



## Regional Toll Revenue (RTR) Frequently Asked Questions

### Agreements/Legal Questions

#### Question 1:

Several locations in the Advanced Funding Agreement (AFA) use the term "Local Government." Should the agreement be changed to use "Local Government or Developer"?

For example:

- *Article 6. Local Match*

*"The Local Government shall be responsible for the required 20 percent local match..."*

*"The costs incurred by the Local Government prior to the execution of this agreement..."*

**Response:** "Developer" should not be added to the agreement, as the agreement with TxDOT should be with a governmental agency. If a Local Government wants to pass obligations on to a developer, that option is available at the Local Government's discretion. However, the local government would need a separate agreement with the developer in addition to the TxDOT agreement. TxDOT will ultimately look to Local Government to satisfy the requirements in the same way a Local Government would hold a prime contractor responsible and not look to a subcontractor.

**Question 2:** Will the contractor be required to follow the local government code (our process) as it relates to the bidding process?

**Response:** The Local Government will have to demonstrate that the procurement method used complies with State law (as RTR funds are legally considered to be State funds). The intent behind the RTR agreements was to permit Local Governments to use their local design standards, construction management, and procurement standards, rather than a standard TxDOT approach. However, Local Governments must still meet the minimum requirements of State law. The agreement requires the Local Government to certify compliance with State law for any procurement with RTR funds (Article 7). If the Local Government can certify that they have complied with State law, then the Local Government is in compliance. There are exceptions to competitive bidding requirements under certain economic development agreements that a Local Government may want to review or seek legal advice regarding the issue.

**Question 3:** Is "Pre-award Authority" allowed in the RTR program?

**Response:** There are three different sets of rules (and agreements) for RTR projects depending on the type of RTR funds awarded to the project:

1) RTR funding is "off-system": In this case, agreements are drafted directly between the implementing agency (i.e., the city or county) and TxDOT. Pre-award authority is allowable under certain conditions

## Frequently Asked Questions (cont'd)

with pre-approval from the North Central Texas Council of Governments (NCTCOG), but only up to the amount of local match required for the project.

2) RTR funding is “on-system”: On-system projects involve some or all work performed on the State Highway System. In this case, an agreement may not be necessary unless the local agency owes a local match. Then, agreements are drafted directly between TxDOT and the implementing agency. Generally, since TxDOT is the implementing agency, RTR funds are disbursed directly to TxDOT for approved RTR project costs without an agreement. Pre-award authority is generally not needed in this scenario.

3) RTR funding is for sustainable development projects: Due to interactions with developers, these projects require a three-party agreement between TxDOT, NCTCOG, and the implementing agency. These types of agreements allow for a more limited type of pre-award authority, but are treated on a case-by-case basis. If an implementing agency wishes to seek pre-award authority for a sustainable development project, please contact NCTCOG Sustainable Development [staff](#).

**Question 4:** Do Regional Toll Revenue projects have a Davis-Bacon requirement? Specifically, is there any requirement to get certified payrolls or do interviews with off-system RTR project contractors?

**Response:** No, if the project is 100 percent funded with non-federal funds, then the Davis-Bacon requirement is not applicable. **RTR funds are non-federal.** However, if there is federal funding or assistance in the project, compliance with the Davis-Bacon regulation is necessary for the following reasons:

The Davis-Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on **federal** or District of Columbia construction contracts or **federally assisted contracts** in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.

29 CFR Section 3.2 further defines federally assisted projects “... (d) The term *building or work financed in whole or in part by loans or grants from the United States* includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.”

For more information about Davis-Bacon, please visit <http://www.dol.gov/compliance/laws/comp-dbra.htm>.

**Question 5:** Are RTR funds considered State funds or Regional funds?

**Response:** Legally, RTR funds are classified as State funds for accounting purposes. However, in the TIP/STIP documents, RTR funds are identified as regional, because they are created by regional toll roads and managed lanes.

## Frequently Asked Questions (cont'd)

### Project Implementation

**Question 6:** How often is the implementing agency required to provide status reports to NCTCOG for RTR-funded projects?

**Response:** According to Article 22 of the TxDOT Agreement, implementing agencies should provide a **monthly** status report to NCTCOG starting when the agreement is executed, and continuing until completion of the RTR funded project. The monthly report should include: 1) the status of the project, 2) a report of expenditures by phase, 3) interest earned, and 4) the current interest rate for the period, as required in the agreement. Language from the agreement is provided below:

*“...The Local Government shall provide to NCTCOG on a **monthly basis** a report of expenses, including the Local Government’s expenditure of local match funds. The report shall list separately the expenditures **by project phase** as shown in Attachment A, including but not limited to engineering, environmental review, right of way acquisition, and construction. The report shall also describe **interest earned** on money from the SH 121 Subaccount, including the **interest rate**, interest earned during the month, and cumulative interest earned. The report shall further describe the **status of developing the Project...**”*

**Question 7:** Who should I contact when I have questions about RTR projects?

**Response:** Click [here](#) for a list of RTR program contacts.

**Question 8:** What is RAPTS?

**Response:** NCTCOG maintains an interactive database containing all RTR projects and fund balances by account and county, which is called the Revenue and Project Tracking System or RAPTS. The RAPTS database is a multi-faceted system in which implementing agencies and NCTCOG staff can input RTR project information such as project status, expenditures, project agreements, and environmental information on the project management side (RAPTS internal site). Updates from the internal site are uploaded onto the RAPTS public dashboard, which displays all RTR funds, commitments, and programming information. The RAPTS public dashboard is at <http://rtr.nctcog.org/>.

The RAPTS internal website, in which implementing agencies and NCTCOG staff input RTR project invoices, project expenditures, and project status is located at <http://rtrinternal.nctcog.org/>. Implementing agencies are required to input project information monthly. Please contact RAPTS [technical support staff](#) to request a user account and log-in to access the RAPTS internal website.

As of July 2014, NCTCOG staff upgraded RAPTS to include all RTC-selected projects and their historical TIP data. The site now includes information on projects selected through funding programs such as Congestion Mitigation and Air Quality Program (CMAQ), Surface Transportation Program – Metropolitan Mobility (STP-MM) funds, and other funding programs. All implementing agencies and NCTCOG staff also have the ability to input all TIP project modification requests and updates on this site as well.

**Question 9:** How do I reset my RAPTS password?

**Response:** Please contact RTR program staff by email or phone and we will help you reset the password. Click [here](#) for a list of RTR program contacts.

## Frequently Asked Questions (cont'd)

### Project Close-out

**Question 10:** After completion of an off-system RTR project that received “Advanced” or “Sustainable Development” RTR funds, what is next?

**For Off-System RTR Projects:** Within 30 days of project completion, the implementing agency is required to submit the following items in the order they are listed below:

- 1) The Project Close-out Checklist for RTR Advance Projects to NCTCOG for staff concurrence. After review, NCTCOG will provide a letter of concurrence to TxDOT and the submitting agency. Click here for the [Project Close-Out Checklist](#).
- 2) Then, submit the Close-out Submittal package to TxDOT with the following information:
  - NCTCOG’s Letter of Concurrence for project completion
  - Signed Notification of Completion document acknowledging each individual project(s) completion to TxDOT
  - Certification of the date project was opened to traffic
  - Certification of date of project completion
  - Confirmation that final inspections have been conducted, if applicable.
  - An accounting statement outlining the total RTR funds received, project expenditures and interest earnings on advanced funding.
  - A check made **payable to the Texas Department of Transportation** for any excess RTR funds and interest earned. Distinction must be made between interest earnings and excess RTR funding by the RTR account (121 RTR Subaccount 1, 121 RTR Subaccount 2, etc.)

**For Sustainable Development Projects funded with RTR dollars:** There are different steps to closing a Sustainable Development RTR project. Close-outs for Sustainable Development projects are handled through NCTCOG. Within 60 days of completion of a sustainable development project (i.e., inspections complete and project open to traffic), the close-out actions should occur in the order listed below:

- 1) Implementing Agency submits a [Close-out Report](#) to NCTCOG that documents:
  - Actual project costs
  - Final program activities
  - Documentation of significant progress towards overall project completion (Building Permit Requirement)
  - Local sponsors must submit the close-out report no later than three (3) years after execution of the funding agreement
- 2) NCTCOG staff begins close-out process and review of documents provided by agency.
- 3) NCTCOG staff will submit documentation for sustainable development project closeouts to TxDOT.
- 4) TxDOT reviews and provides final close-out

**Note:** If an implementing agency has multiple RTR-funded projects, a close-out submittal package will be required for each RTR project. Also, interest for each RTR project must be reported separately. For additional interest questions, please see Question 12.

Please click [here](#) for a detailed list of close-out procedures.

## Frequently Asked Questions (cont'd)

**Question 11:** If there are cost savings on a RTR-funded project at close-out, can the implementing agency use the RTR funds on another RTR project?

**Response:** No, any remaining RTR funds and interest earned must be returned. Once project close-outs are complete, funds will be placed in the appropriate county's RTR account(s). As remaining RTR funds are accumulated, county-wide discussions on project priorities will be facilitated through each county's RTR taskforce.

**Question 12:** Prior to close-out, if there are cost savings on a funded RTR project, should the implementing agency wait until close-out or amend the agreement to show the cost savings?

**Response:** If cost savings are realized prior to close-out, the RTC may remove the funds prior to the project being ready for close-out. The implementing agency should send a letter outlining the cost savings and asking TxDOT to confirm receipt; NCTCOG should be copied on the letter. This process will occur in lieu of an agreement amendment to show reduction in funds, and TxDOT will save the letter in the project file. Additionally, a TIP modification will be processed to reflect cost savings in the TIP/STIP document.

**Question 13:** What should the implementing agency do if there is a possibility that project costs will be more than originally planned and a cost overrun is anticipated?

**Response:** If an implementing agency anticipates a potential cost overrun, please notify [NCTCOG staff](#) as soon as possible to avoid project delays. NCTCOG will review project needs to determine if additional RTR funds are needed and available for the cost increase. If so, a TIP modification request will need to be submitted by the implementing agency and processed by NCTCOG staff. Although, TxDOT does not amend off-system agreements, TxDOT accepts fully approved TIP modifications in lieu of an agreement amendment.

## Earned Interest on RTR-funded Projects

**Question 14:** Can interest earned from the RTR funds advanced for a project be used against related project expenditures?

**Response:** Interest earned cannot be used without receiving prior Regional Transportation Council (RTC) approval through project modification. If additional RTR funding is needed above the amount originally funded, a modification to the project will be necessary through the Transportation Improvement Program (TIP) quarterly modification process. If interest is awarded by the RTC, the implementing agency will be responsible for the local match portion of the newly awarded funds.

**Question 15:** If an implementing agency has several RTR projects, how should interest earned be reported? Based on each individual RTR awarded project or based on the total RTR funds received by the agency as a whole?

## Frequently Asked Questions (cont'd)

**Response:** Interest earned should be reported for each TIP project receiving RTR funds. If the Implementing Agency has three (3) RTR projects, the interest earned should be reported separately for each RTR project in RAPTS. The agreement requires invoice reporting for individual projects on a monthly basis. Each month, interest should be reported for Current Period Interest and Percentage for each project. Interest reported incorrectly will cause RAPTS reporting inaccuracies. Also, projects should be closed out separately as well. According to Article 3 of the TxDOT Agreement, all funds paid to the Local Government should be deposited into a separate account and interest earned on the funds should be kept in the account.

**Question 16:** Can interest be used to offset the cost of accounting and RTR accounting-related expenses?

**Response:** Costs associated with tracking interest on an RTR project, can be included as a program or project cost, and the amount should be included in invoices (as a part of the overhead cost). The required local match can be used to cover these costs. However, interest from the RTR account cannot be used to cover these costs unless first approved by the RTC. These costs are eligible to be paid from the original RTR funds awarded to the project.