

Funding for Positive Protection Barriers

What Federal Funding is Available for Positive Protection?

NHPP, STBGP, and HSIP

FHWA recently clarified that States can now use federal funds to acquire Mobile Barriers MBT-1 and other construction and safety equipment. States can use NHPP, STBGP or HSIP funds (e.g. leftover or otherwise available funds from most projects). States may find it advantageous to first transfer funds from NHPP or STBGP to HSIP under 23 U.S.C. 126, and then purchase barriers under the HSIP program. Barriers purchased under the HSIP program can be used for maintenance and construction on federal and state roads. The State share under HSIP is 10% (federal funds can be used for 90% of the purchase). The FHWA also clarified that States can directly purchase barriers (i.e. they do not have to purchase them through separate projects).

How Can Contractors Obtain & Use Positive Protection?

Contractors have options on how to pay for and use positive protection. Options vary for different products. As one example, Mobile Barriers MBT-1 are available to buy, lease or rent.

Federal law and the national standards identify types of projects that need positive protection. For such projects, a “separate pay item” for positive protection is required under federal law and regulations. [1](#), [11](#) Contractors can urge States to include positive protection in their plans. States can spec in a separate pay item for positive protection, or otherwise, purchase it for their employees and contractors to use on these types of projects.

State personnel may not be aware of the recent changes in federal policy and may not realize they can directly purchase the barriers or that they can take the barriers back at the end of the contract for future use. Traditionally, that has not typically been allowed.

Under the new FHWA policy, states can directly purchase or spec-in and reclaim Mobile Barriers MBT-1 and other safety and construction equipment for use by their crews and contractors.

- **States can buy positive protection barriers directly, then allow their crews and/or winning contractors use them (i.e. buy and provide).** Direct purchases are specifically allowed under the new FHWA policy.
- **States can spec in barriers, allow winning contractors to use them, and then the States can take ownership and possession at the end of the term.** This allows all bidders to include them and later transfers the barriers back to the state for its own use and/or for use on the next contract.
- **States can spec in barriers, then allow winning contractors to rent or buy them at the end of the term.**

Footnotes

¹ [Temporary Traffic Control Devices, 23 U.S.C. § 112\(g\).](#)

² [Definitions, Subpart K - Temporary Traffic Control Devices, 23 C.F.R. § 630.1104.](#)

³ [Positive Protection Measures Defined, 23 U.S.C. 112\(g\)\(4\).](#)

⁴ [2019 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

⁵ [2018 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

⁶ [2017 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

⁷ [2016 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

⁸ Estimated Total Crashes & Injuries Data: 2013-2015 data from NHTSA National Automotive Sampling General Estimates System (NASS/GES). NHTSA retired NASS/GES at the end of 2015. 2016-2017 data from NHTSA's replacement Crash Report Sampling System (CRSS).

⁹ Fatalities Data: NHTSA Fatality Analysis Reporting System (FARS) Encyclopedia. 2018 is the last year with available data.

¹⁰ [Positive Protection Devices, Subpart K - Temporary Traffic Control Devices, 23 C.F.R. § 630.1108\(a\)\(1-5\).](#)

¹¹ [Payment for Traffic Control, Subpart K - Temporary Traffic Control Devices, 23 C.F.R. § 630.1108\(f\)\(2\).](#)

¹² ["Portable Positive Protection: A Guide for Short Duration and Short Term Work Zones", Updated by Mobile Barriers LLC, Based on Material Developed by ATSSA for the FHWA Work Zone Safety Grant Program \(June 2016\).](#)

¹³ [U.S. Department of Transportation, "Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses - 2016 Adjustment," \(August 8, 2016\).](#)

¹⁴ UC Davis/AHMCT, "A Risk Assessment and Cost Benefit Analysis for [Highly Mobile Barriers]," Technical Report Number UCD-ARR-08-09-30-01, (2008). Ibid, Attachment 3.

¹⁵ Mobile Barriers LLC internal crash analysis for Washington D.C. located highly mobile barrier.

¹⁶ Former Deputy Executive Director of the Texas Department of Transportation (TxDOT).

¹⁷ [2013 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

¹⁸ [2014 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

¹⁹ [2015 Associated General Contractors of America \(AGC\) Highway Workzone Safety Study.](#)

Work Zone Barriers

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