to pursue the long-term outcomes and/or significantly enhance the operational performance of the transportation system; and (2) partnership, which assesses a project's involvement of nonfederal entities and use of nonfederal funds, and support from nontransportation public agencies that are pursuing similar objectives.

Finally, if several similar projects are rated similarly based on the primary and secondary selection criteria, the department plans to consider program-specific criteria—measures that are currently in place for evaluating similar projects in a particular mode (such as highways or transit). For example, the department plans to use evaluation factors relevant to bridges, such as total daily truck and nontruck traffic and bridge sufficiency ratings,⁸ if it needs to differentiate between several similar bridge replacement projects. The department also plans to use this approach for transit projects and projects involving port infrastructure investments.

The Department Followed Key Elements of Federal Guidance in Developing Selection Criteria for Awarding TIGER Grants

In our opinion, the information in the department's interim notice generally adheres to the requirements in three key pieces of federal guidance for communicating important elements associated with funding opportunities and awarding grants that support economic recovery and transportation infrastructure, as well as complying with Recovery Act requirements. (See table 2.)

⁷ A fixed guideway system is one in which vehicles operate on their own guideways, such as rails.

⁸ A bridge sufficiency rating indicates whether a bridge needs repair or replacement.

Table 2: Degree to Which the Department Communicated TIGER Grant Selection Criteria

Objective	Requirement	Communicated?
Communicating important elements associated with funding opportunities	Provide full description of funding opportunity, including eligibility.	Yes
	Provide full description of basis to award grant including information regarding: <ul style="list-style-type: none"> • statutory, regulatory, or other preferences with an explicit indication of their effect; • all criteria, including sub-criteria to be considered and their weights, if they differ in importance; and • any program policy or other factors to be used other than merit criteria (e.g., program balance or diversity). 	
Supporting responsible spending of Recovery Act funds	Consider long-term public benefits.	Yes
	Consider economic stimulus achieved by creating or preserving jobs.	
Supporting transportation infrastructure	Base infrastructure investments on systematic analysis of expected benefits and costs.	Yes

Source: GAO analysis of interim TIGER grant and other federal guidance.

The Department Communicated Important Elements Associated with Funding Opportunities

OMB’s 2003 guidance requires that federal agencies communicate to applicants for discretionary grants (1) a description of the agency’s funding priorities or the technical or focus areas in which the agency intends to provide assistance, and (2) any factors that make an applicant or application eligible or ineligible for consideration. We found that the department’s interim notice follows OMB’s guidance because it provides (1) the department’s funding priorities, which are capital investments in surface transportation infrastructure that have a significant impact on the nation, a metropolitan area, or a region; and (2) the department’s focus areas, which include, but are not limited to, highway or bridge projects, public transportation projects, passenger and freight rail transportation projects, and port infrastructure projects. The notice also delineates the organizations that are eligible to apply: state and local governments, U.S. territories, tribal governments, transit agencies, port authorities, other political subdivisions of state or local governments, and multistate or multijurisdictional applicants.

OMB’s 2003 guidance also requires that a financial assistance announcement ensure that the selection process is as fair and equitable as possible. Specifically, announcements should include (1) a description of all criteria that will be used to evaluate applications, (2) a detailed explanation of any statutory or regulatory preferences, and (3) any program policy or other factors that may be used in selecting applications, including geographical dispersion, program balance, or diversity.

We found that the department’s interim notice follows OMB’s guidance because it provides a description of the primary selection criteria, secondary selection criteria, and program-specific selection criteria. The primary selection criteria are applied to assess a project’s impact on desirable long-term outcomes for the nation, a metropolitan area, or a region, as well as its ability to quickly create and preserve

jobs and stimulate rapid increases in economic activity. The secondary selection criteria are applied to assess the extent to which a project uses innovative technology and receives financial commitment from or otherwise involves state and local governments, and other public, private, or non-profit entities. The interim notice also states that the department will use program-specific criteria to assign priority among similar projects within a mode, such as similar bridge replacement projects.

The interim notice also provides a description of statutory preferences from the Recovery Act. For example, the department is to give priority to projects that are expected to be completed by February 17, 2012, and that require a contribution of federal funds in order to complete an overall financing package, although the federal share of the costs may be 100 percent.

Finally, the interim notice, as required by the Recovery Act, provides other factors for consideration when selecting applicants, such as ensuring an equitable geographic distribution of funds and an appropriate balance in addressing the needs of rural and urban communities.

Selection Criteria Support a Framework for Merit-Based Spending of Recovery Act Funds

The administration's March 2009 memorandum issued to executive departments and agencies to guide responsible Recovery Act spending states that merit-based selection criteria should be designed to support projects that achieve (1) economic stimulus by optimizing economic activity and the number of jobs created or preserved, and (2) long-term public benefits by investing in transportation, among other things. We found that the interim notice complies with the administration's memorandum. As previously described, the department evaluates a project's ability to achieve long-term economic benefits and economic stimulus through the use of the two primary selection criteria—long-term outcomes and jobs creation and economic stimulus.

We do observe, however, that the selection and distribution provisions in the department's interim notice could create a tension between funding projects with the most transportation merit and those that quickly create and preserve jobs and that meet geographic distribution requirements and dollar size limits.⁹ This tension is understandable because these provisions are imposed by the Recovery Act and the administration's March 2009 memorandum.

Selection Criteria Follows Transportation Infrastructure Investment Principles

The 1994 executive order establishing principles for federal infrastructure investments states that these investments should be based on systematic analyses of

⁹ For additional discussion of the tension between undertaking higher-cost projects, relatively limited federal funding, and approaches to distributing federal funds, see GAO, *Surface Transportation: Clear Federal Role and Criteria-Based Selection Process Could Improve Three National and Regional Infrastructure Programs*, GAO-09-219 (Washington, D.C.: Feb. 6, 2009). In this report, we made several suggestions, such as developing program enhancements that could help the programs meet identified priorities and achieve the highest return on federal investments, that Congress should consider when reauthorizing federal surface transportation programs to help ease these tensions.

expected benefits and costs that consider both quantitative and qualitative measures. We found that the department's interim notice follows this guidance because the primary selection criteria call for the applicant to assess the project's expected benefits and costs. In conducting benefit-cost analyses, the interim notice requires applicants to account for quantitative factors, including the project's impact on fuel savings, travel time, greenhouse gas emissions, and water quality, as well as factors that can be described qualitatively, such as public health, land use, and household budgets.

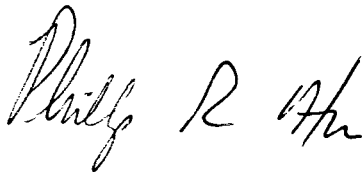
The department has taken a necessary first step in laying out interim selection criteria for its TIGER discretionary grants in a way that reasonably follows key federal guidelines. We recently reported on the importance of ensuring that the selection criteria that are communicated to users are actually those on which the department bases its decisions.¹⁰ In that report, we found that the department applied one important selection criterion that was not communicated to potential applicants for one of its grant program initiatives. Therefore, another important step will be for the department to follow its stated selection criteria when it begins to review TIGER grant applications.

Agency Comments

The Department of Transportation had no comments on a draft of this report.

We are sending copies of this report to other committees and subcommittees with responsibilities for mobility issues; the Secretary of Transportation; and the Director, Office of Management and Budget. The report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions or comments about this report, please contact me at (202) 512-2834 or herrp@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are Samer Abbas, James Ratzenberger, and Justin Reed.



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(546017)

¹⁰ GAO, *Urban Partnership Agreements: Congestion Relief Initiative Holds Promise; Some Improvements Needed in Selection Process*, [GAO-09-154](#) (Washington, D.C.: Mar. 25, 2009).

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