Revisiting the Firm Cost Cap on Bicycle and Pedestrian TIP Projects

As part of the 2010-15 TIP update, the Planning Committee agreed to revisit the cap discussion. The issue was on the agenda for discussion during the TIP update but was overlooked due to the amount of time spent with the Round 1 and Round 2 programming discussions. At the April 2011 Planning Committee meeting, members had an informal discussion and suggested the staff outline some options for consideration. At that time, concerns were also raised about the different treatment of highway and transit projects regarding late cost changes and overruns, and the potential for having different cost cap treatments for projects considered for flexible funding by CDTC and those submitted to NYSDOT for Enhancement funding.

Current policy is to apply a firm cap to all bicycle and pedestrian projects that are put on the TIP. This was originally done to be consistent with the Transportation Enhancements Program (TEP) administered by NYSDOT and because CDTC, at the time, did not have a good history of construction and engineering funding for bike/ped projects to develop ‘comfortable’ cost estimates.

Table 1 presents the current variety of approaches to various combinations of fund source and project type. Note that many of the rules (shown in bold) are imposed by NYSDOT or USDOT and are not subject to modification by CDTC. Only those rules not shown in bold in Table 1 are candidates for revisiting by CDTC.

Table 1
Eligibility for Consideration of Cost or Scope Amendments for Various Fund Source – Project Type Combinations on CDTC’s TIP

<table>
<thead>
<tr>
<th></th>
<th>FHWA Highway (on road)</th>
<th>FHWA Bike/Ped (on road)</th>
<th>FHWA Trail (off road)</th>
<th>FHWA Spot (on road)</th>
<th>FHWA Enhance (off road)</th>
<th>FHWA SRS Transit</th>
<th>FHWA Transit</th>
<th>FTA Transit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope revision</td>
<td>Yes</td>
<td>Yes (1)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Scope revision with cost implications</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cost increase, no scope change</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Latest opportunity for amendment</td>
<td>Before letting</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>Limited to $ in grant</td>
<td>Limited to $ in grant</td>
<td></td>
</tr>
<tr>
<td>Cover overbids and change orders?</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

(1) CDTC would likely consider a reasonable scope request if costs remained capped.

**Bold font** represents rules imposed by others.

Normal font represents latitude and/or explicit constraints provided by CDTC policies and practices.
To simplify the discussion of options, some key issues are presented below followed by a limited number of options. In the Planning Committee’s discussions of the options, several over-riding principles and practices should be considered:

- CDTC seeks steady progress across all aspects of its plan at any funding level. Implementation of the entire plan is required to deliver good system performance, build a healthy region and provide the economic, air quality and livability benefits promised by New Visions.

- Access to flexible funds in the TIP is influenced primarily by New Visions’ budgets for each project category (which guides Round 1 allocations of funds to each category) and by compelling arguments for particular projects and initiatives (Round 2 and 3 discussions). Head-to-head competition between projects from different project categories is not a central element of the TIP process.

- CDTC also views equity as applying the same rules to all sponsors and avoiding the appearance of providing one treatment to one sponsor while withholding it from another.

- No TIP amendment (or change to a project listing during a TIP update) can be considered automatic; *all projects must be viewed as having scope and cost caps*. Table 1 simply describes whether changes can even be floated for consideration.

**Null Alternative**

**Maintain a firm cap on all stand-alone bike/ped projects.** This option maintains consistency with external (Enhancement, Safe Routes to School) programs and limits CDTC budget implications of certain bike/ped projects that are complex and hard to nail down at the time the projects are added to the TIP. It is equitable in that it treats all bike/ped sponsors equally, but maintains a distinction between bike/ped and other projects that is not justified if cost estimates are comparable in quality to those for other project types and is inconsistent with CDTC’s holistic principles. It also retains an inconsistency between the treatment of stand-alone bike/ped projects and bike/ped elements of larger projects.

Reaffirming the null alternative is a strong statement that the door is closed to TIP amendments for bike/ped projects regardless of circumstances.

**Option 1**

**Remove the firm cap on future stand-alone bicycle and pedestrian projects, with the exception of Spot Improvements.** Changing the policy would be consistent with CDTC’s commitment to a holistic approach to transportation planning and programming.

A change in policy would not eliminate the need to look at proposed amendments in terms of a sponsor’s good faith effort to develop sound cost estimates and deliver the approved scope. The adopted amendment procedures would have to be followed to deal with context, magnitude, merit, and potential TIP off-sets. This would only refer to the review of cost or scope during a TIP update or via amendment for projects funded with STP, NHS, or CMAQ.
Projects funded by programs with definitive budgets such as TEP and Safe Routes to School would continue to have a firm cap. Future solicitations for CDTC’s Spot Improvement Program would continue the firm cap. (The 2010-15 TIP increases the annual amount for this program to $0.250 M in 2014-15. It may be advisable to revisit the maximum amount that can be requested to make projects more deliverable.)

Variations would be possible when appropriate. For candidate projects for which there is great uncertainty over final cost or scope, or for which the scale is large enough to require multiple funding partners, CDTC might wish to encourage or require sponsors to propose a cap.

**Option 2**

**Remove the firm cap on existing and future bike-ped projects on the TIP.** This would extend the *eligibility* for consideration of cost or scope changes to existing projects on a case-by-case basis.¹

If this option were selected, demonstrated good faith effort to deliver the approved scope and honor the agreed cost cap would be critical elements to CDTC review of any change to a project for which the sponsor had accepted the firm cap earlier. Given that sponsors entered into project development after accepting a firm cap, the burden on the sponsor (in documenting the argument for an amendment) would be greater than typical for other projects. There are projects on the TIP that have had to ‘live with’ the cap and the project sponsors have been responsible for finding additional funds when costs have increased. Ignorance of the cap would not be a strong argument for entertaining an amendment, for example.

For reference, there are currently 19 stand-alone bike/ped projects (see attached) on the 2010-15 TIP in addition to Spot, Enhancement and Safe Routes to Schools projects.

**Option 3**

**Tighten the cap on all projects and extend the tightened rules to all projects, existing and new.** As with options 1 and 2, this option would also address the need for equitable treatment, but only if extended to all flexible fund sources for all project types and all sponsors. (Some MPOs in other states maintain a firm cost cap on all projects under their control, but in such cases State DOT projects are treated differently from local projects. This would not be a desirable circumstance from the perspective of CDTC principles.)

A tightened cap could be envisioned as placing a burden on all sponsors equivalent to the heightened burden described in Option 2 for sponsors of existing capped projects. In other words, sponsors would need to be prepared to advance the project at a capped federal level and consider approval of a TIP amendment as only a “possibility” rather than a “probability”.

¹ In February 2009, the Planning Committee agreed to discuss the cap for the Cohoes Black Bridge project (A437).