

## Memorandum

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|------|---|-------|----------------------|
| TO   | Kevin Groeneweg   | DATE  | July 3, 2018         |
| FROM | Honorable James H. Burnley  | EMAIL | JBurnley@venable.com |
| CC   |   | PHONE | 202.344.4054         |
| RE   | Eligibility of Highway Safety Equipment Acquisition Costs for Reimbursement as an Up-Front Cost |       |                      |

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### Safety Equipment Now Eligible as a Direct Charge

On September 8, 2017, FHWA issued new guidance on the eligibility of construction and highway safety equipment acquisition costs as a participating direct charge to Federal-aid projects.<sup>1</sup> This guidance changed FHWA's policy regarding the acquisition costs of safety equipment, which includes the Mobile Barrier System.<sup>2</sup>

The result of this change is that States can now directly purchase safety equipment, such as the Mobile Barriers MBT-1 using HSIP, NHPP or STBGP funds.

In short, under the new policy, States may directly charge to an eligible Federal-aid project the up-front acquisition cost of safety equipment. If a State requests approval to charge the full cost of equipment acquisitions as a direct cost, rather than allocating the amortized acquisition costs over the useful life of the equipment, all it has to do is provide FHWA with adequate assurances that there is a Federal highway or transportation interest in doing so.<sup>3</sup>

HSIP funds are particularly attractive for use with the MBT-1. The HSIP program provides a 90% federal match and allows ongoing use for both construction *and* maintenance work, on both federal and state roads. NHPP or STBGP funds may also be used for the purchase of mobile barriers; however, such funds are restricted to eligible work on federal roads (e.g. rehabilitation and preventative maintenance on bridges). There is no such HSIP restriction.

Particularly important is the following guidance in the September 2017 FHWA memorandum: "After the initial purchase of the equipment using HSIP funds, the State may use the equipment for its intended safety purpose on any public road (including local roads) for any project (e.g. Federal-aid or non-Federal-aid, capital improvement or maintenance, etc.)"

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<sup>1</sup> USDOT/FHWA Memorandum, *Eligibility of Construction and Highway Safety Equipment Acquisition Costs as a Direct Charge*, (September 8, 2017).

<sup>2</sup> As defined in 2 CFR 200.33, equipment means the tangible personal property (including information technology systems) having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

<sup>3</sup> See 2 CFR 200.439(b)(1).

States may want to consider moving work from HSIP to NHPP or STBGP, thus freeing up HSIP funds for safety equipment, such as mobile barriers.

In conclusion, FHWA has provided States with a great deal of new flexibility for equipment costs that benefit the Federal-aid highway program, including flexibility for the direct purchase of the MBT-1.