

Supplemental EA on May 8, 2008. An addendum to the FONSI was issued by FTA on July 22, 2008.

FTA is required by law to evaluate a proposed project against a number of New Starts criteria. As a result of FTA's evaluation for Final Design approval, the project has received an overall rating of "Medium." The current total capital cost estimate for the IOS is \$335.4 million in 2008 base year dollars and \$357.2 million in Year of Expenditure (YOE) dollars. The capital cost of the IOS is anticipated to be funded with 50 percent Federal New Starts funding, 25 percent state funds, and 25 percent local funds from the City of Orlando, and Seminole, Orange, and Volusia Counties. FDOT is seeking \$178.6 million (50 percent) in New Starts funds for the CFCRT IOS. Please be advised that this level of funding will be the maximum amount of New Starts funds provided by FTA for any subsequent Full Funding Grant Agreement (FFGA) for the IOS.

It is the Administration's policy to recommend for funding only those proposed projects that achieve cost effectiveness ratings of "Medium" or higher. The CFCRT IOS is currently rated "Medium-Low" for cost effectiveness. In June 2008, the SAFETEA-LU Technical Corrections Bill included language stating that the CFCRT Project should be considered exempt from the Administration's policy of requiring a "Medium" rating for cost effectiveness. Even with this exemption, the statute requires that the project maintain at least a "Medium" overall rating to be eligible for an FFGA.

FTA is required by law to ensure that grantees demonstrate the technical, legal, and financial capability to implement the project. Several important activities have occurred which demonstrate these capabilities. First, FTA's Project Management Oversight Contractor (PMOC) reviewed project plans and conducted a risk assessment of the project scope, cost, and schedule to assess FDOT's readiness to enter Final Design. The results of the PMOC's reviews indicate that:

- FDOT has adequately defined the scope of the CRCRT IOS, cost estimate, schedule, and potential risk areas to enter Final Design;
- The IOS cost estimate of \$357.2 million in YOE dollars, inclusive of financing costs, is sufficient to enter Final Design; and
- Based upon the PMOC's updated risk assessment analysis, the PMOC recommends a revenue operations date of May 1, 2012. The contingency amounts included in the baseline cost estimate are sufficient to cover the 10-month schedule delay from FDOT's originally projected revenue operations date of June 29, 2011. FDOT has accepted this recommendation and provided an updated schedule to FTA on July 24, 2008.

However, as FDOT completes Final Design, it should take actions to address the major risk factors noted by the PMOC during the risk assessment. The following areas of uncertainty should be addressed during Final Design and resolved prior to FTA's consideration of an FFGA:

- FDOT should enter into Operational and Contractual Services Agreements with Amtrak that address: (1) Amtrak operations over the CFCRT system corridor once FDOT takes ownership of the rail corridor and commences dispatching obligations; and (2) the maintenance of the CFCRT DMU fleet by Amtrak at the Auto Train facility;

- FDOT should complete its Preliminary Hazard Analysis, which is inclusive of the Federal Railroad Administration's (FRA) Collision Hazard Analysis and FTA's Threat Vulnerability Assessment requirements. The PMOC's comments are to be incorporated into this FDOT submission;
- The original Design-Build-Maintain (DBM) civil/systems and DMU vehicle contracts' cost estimates were developed approximately a year ago. Therefore, it is important that FDOT review and, if necessary, update the estimates for these contracts to account for current market conditions, as well as any change in costs for commodities (i.e., steel, copper, concrete). FDOT should also review and update its cost estimates for these contracts, if necessary, to reflect any design revisions due to advanced Preliminary Engineering activities;
- FDOT should update the Project Management Plan (PMP) to include: (1) additional detail regarding FDOT's standard change order procedures and authorization/approval levels; and (2) additional information, as well as specific references, on material testing policies and procedures;
- FDOT must provide FTA with documentation of fully executed and completed railroad and other third party agreements; and
- FDOT should revise and resubmit its Operating Plan to consolidate information on the following topics: operating agency; projected ridership and line loads; passenger fares; vehicle capacity and round-trip cycle times; service plans with preliminary operating schedules for opening day and 2030 for the IOS; and parking plans for opening day and 2030.

In addition, several areas require follow-up actions upon receiving approval into Final Design. FDOT will be required to complete these actions within 45 days of receiving approval into Final Design:

1. Update and resubmit the PMP to reflect the IOS's current cost and schedule information.
2. Develop and submit an outline for the Risk Management Plan to FTA and the PMOC.
3. Develop and submit a Trespassing Hazard Analysis (that includes studying the need for additional fencing along the corridor to prevent trespassing).
4. Develop and submit a schedule mitigation plan for at least three (3) months of schedule recovery at the start of the construction period.
5. Develop and submit a mitigation plan capable of reducing the project cost by a minimum of \$10.7 million. The mitigation plan serves to adjust scope as a means to replenish the contingency amount to the level required at that phase of the project. This is meant to maintain the baseline project budget and avoid the need to increase project funding.
6. Evaluate the DMU procurement, DBM and Design-Bid-Build contracts to determine if incentives can be included to increase the reliability of schedule performance for these contractors.
7. Update and submit all management plans for the construction phase.

The second activity which occurred as part of FTA's evaluation of FDOT's legal, financial and technical capability to implement the project is that FTA's Financial Management Oversight

Contractor (FMOC) completed a draft financial capacity assessment of FDOT's financial capacity to build, operate and maintain the IOS. The FMOC noted several areas of concern that need to be addressed during Final Design, and prior to FTA's consideration of the IOS for an FFGA:

- The termination clauses in the Interlocal Agreements (ILA) are of concern to FTA and may limit our ability to award an FFGA. This includes the clauses which state that the agreements can be terminated if: (1) the design-build or other firm fixed price contract exceeds 105 percent of budget; (2) the total project budget is greater than 105 percent of project budget; (3) the annual local operating subsidy exceeds the maximum limit in the agreement; or (4) due to an unforeseen event, the funding partners (by mutual consent) may elect to cease operations. These clauses call into question the viability of the project should there be unforeseen capital or operating cost increases.
- FDOT must develop a plan describing how it would mitigate potential project cost increases and provide non-federal funding for these increases if needed.
- The current projected local operating assistance contributions exceed the maximum annual contributions established in the ILAs. FDOT must work with the local funding partners to establish a plan to fully cover the operating and maintenance costs for the project now and in the future, which may require adjustments to the ILAs.
- The financial plan assumes receipt of usage fees from Amtrak. A usage fee agreement with Amtrak needs to be finalized.

With this approval, FDOT has pre-award authority to incur project costs for Final Design and utility relocation activities prior to grant approval and retain eligibility for future FTA grant assistance. This pre-award authority does not constitute any FTA commitment that future federal funds will be approved for the IOS. As with all pre-award authority, all federal requirements must be met prior to incurring costs in order to retain eligibility for future FTA grant assistance. This approval is limited to Final Design and utility relocation activities and related costs. It does not constitute approval to start any physical construction activity, including but not limited to site preparation and/or demolition and procurement of long lead items. If needed to maintain schedule, project staff must identify which pre-construction activities need to be performed during Final Design and obtain FTA approval of any necessary Letters of No Prejudice (LONPs). FDOT has automatic pre-award authority for the acquisition of real property or real property rights as more fully described in FTA's Federal Register Notice of January 28, 2008.

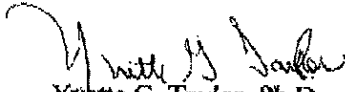
Per FTA's letter to FDOT dated May 22, 2008, FTA will consider LONPs for vehicles and other long lead procurement items. However, in order for FTA to consider (1) obligating Federal funds to the CFCRT Project for Final Design activities; (2) reimbursing property acquisition expenses; or (3) issuing LONPs for construction-related activities, submission of documentation of the executed and completed railroad agreements would be required. This includes agreements with CSXT for operating rights on the A-Line and with Amtrak for usage of the Auto Train facility and sharing of the existing Amtrak Stations. If the CSXT operating agreements continue to be contingent upon the sale of the CSXT property, then that agreement must be fully executed and completed as well.

Additionally, FDOT is reminded that the project must meet all Americans with Disabilities Act (ADA) requirements. Per FTA's letter dated August 8, 2007, FDOT has provided an acceptable solution to meeting the ADA level boarding requirements for the CFCRT IOS. However, should the project scope or design be altered, FDOT will need to provide FTA with updated information so that FTA can ensure ADA requirements continue to be addressed appropriately.

As an FTA grantee, FDOT is required to provide continuous administrative and management direction of project operations authorized by this letter, including the timely resolution of the technical issues identified above. Failure to make substantial progress on the above items will delay advancement of the project.

If you have any questions, please do not hesitate to contact me or my staff at 404-865-5600.

Sincerely,


Yvette G. Taylor, Ph.D.
Regional Administrator