



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Grants to the Los Angeles County  
Transportation Commission Under the  
Intermodal Surface Transportation Efficiency  
Act of 1991

**File:** B-251179

**Date:** March 3, 1993

### DIGEST

1. Sections 3034(b)(3) and 3034(b)(5)(C) of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), respectively direct the Secretary of Transportation to grant to the Los Angeles County Transportation Commission \$695 million for fiscal years 1993 through 1997 and \$535 million for fiscal years 1998 through 2000. The two grant amounts are additive rather than inclusive.
2. Section 3034(b)(5)(C) of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), directs the Secretary of Transportation to grant funds to the Los Angeles County Transportation Commission in fiscal years 1998 to 2000. This directive does not establish a current grant which must be charged against the statutory limits on grants awarded through fiscal year 1997.
3. Sections 3034(b)(5)(C) and 3034(c) of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), direct the Secretary of Transportation to sign an agreement, by October 15, 1996, to grant funds to the Los Angeles County Transportation Commission in fiscal years 1998 to 2000. When entered into, the agreement will constitute a contingent commitment of future budget authority under section 3(a)(4)(C) of the Federal Transit Act, and will become subject to the statutory limits on such commitments.

### DECISION

The Administrator of the Federal Transit Administration has asked for our opinion on the type of funding commitment created by section 3034(b)(5)(C) of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991) (ISTEA). Section 3034(b)(5)(C) provides that, if the Los Angeles County Transportation

Commission (LACTC) or its successor uses statutorily provided advance construction authority, the Secretary of Transportation shall grant funds to the LACTC in fiscal years 1998 to 2000. Section 3034(c) requires that, by October 15, 1996, the Secretary and LACTC amend their full funding contract to provide for these grants.

For the reasons stated below, we conclude that section 3034(b) (5) (C) does not establish a current grant, which the Secretary of Transportation would be required to charge against the current statutory limits on grants awarded through fiscal year 1997. We also conclude that, when the contract is amended under section 3034(c), the funding commitment provided for in section 3034(b) (5) (C) will become a contingent commitment of future budget authority under section 3(a) (4) (C) of the Federal Transit Act, and will become subject to the statutory limits on such commitments.

#### BACKGROUND

The Federal Transit Act, as amended by ISTEA, authorizes the Secretary of Transportation to help States and local public bodies finance mass transit projects. The questions raised by the Administration concern two forms of assistance authorized by the Act. First, section 3 of the Act, 49 U.S.C. app. § 1602, authorizes the Secretary to award discretionary and formula grant funds to help finance projects. Generally, these grants are financed out of the Mass Transit Account of the Highway Trust Fund. See B-228732, Feb. 18, 1988. However, the present authorization only extends through fiscal year 1997, and is subject to annual limits on the amounts that may be granted. 49 U.S.C. app. § 1617(b).

Second, section 3(a) (4) (C) of the Act authorizes the Secretary of Transportation to incur commitments to make future grants. These commitments are contingent upon the future availability of budget authority, and may involve grants to be made after the current authorization period of the Act. However, under section 3(a) (4) (E) of the Act, the total estimated amount of contingent commitments to incur obligations (and other future obligations) may not exceed a specified limit. That limit is the greater of the amounts authorized to carry out section 3 or 50 percent of the Mass Transit Account's uncommitted cash balance (with certain adjustments).

In addition to reauthorizing and amending the Federal Transit Act, ISTEA directs the Secretary of Transportation to award several specific grants from funds available under section 3. Relevant here is the section 3034(b) (2) requirement that, by October 15, 1992, the Secretary amend the existing "full funding contract under section 3 of the

Federal Transit Act"<sup>1</sup> with the LACTC. The purpose of the amendment is to provide funding for Minimum Operable Segment-3 (MOS-3) of the Los Angeles Metro Rail Project. Section 3034(b) also specifies some specific terms to be included in the amended contract. For example, section 3034(b)(3) requires the amended contract to state that the Federal share of MOS-3 costs will be \$695 million for fiscal years 1993 to 1997. In addition, section 3034(b) contains the following:

"(5) Advance Construction.--

"(A) In General.--The amended contract . . . shall provide that the [LACTC] may construct any portion of [MOS-3] in accordance with section 3(1) of the Federal Transit Act.

"(B) Amount.--The [LACTC] may use advance construction authority in an amount not to exceed the sum of \$535,000,000 plus the difference (if any) between the Federal share specified in paragraph (3) for fiscal years 1993 and 1997 and the amount of Federal funds actually provided in those fiscal years.

"(C) Conversion to Grants.--In the event the [LACTC] uses advance construction authority under this paragraph, the Secretary shall convert that authority into a grant and shall reimburse the [LACTC], from funds available under section 3 of the Federal Transit Act, for the Federal share of the amounts expended. Such conversion and reimbursement shall be made by the Secretary in fiscal years 1998, 1999, and 2000 and shall be equal to the Federal share of the amounts expended by the [LACTC] pursuant to this paragraph . . . ."

Section 3034(c) directs the Secretary, by October 15, 1996, to further amend the full funding contract with the LACTC to provide funding for MOS-3 for fiscal years 1998 to 2000. The amended contract is to include provisions for the use and reimbursement of advance construction authority in the manner provided in section 3034(b)(5).

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<sup>1</sup>While section 3034 of ISTEA refers to a "full funding contract," section 3 of the Federal Transit Act, as amended by ISTEA, discusses "full funding grant agreements." However, early legislative versions of the ISTEA amendments to section 3 also referred to "full funding contracts." S. 1194, 102d Cong., 1st Sess. (1991). Thus, we view these terms as interchangeable for our purposes here.

## DISCUSSION

The Administrator of the Federal Transit Administration has asked for our opinion on two issues. The first issue is whether the \$535 million discussed in section 3034(b)(5)(C) is in addition to or part of the \$695 million to be granted under section 3034(b)(3). The Administration suggested that the reimbursement of advance construction authority provided for in section 3034(b)(5) might be viewed as a component of the \$695 million to be granted under 3034(b)(3). While this might alleviate the Administrator's concerns, we believe the clear language of section 3034 compels the conclusion that the \$535 million covered by paragraph (5) is in addition to the \$695 million grant provided by paragraph (3).

The second issue raised by the Administrator is the type of funding commitment created by section 3034(b)(5)(C). If section 3034(b)(5)(C) creates a funding commitment in addition to the section 3034(b)(3) grant of \$695 million, as we conclude it does, the Administrator suggests two alternate views of this additional commitment. The first view is that section 3034(b)(5)(C) creates a current commitment akin to a current grant, which the Secretary would be required to charge against the limits on section 3 grants in fiscal years 1992 through 1997. The second view is that section 3034(b)(5)(C) creates a "contingent commitment" of future budget authority under section 3(a)(4)(C) of the Federal Transit Act, which would be subject to the statutory limits on such commitments. The Administrator states that the budgetary treatment of the additional commitment to the LACTC under either view will significantly impair the Administration's ability to award other grants or "commitments."

### Section 3034(b)(5) Does Not Create a Current Grant

Under section 3(1) of the Federal Transit Act, prospective grantees designated by the Secretary may expend their own funds on mass transit projects, and use subsequent grants to reimburse the federal share of those costs. Prior to the enactment of this advance construction authority in section 3(1), grant applicants could not be reimbursed for costs incurred on projects before the projects were approved by the Secretary, or before the Secretary permitted an applicant to incur costs. H.R. Rep. No. 27, 100th Cong., 1st Sess. 218 (1987). However, the legislative history of advance construction authority under section 3(1) clearly shows that these designations do not obligate the federal government to award any grants. Id.

In our view, the requirement in section 3034(b)(5)(C) of ISTEA to convert advance construction authority used by

LACTC into a grant, and to reimburse LACTC from funds available under section 3 of the Federal Transit Act in fiscal years 1998 to 2000, does not presently require the Secretary to charge any amount against the current statutory limits on section 3 grants. The only current effect of section 3034(b)(5) is to allow the LACTC to expend its own funds "in accordance with section 3(1) of the Federal Transit Act." Neither the section 3(1) designations by themselves nor sections 3034(b)(5)(A) and (B) obligate the federal government to grant funds to LACTC beyond the \$695 million grant provided in section 3034(b)(3). Accordingly, we do not believe that anything in section 3034(b)(5) requires the Secretary to charge any amounts against the current statutory limitations on section 3 grants.

Sections 3034(b)(5)(C) and 3034(c)  
Will Create a Contingent Commitment

Under section 3(a)(4)(B) of the Federal Transit Act, the Secretary of Transportation may enter into a full funding grant agreement that establishes the terms and conditions of Federal financial participation in a project. Under section 3(a)(4)(C), a full funding grant agreement may obligate available budget authority, and may include commitments, contingent upon the future availability of budget authority, to obligate additional amounts. These contingent commitments may extend beyond the current authorization period of the Act. S. Rep. No. 79, 102d Cong., 1st Sess. 16-18 (1991).<sup>2</sup> Thus, section 3(a)(4)(C) authorizes the Secretary to commit to obligate additional funds after fiscal year 1997 once Congress provides budget authority for those years. As discussed above, section 3(a)(4)(E) of the Federal Transit Act limits the amount of such contingent commitments that the Administration may incur.

Section 3034(c) of ISTEA requires the Secretary to execute a second amendment to LACTC's full funding grant agreement by October 15, 1996. This amendment must provide for the use and reimbursement of advance construction authority as provided in section 3034(b)(5)(C). Section 3034(b)(5)(C) states that advance construction authority used by LACTC will be converted into grants in fiscal years 1998 to 2000. Thus, the amendment required by section 3034(c) to be executed by October 15, 1996, will commit the Secretary to grant funds to LACTC in fiscal years 1998 to 2000. The statutory directive, once effectuated in accordance with the terms of section 3034(c), results in an undertaking similar to "contingent commitments" under section 3(a)(4) of the

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<sup>2</sup>Senate Report 102-79 discusses S. 1194, much of which became part of ISTEA. See 137 Cong. Rec. S7747-S7748 (daily ed. June 13, 1991).

Federal Transit Act because it extends beyond the current authorization of the Act.

In addition, the section 3034(b)(5)(C) grants in fiscal years 1998 to 2000 are to be made from "funds available under section 3 of the Federal Transit Act." At present, there are no funds available under section 3 to be granted in fiscal years 1998 to 2000. The current authorized funding for section 3 grants only extends to fiscal year 1997. 49 U.S.C. app. § 1617. Thus, under the current statutes, the amendment required by section 3034(c) will, once executed, create an obligation to grant funds that is contingent upon Congress providing the necessary budget authority for those grants. In this respect, this commitment also resembles "contingent commitments" under section 3(a)(4) of the Federal Transit Act because they are both contingent on Congress providing future budget authority.<sup>3</sup>

These similarities, in our view, make the commitment provided for in section 3034(b)(5)(C) of ISTEA indistinguishable from the contingent commitments Congress authorized under section 3(a)(4)(C) of the Federal Transit Act. Therefore, we conclude that the commitment provided for under sections 3034(b)(5)(C) is subject to the limit on contingent commitments under section 3(a)(4) of the Federal Transit Act.

The Administration asserts that if it records the amounts to be granted under section 3034(b)(5)(C) as contingent commitments, it will effectively exhaust the amounts available under the limit in section 3(a)(4)(E) of the Federal Transit Act. Thus, the Administration argues, the single full funding grant agreement with LACTC will eliminate the Administration's ability to provide contingent commitments for other projects.

However, section 3034(b)(5)(C) creates a contingent commitment only when the Secretary amends the full funding contract with LACTC pursuant to section 3034(c). In this regard, the Secretary has until October 15, 1996, to execute the amendment. This interim period provides ample opportunity for the Secretary to present his concerns about the effect of incurring contingent commitments under section

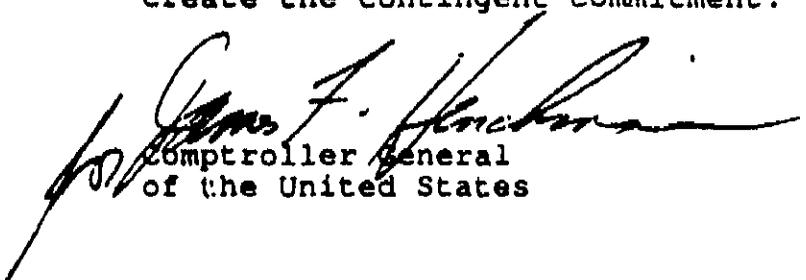
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<sup>3</sup>As discussed in detail in B-228732, Feb. 18, 1988, the Federal Transit Act creates budget authority. Accordingly, one but certainly not the only way to provide the requisite budget authority for the contingent commitment to be created by the section 3034(c) amended agreement is to extend section 3 of the Federal Transit Act through fiscal year 2000.

3034 to the Congress, and for the Congress to enact whatever legislation it deems necessary.

#### CONCLUSION

We conclude that the \$535 million funding commitment provided for under section 3034(b)(5) of ISTEA is in addition to the \$695 million grant provided for under section 3034(b)(3). We also conclude that section 3034(b)(5)(C) does not establish a current grant, which the Secretary of Transportation would be required to charge against the current statutory limits on grants awarded through fiscal year 1997. Finally, we conclude that amending the LACTC's full funding contract as required by section 3034(c) and section 3034(b)(5)(C) will create a contingent commitment of future budget authority under section 3(a)(4)(C) of the Federal Transit Act. This contingent commitment will be subject to the statutory limits on commitments under section 3(a)(4)(E) of the Federal Transit Act. However, the Secretary has until October 15, 1996, to amend the full funding contract and create the contingent commitment.

  
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