



# COLORADO

## Department of Transportation

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### **Multimodal Transportation and Mitigation Options Fund (MMOF) Federal Recovery Funds (ARPA / SLFRF) Fact Sheet - *Updated July, 2022*** Senate Bill 2021-260 (SB 260)

*This fact sheet provides information specific to **infrastructure projects** funded with MMOF Federal Recovery Funds (ARPA / SLFRF).*

#### **Program Overview**

Colorado Senate Bill 2018-001 established a Multimodal Options Fund (MMOF) within the state Treasury to promote a “complete and integrated multimodal system.” Senate Bill 2021- 260 revised the program name to Multimodal Transportation and Mitigation Options Fund (MMOF), expanded the program’s focus and directed general state funds and also federal funds received under the Coronavirus State & Local Fiscal Recovery Funds (SLFRF) under Section 9901 of Title IX, Subtitle M of the Federal “American Rescue Plan Act of 2021” (ARPA), Pub.L. 117-2 to the program.

Comprehensive information on the MMOF program, funding and requirements may be found in the [Local MMOF Program Guide](#).

#### **Program features**

##### *Unique Requirements*

- Changing conditions: As of February 2022, requirements and regulations of the Federal Recovery Funds continue to evolve as directed by the US Treasury. CDOT will provide updates to MPOs/TPRs and to Local Agencies (Subrecipients) as information becomes available.
- Documentation: As stated by the Office of State Controller (OSC), documentation is critical on projects containing Federal Recovery Funds. If compliance with a requirement is not documented, it is presumed that it did not happen. Therefore, documentation requirements must be adhered to strictly.

##### *Combo Project Requirements*

- Local Agency “combo” projects (those with multiple sources of awarded funds) must comply with the most stringent requirements of each funding program and apply those requirements to the entire project. An example is a project containing both Federal-aid Highway program funds (such as TAP, HSIP, SRTS, etc.) and MMOF program Federal Recovery Funds.

##### *Match Requirements*

- MMOF projects require match funding in an amount that is equal to or greater than the awarded MMOF funds. Match funding may come from any other source, including other federal, state or local programs. For instance, MMOF funding may be matched with funds from another federal program (e.g., TAP, STBG, etc.). As of March 2022, in accordance with the final ARPA / SLFRF rule, the Federal Recovery Funds administered under MMOF can be used to satisfy the matching requirements of other federal programs, and CDOT has obtained approval at this time for its use to match FHWA and FTA programs. For federal programs managed by awarding



agencies other than FHWA/FTA, Local Agencies must obtain the awarding agency's approval for use of the MMOF Federal Recovery funds as match.

- Refer to the [Local MMOF Program Guide](#) for additional information on matching requirements under different funding scenarios.

#### *Technical Requirements*

- Administrative Requirements of each project:
  - Compliance with applicable requirements in the Intergovernmental Agreement (IGA) and the Exhibits contained in the IGA.
    - One of the IGA Exhibits contains a Subrecipient Certification form which is similar to the form required by US Treasury and signed by the Office of the State Controller (OSC) on behalf of the State of Colorado. This form provides terms and conditions for Federal Recovery Funds. An authorized representative of the Local Agency is required to sign this form when the IGA is signed.
    - Local Agencies are encouraged to read the IGA and Exhibits as terms and conditions may be unique to state, federal, FTA or FHWA sourced funds. For example, the Title VI/Nondiscrimination Assurances for the Federal Recovery Funds are different from the assurances utilized on US DOT-assisted contracts.
  - Compliance with [2 CFR §200](#) (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or “Uniform Guidance”), including but not limited to the following:
    - Completion of a Subrecipient Risk Assessment v2.2 (2 CFR §200.332 (b)): CDOT Staff will provide the risk assessment form to each awarded Local Agency which must be completed and returned during the preparation of the IGA. This form has been updated for Federal Recovery Fund projects.
    - Period of Performance (2 CFR §200.332 (a)(1)(v)): In accordance with US [Treasury Guidance](#) (SLFRF - Final Rule, page 354), funds under this program must be obligated by December 31, 2024 and expended by December 31, 2026. As stated on the IGA Scope of Work Exhibit, all bills must be submitted to CDOT for payment by January 31, 2027 and bills must be paid by CDOT by March 31, 2027.
    - Record Retention: Records must be retained for a period of five years after all Federal Recovery Funds have been expended or returned to the US Treasury, whichever is later in accordance with the ARPA [SLFRF Compliance and Reporting Guidance](#) (page 10). This is a longer period of time than for other federal programs.
  - Designation of a qualified Local Agency employee who is responsible and in charge of the project to ensure that the work being done is complete, accurate, and consistent with the terms, conditions, and specifications of the contract in accordance with the [Local Agency Manual](#) or with the [2019 CDOT State Management Plan](#) for transit projects. On projects funded with Federal Recovery Funds, and consistent with all Local Agency projects with pass-through funding, this must be a full-time employee of the Local Agency, although the person does not have to be an engineer nor dedicated full-time to the project. The name of this employee is shown on the CDOT Form 1243, Local Agency Contract Administration Checklist, which is part of the IGA. The Local Agency employee must do the following:
    - Supervise all project administration activities and coordinate with CDOT based on the assignment of responsibilities
    - Maintain familiarity with day-to-day project operations, including safety issues
    - Approve contract changes based on the IGA with CDOT



- Perform field reviews with a frequency appropriate to the project size and complexity, including a final inspection to compare against the plans and specifications
    - Review project financials to ensure that safeguards are in place to minimize fraud, waste, and abuse, and
    - Direct staff to carry out project administration and ensure it is done satisfactorily
  - Consistent with Federal-aid Highway program projects, for Infrastructure projects, Professional Services Consultant Selection requirements must follow the documented procedures in Chapter 5 of the Local Agency Manual, or with the prior approval of CDOT’s Engineering Contract Services, the Local Agency may use its own consultant selection process. In order to obtain this prior approval, the Local Agency must have its attorney certify that the Local Agency Request for Proposals (RFP) and Consultant Selection Process is in conformance with federal and state laws. The DBE program will not apply to the RFP unless the project is combined with Federal-aid Highway program funds. Prompt Payment requirements will apply to professional service contracts.
  - Use of designated Compliance Software System B2GNow on [construction](#) contracts advertised on or after July 1, 2022. [Projects funded with only Federal Recovery Funds and local funds are not required to use LCPTracker.](#)
  - Compliance with all applicable federal statutes, regulations and Executive Orders and requirements of the American Rescue Plan Act ([31 CFR §35.9](#))
- **Project Development Requirements:** As applicable, compliance with the following:
  - Standard project delivery processes, [CDOT Local Agency Manuals](#) or [2019 CDOT State Management Plan for transit projects](#), and other guidance documents
  - ROW Clearance: Uniform Relocation Assistance (Uniform Act) requirements per the [CDOT Right of Way Manual](#)
  - Environmental Clearance: [Although NEPA does not apply to the US Treasury’s administration of the Federal Recovery Funds, other environmental requirements do apply per the CDOT NEPA Manual. CDOT has committed to following the intent and requirements of NEPA for all transportation projects.](#) Interim requirements per SB 260 / C.R.S. 43-1-128 are under development and are anticipated to be issued before 7/1/2022. If a project is a regionally significant transportation capacity project, additional air monitoring and modeling may be required. Attention to greenhouse gas reduction mitigations should be considered.
  - Utility Clearance: Utility requirements per the [CDOT Utility Manual](#), including Subsurface Underground Engineering requirements found at C.R.S. 9-1.5-101, et seq.
  - Compliance with Americans with Disability Act (ADA) requirements
  - Compliance with ITS System Engineering Analysis (SEA) requirements for Local Agencies per CDOT policy, currently drafted to require Local Agencies to follow CDOT procedures in certain instances (project connects to CDOT network, maintained by CDOT or involve CDOT technology assets)
- **Construction Requirements:** As applicable, compliance with the following:
  - Standard project delivery processes, [CDOT Manuals](#) and other guidance documents
  - Designation of a Local Agency Professional Engineer in-responsible-charge of construction supervision per the Colorado AES Board Rules (4 CCR 730-1) and C.R.S. 12-120-202(8). The name of the Professional Engineer is shown on the CDOT Form 1243, Local Agency Contract Administration Checklist. The full-time Local Agency employee and the Professional Engineer in-responsible-charge of construction supervision may be the same person but only if the Professional Engineer is an employee of the Local Agency.



- Prompt Payment requirements found in C.R.S. 24-91-103
- [Equal Employment Opportunity](#) (Executive Order 11246, as amended)
- Permit requirements, as applicable (e.g., Special use, erosion control, landscape, 404, CDPS stormwater construction permit, dewatering, license agreements, etc.)
- Environmental / Greenhouse Gas mitigations found at C.R.S.43-1-128 and 2 CCR 601-22
- Project-specific documentation as indicated on CDOT’s construction checklists, including the latest version of the Construction Oversight Checklist
- Construction elements **NOT** required (unless the MMOF project is combined with Federal-aid Highway program or FTA funding):
  - Disadvantaged Business Enterprise (DBE) Regulations, 49 CFR Part 26
  - Emerging Small Business Requirements, 2 CCR 604-1 and 49 CFR Part 26.39
  - On-the-Job Training (OJT) Requirements, 23 CFR Part 230
  - [Davis-Bacon and Related Acts Provisions](#)
- Other Considerations
  - Buy America Requirements. On MMOF projects funded with Federal Recovery funds combined with Federal-aid Highway funds, Buy America requirements for iron and steel will apply (23 CFR §635.410 & 23 USC §313) in accordance with the *CDOT Field Materials Manual, Special Notice to Contractors, Section 4*. However, the waiver process outlined in 23 CFR 635.410, *Buy America*, will not be allowed. [On April 18, 2022, the Office of Management and Budget issued memo M-22-11, Build American, Buy America, which expands Buy America to include all Federal Agencies’ subawards. The Federal Recovery Funds would normally be considered bound by Buy America requirements, but a waiver process allows for the US Treasury to waive these requirements. The Office of State Controller and CDOT are monitoring progress of a potential waiver request by the US Treasury. As of July 2022, this process is still underway.](#)
  - Domestic Preferences for Procurements Requirements. If a project has MMOF Federal Recovery Funds, with or without Local Funds, in accordance with the IGA and 2 CFR 200.322, *Domestic preferences for procurements*, the Local Agency must indicate a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) in all subcontractor Agreements and purchase orders for work or products under the award.
  - Competitive Sealed Bids. Many Local Agencies received direct transfers of ARPA / SLFRF funding. OSC FAQs indicate that there are restrictions on how Local Agencies spend the direct transfer money received under SB 260, and Local Agencies are required to follow both HUTF and SLFRF requirements. This can have implications on technical requirements if the Local Agency uses the direct transfers of funds as match.
    - For example, C.R.S. 29-1-704 (1) Construction of public projects – competitive sealed bidding states, “All construction contracts for state-funded public projects shall be awarded by competitive sealed bidding...” A state-funded public project is defined as, “any construction...by any agency of local government...which are funded in whole or in part from the highway users tax fund...” If a local government is using the direct transfer as match and meets the other requirements in this statute (population of 30,000 or more, project size >\$150,000), and wants to use an alternative delivery method like Design-Build, the local government would be required to explain to CDOT why it is legal for them to use a method that is different than competitive sealed bidding.

