

Transit Security Grant Program (TSGP) Stakeholder Input Questions and Answers
FY 2010 TSGP Look Back, FY 2011 TSGP Look Ahead

Urban Areas Security Initiative Conference, New Orleans, LA
TSGP After Action Conference, New York, NY
TSGP After Action Conference, Los Angeles, CA
Transit Security Roundtable, Boston, MA

Application Requirements and Allowable Use of Funds

- 1. Regarding Maintenance Costs and warranties; I have noticed that the associated changes in Information Bulletin (IB) # 336, (Issued- November 20, 2009), can be considered open to interpretation throughout different grant programs. Can you clarify changes specifically as they relate to warranties and general explanation for Maintenance Costs issues as well as updates regarding the handling of equipment warranties as addressed in IB #336?**

Response: IB # 336 can be found online here:

<http://www.fema.gov/pdf/government/grant/bulletins/info336.pdf>. This IB examines the issue of sustainment as it relates to purchasing maintenance contracts, warranties, repair or replacement costs, upgrades, and user fees with preparedness grant funding. This IB amends the Maintenance section within IB 293. In previous years (and has since been amended per the release of IB #293) maintenance agreements and warranties were allowable costs, *provided they were procured at the time of purchase, and could not exceed the period of performance of the original grant used to purchase the equipment*. Highlights of the IB are as follows:

- a. Effective as of the release of IB 336, the use of FEMA preparedness grant funds (including TSGP) for maintenance contracts, warranties, repair or replacement costs, upgrades, and user fees *are allowable* under all active and future grant awards, unless otherwise noted in the IB. Grantees are reminded to be sensitive to supplanting issues. Maintenance contracts, warranties, repair or replacement costs, upgrades, and user fees previously purchased with State and or local funds cannot be replaced with Federal grant funding.
- b. To increase the useful life of the equipment, FEMA has determined that maintenance contracts and warranties *may be purchased using grant funding from one fiscal year (FY) to cover equipment purchased with funding from a different fiscal year*. The use of grant funding for the purchase of maintenance contracts and warranties must meet the conditions as outlined in the IB.
- c. However, these updates do not include Maintenance and Sustainment (M&S) costs or equipment previously purchased with State and/or local funds.

2. Can the maintenance contract exceed the period of performance?

Response: Yes, the contract may exceed the period of performance; however, the funds still must be spent within the period of performance. For example, you can purchase a 10-year warranty/maintenance contract **provided** that you pay for the warranty/contract within the 3-year period of performance of the grant.

3. Regarding the repair, replacement costs, and upgrades of equipment, what changes apply to FY 2010, and what is recommended for equipment that may be technically outdated?

Response: The cost of repair and replacement parts for equipment purchased using FEMA preparedness grant funding, including TSGP, is an allowable expense. Repair and replacement parts may only be purchased for equipment that has been purchased using previous TSGP funding.

TSGP funding may also be used to upgrade previously purchased allowable equipment.

4. Operational Costs and Limits, what is the congressional intent on this implementation? When written, the economy was much different.

Response: FY 2010 operational projects were limited to 20% of **total national** TSGP funding due to yearly restrictions in 9/11 Act, but ***FY 2011 total TSGP Operational costs are limited to 10%***

We cannot speculate or comment on Congressional intent. As noted, when the 9/11 Act Authorization was written, the economy was much different. Also, the authorized amounts are typically much higher than the Appropriated amounts; therefore the percentage limits on operational costs do not seem so drastic when compared to the Authorized amount for the TSGP. Lastly, while operational percentages are on a sliding downward scale in the 9/11 Act, that authorization also included an increased funding amount over time, including over \$1B for the FY 2011 TSGP. If the appropriations increased annually as was written in the authorization, the decreasing percentages for operational expenses might not be as significant in real dollars. We cannot change the law; only Appropriations could override the limits set in the Authorization.

We anticipate this to have an impact on the FY 2011 process, regardless of what methodology is used. Historically, approximately 20% of the total TSGP has been awarded for operational activities, so the 10% limitation will most likely have a significant impact on how many operational projects we are able to approve and fund.

- 5. The current budget template has a place for indirect costs, but direct costs are not allowable. Can this be made more clear?**

Response: Direct costs are only allowable for Operational Packages (OPacks). Indirect costs are allowable as long as they have a federally approved cost rate and are submitted with the grant application.

We will consider including a sample budget in the Grant Guidance to assist filling out the budget template.

- 6. Can EHP be included as part of a grant funding request in planning process?**

Response: Yes, it is an allowable cost.

- 7. How often is the Authorized Equipment List (AEL) updated? We do not always see the equipment we would like to purchase listed.**

Response: The AEL is updated twice a year, so even if a specific technology or piece of equipment is not on the list, that does not mean that it is not eligible. While the intent may be to find a specific category, some equipment can and should be categorized by a higher level definition, i.e. remote disabling can fall under a higher-level category for bus hardening. In this case, use the broader definition category number for reference. If you ever have any questions regarding allowability, feel free to ask your FEMA/TSA program analyst.

Additionally, the categories are listed by grant program, and not year.

If the equipment you wish to purchase cannot be categorized into a broader category, you can provide FEMA/TSA with a compelling reason why said equipment should be allowable and would fit into one category versus another.

- 8. Could direct staff labor be funded in the future? For most grant projects we need to use internal labor for work that can't be performed by contract staff. This is a burden in the current economic climate.**

Response: Currently, direct staff labor is not allowable. We will look into this as a possibility of considering this on a case by case basis in the future; but must be cognizant of supplanting.

- 9. Recently, we have been allowed to use grant funding for specific mass surge initiatives. Can this appear in future guidance? Rather than hiring new police officers and increasing their FTEs, we can pay overtime. It's very effective in reducing vulnerability.**

Response: We are currently looking into it as a possibility.

- 10. Is a 3 year old vulnerability assessment/security plan acceptable? What is acceptable?**

Response: Yes, the grant guidance has always asked for a vulnerability security assessment plan within the last 3 years.

Funding Priorities and Scoring

- 11. Can the Baseline Assessment and Security Enhancement (BASE) assessment be taken into consideration when the National Review Panel (NRP) scores a project?**

Response: While the BASE assessment is sufficient for the Vulnerability Assessment/Security Plan (VA/SP) requirement and is a valuable tool, it is not required. Therefore, not all eligible agencies may have undergone a BASE assessment. However, in cases where an agency has had a BASE assessment, they are encouraged to reference it in their application, and describe how the projects they are applying for address issues in their BASE. Inclusion of this information may assist the NRP in evaluating an application, but does not factor directly into project scoring.

- 12. Can there be some fluidity with priorities? Risk is not static and special events come with special operational expenses. Could there be a separate Project Effectiveness Group (PEG) for this?**

Response: We did recently allow some reprogramming of funds for specific surge initiatives. The rules are based on each year's grant and we have allowed it recently, but with operational expenses there are limits imposed per the 9/11 Act.

- 13. Where does M&S fit into the PEGs? Is there a distinction between M&S for New Capabilities vs. Existing, and should they fall under the same effectiveness group as the original project? Could future grant guidance extend M&S for the life of the project?**

Response: For the FY 2010 process, M&S was considered as part of the lowest PEG. We have received a lot of feedback suggesting that it should be higher, either as part of the PEG of the "original" project, or at least higher than automatically being in the lowest PEG. We are looking into different scoring options for M&S for the FY 2011 cycle based on your feedback, so please continue to send us your thoughts.

The 2010 grant guidance allows for M&S for the life of the project, we will make this clearer in future guidance.

14. Why are projects ranked on timelines when they are required with the applications anyways?

Response: We're looking for how well planned the project is, so maybe the wording is off. We can use "work planning" or "time management."

15. Projects like hardening a specific agency facility were thrown out because they have a low PEG ranking, even though they are a high local priority. The highest local priority is not operational.

Response: We do feel strongly that boots on the ground and operations are beneficial to security, and in fact have heard feedback that it's the best. We will consider making hardening infrastructure a higher priority; however we have to take into account national hardening priorities as well as local, which affect overall PEG scores.

16. Why isn't the regional transit security strategy included in the scoring? It should be weighed higher up.

Response: Regional collaboration is currently included in the grant guidance, we will consider including the regional transit security strategy specifically.

Post-Award

17. For a previous award, we couldn't get the award until we went through the complete review process, but then learned that planned costs were not eligible for reimbursement.

Response: Now that it is a direct award, as long as the costs are in your approved budget up front, you should not have this issue. This year it is planned for applications to go through FEMA's new ND (non-disaster) Grants system. You should receive notices on training for using the system.

18. Why is there a 6 month limit to extensions? This is not enough time for the internal and external procurement process. Agencies are performing at risk because they do not know how much of an extension they will be able to get.

Response: The current policy is that agencies may not apply for extensions until 90 days of expiration and a 6 month extension is status quo. In order to receive a longer extension, agencies must provide a justification for the additional time with timelines, milestones, etc.

19. Previously, we received a lot of IJ feedback, but didn't get a lot this year. What does this mean?

Response: Overall, the IJs were better this year because agencies paid attention to the feedback they received in previous years. Unfortunately, with less funding and more applications, sometimes worthy applications could not be funded.

20. The 45-day application period puts a lot of pressure on the Tier II agencies. They would appreciate more time.

Response: This requirement is congressionally mandated. While we have expressed the same concern, until they change the language it will remain 45 days.

FY 11 Questions

21. How did TSA arrive at the Top Transit Asset list?

Response: In addition to intelligence gathering (current threats as well as threats that have been present in the past), TSA drafted the top Transit Asset List by looking at the highest-risk regions, and the highest criticality-type assets within those regions (bridges, underwater tunnels, and multi-modal high-density stations). These assets were then analyzed with a criticality tool, which takes into account current threats, vulnerabilities, and consequences. Government and industry stakeholders have also participated in the process.

22. At what point is an asset considered adequately protected, and would it then be removed from the list?

Response: An asset's protection status is based on the full remediation design/plan. Once there is an agreement on the design and it is funded, then, theoretically, the asset would be removed from the list.

In cases where a vulnerability cannot be remediated based on current technology limitations or something similar, we would look to remediate as much as possible, and then leave that asset technically on the list but not (re-)fund it until such time where new technology could mitigate that vulnerability.

These are all flexible options we are open to discussing in the future, there is nothing set in stone with this specific process, and all of your feedback is welcomed.

23. What is the expected benefit of the proposed plan?

Response: We do not expect to be able to remove any assets from the critical asset list in the first year. Overall, with this proposed plan, we will be able to start giving real data on what it takes to remediate the critical assets on the list to our legislators and other relevant stakeholders.

24. What percentage of the money will ultimately be put into the Top Transit Asset list?

Response: That is a question we are currently analyzing, and would appreciate your thoughts on as well.

25. How much of the funding do agencies on the Top Transit Asset list already receive? Do they need more?

Response: These agencies currently receive a bit more than half of the funding. However, the current process is resulting in a piecemeal approach to funding large critical infrastructure projects.

26. What is the Secretary (of DHS) doing about getting the transit industry more money? What is being done in DC to add money to the program to make it more successful?

Response: Unfortunately this is an issue of congressional funding that is out of our control.

27. How will an agency know if they have an asset on the list? How many agencies have assets on the list?

Response: About eight agencies have assets on the draft list, although that number could change as the list is reviewed and vetted. Agencies with assets on the list have been notified.

28. What is the competitive “Set Aside”, and can that be called something else?

Response: The set aside exists to ensure that there is funding for capital projects for all other eligible agencies that do not have an asset on the Top Transit Asset List.

We are open to changing the wording from “Set Aside” to something else, and would welcome your ideas on what to call this.

29. What incentive is there for agencies without assets on the Top Transit Asset list to continue coming to meetings and participating in the process?

Response: Agencies without assets on the list are still eligible to compete for the Set-Aside funding. Additionally, projects for training, drills and exercises, and public awareness are most effective when regionally-based.

30. Will there be major changes to the current risk formula?

Response: FEMA is looking at the risk formulas for State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI), which will possibly have a downstream effect on TSGP.

31. For assets on the Top Transit Asset list, can we address the asset not just from a capital funding perspective, but also for operational activities like exercise and training as part of remediation for that asset? How much are we allowed to count as part of a remediation?

Response: That would all be part of the Remediation Design/Plan discussion and approval. As a reminder, regardless of what approach is taken for FY 2011, we are constrained to award no more than 10% of total TSGP funding on operational activities.

32. Can an agency who owns more than one asset combine them into one project?

Response: Yes, that is something we would consider.

33. Can the government define the responsibilities within a facility or ownership?

Response: We understand that many agencies may share/service one station, but there must be one agency that has primary ownership, and that would be the agency that would technically apply for the grant. A remediation plan, on the other hand, should include ALL agencies affected and their relationships in order to ensure full mitigation of the asset.

34. What is the benefit of splitting the allocation between the Top Transit Asset List and the competitive "set-aside"?

Response: The items on the Top Transit Asset list will take resources to remediate, and they need a dedicated funding stream in order to get things down and check them off the list. These are genuine targets that need to get addressed, but the current TSGP model only allows for piece-by-piece remediation rather than total remediation at once.

35. Do you have to qualify for the first 10% operational funding category (VA/SP, training, drills/exercises, and public awareness) in order to be able to compete for the 90% capital funding category?

Response: Yes.

36. Are agencies without 100 officers still eligible to apply for capital projects?

Response: Yes.

OPacks

37. If an agency has less than 100 dedicated officers who can be absorbed by a regional police force, are they eligible to apply for OPacks?

Response: Yes, we would be open to considering their request as long as they can prove sustainability.

38. For agencies that contract out to local law enforcement for security, this places a burden on the agencies without 100 officers, as they cannot maintain the program in the contract with the police force without being able to show sustained funding. Meaning, even though the transit agency itself doesn't actually employ the officers but contracts for them, the agency appears to be on the hook to sustain the police force.

Response: We recognized that was an issue with the way in which the grant guidance was worded in previous years. For the FY 2010 guidance, we updated the language so that it was the actual entity that employed the officers (transit agency with its own police force, or local law enforcement) that would be required for the sustainment. Per page 26, "...any OPack costs after the 36 month period of performance...are the responsibility of the applicable transit system **or law enforcement sub-recipient.**" (Emphasis added.) This language should clear up the issue.

39. For OPack eligibility in the proposed FY 2011 model, how was the 100 Sworn Officer numbers derived, and is there flexibility in that number?

Response: Yes, there is flexibility, and feedback on an appropriate number or amount is greatly welcomed.

The 100 sworn officer number was what we used for the ARRA, and was determined by talking to industry experts. The number was determined as a reasonable force level to be able to absorb new officers into the existing force after the grant period of performance.

This is definitely an area we want your feedback. From your perspective, what should this number be - 75, 50, or perhaps something else all together? Should we establish the number as a percentage of ridership or some other criteria. Is there any additional feedback that you (the stakeholders) can provide to use that will assist in the justification of changing the number from 100 to a more appropriate amount?

40. Currently, contract security is not an eligible expense for OPacks. Is this something that may become eligible, and if so, do the 100 sworn officers (or whatever number it is) have to be full

time transit officers? For example, an officer may be full time, but only dedicate part-time hours per week on Transit systems.

Response: TSA is flexible and open to all feedback on the number of sworn officers, contract vs. sworn officers, and any other changes in this matter. Given the economy and availability of budget/officers, overtime (instead of hiring more officers) may also be an option.