LOCAL ASSISTANCE PROCEDURES MANUAL

2026

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DLA
LOCAL ASSISTANCE

Local Assistance Procedures Manual

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Chapter 1 **Introduction and Overview**

1.1 Purpose

The Local Assistance Procedures Manual (LAPM) is intended to assist California Local Public Agencies (LPAs) scope, organize, design, construct, and maintain local public transportation facilities utilizing Federal Highway Administration (FHWA) Federal-aid or state funding. The LAPM describes the required processes, procedures, documents, authorizations, approvals, and certifications to receive Federal-aid and/or state funds for many types of local transportation projects.

1.2 Background

The LAPM is a compilation and summary of information from many sources including federal and state laws, regulations, and guidelines. It reflects the practices and procedures developed over many years of providing Federal-aid funding and state funding for LPA projects. These practices and procedures have been modified by superseding legislation which has provided LPAs with broad delegation, latitude, and responsibility for developing its projects. However, under Title 23 of the United States Code (U.S.C), Caltrans is responsible for the administration of Federal-aid transportation projects in California and cannot delegate this overall administrative responsibility.

1.3 Related Manuals

The LAPM is intended to be used in conjunction with the Local Assistance Program Guidelines (LAPG). The LAPG describes each of the Federal-aid and state-funded Local Assistance programs and the requirements for obtaining project funding for these individual programs.

The Standard Environmental Reference (SER) provides departmental policy and guidance on compliance with the National Environmental Policy Act (NEPA) and related federal environmental laws, executive orders, regulations, and policies. The reference is intended for statewide use by LPAs and Caltrans.

For LPA projects on the State Highway System (SHS), all applicable Caltrans manuals and guidelines must be used. These describe the processes and procedures for developing state system projects. These also contain discussions of the regional and state planning and programming processes.

The LAPG provides detailed descriptions of the various state and federal programs available for financing local public transportation projects.

1.4 Terms and Definitions

A glossary of terms and definitions commonly utilized in the LAPM / LAPG is available at: https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/guide/dla-glossary.pdf

1.5 Acronyms and Description

A list of acronyms commonly utilized in the LAPM / LAPG is available at: https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/guide/dla-acronyms.pdf

1.6 LAPM Organization

The LAPM is divided into individual chapters that describe processes and/or procedural steps important to the development of a Local Assistance project. Projects may not need to fulfill each process to be successfully implemented and to be eligible for federal or state funding, but each should be considered.

Federal-aid Projects

Federal-aid projects require consideration of the processes described in each chapter in this manual. For these projects, each chapter should be reviewed to determine whether the actions, activities, and decisions required are applicable to the individual project.

State-Funded Projects

Projects utilizing only state funds require less oversight and review than those with Federal-aid funds. Not all of the processes described in the chapters of this manual apply to these projects. LAPM Chapters 1, 2, 3, 4, 5, 10, 16, and 17 apply in whole, or in part, to these projects. The LAPG further defines these programs.

Chapter Summaries

The chapters are generally in chronological sequence when developing a project; however, some of the procedures can be performed concurrently, or must be repeated for the next phase of a project.

Chapter 2: Roles and Responsibilities defines the roles and responsibilities for the various entities involved in developing a local assistance project.

Chapter 3: Project Authorization describes the process to obtain project authorization and fund obligation required for each phase of a Federal-aid project.

Chapter 4: Agreements describes the agreements needed between the LPA and the State and between the State and FHWA to obtain reimbursement of funds.

Chapter 5: Invoicing describes the general accounting procedures necessary to receive reimbursement for work done in any phase of the project.

Chapters 6-8: Environmental Procedures, Field Review, and Public Hearings discuss the project initiation and environmental procedures needed to bring a project to the stage at which the LPA decision-makers commit the project to final design and implementation.

Chapter 9: Civil Rights and Disadvantaged Business Enterprises describes the requirements for establishing and reporting DBE program and project goals. This process may be necessary during the initial project stage, or may not be required until a later phase.

Chapter 10: Consultant Selection describes the requirements for selecting and hiring consultants to perform project activities.

Chapters 11 & 12: Design Guidance and Plans, Specifications, & Estimate describe the design standards to be used and the Plans, Specifications and Estimate (PS&E) development necessary to bring the project to the advertising and construction stage.

Chapters 13 & 14: Right of Way and Utility Relocations describe the procedures used to acquire right of way or relocate utilities.

Chapters 15-17: Advertise and Award Project, Administer Construction Contracts, and Project Completion describe the procedures from advertising through construction administration, project completion, and completion of the final reports.

Chapter 18: Maintenance describes the ongoing maintenance responsibilities and activities needed to assure that the project remains a functional public asset, and the related inspection and reporting requirements.

Chapter 19: Reserved for future use.

Chapter 20: Audits and Corrective Actions describes the expectations, roles, and responsibilities for audits conducted by the Caltrans Internal Audits Office (CIAO) or the Independent Office of Audits and Investigations (IOAI).

1.7 LAPM Updates

The LAPM is updated on an annual basis and published every January: https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm.

Comments and suggestions for improvement to the manual or the processes and procedures therein can be submitted to: DLAPublications@dot.ca.gov.

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Exhibits

Exhibit 2-B: Federal-Aid Project Responsibilities List for Delegated Projects off the State Highway System

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 2 **Roles and Responsibilities**

2.1 Introduction

Within Caltrans, the responsibility for administering and managing the Federal and State Local Assistance Highway Programs resides in the Division of Local Assistance (DLA) under Planning and Modal Programs. Each of the twelve Caltrans districts has a District Local Assistance Engineer (DLAE) who is the Local Public Agency's (LPA's) primary contact for processing projects, aiding development efforts, and answering questions: https://dot.ca.gov/programs/local-assistance/other-important-issues/local-assistance-contacts.

The responsibility for implementing individual projects on the local streets, roads, and other transportation systems resides with the LPAs, principally the cities and counties.

State-Funded Projects

State-funded Local Assistance projects must be developed in accordance with policy and procedural requirements as specified in state law by the California Transportation Commission (CTC) and Caltrans. These state policies and procedural requirements are separate from federal requirements. It is Caltrans policy to provide these funds to local transportation programs with a minimum of state oversight. Since procedures vary with each state-funded program, the Local Assistance Program Guidelines (LAPG) should be referenced for a detailed explanation of the roles and responsibilities.

Federal-aid Projects

The Federal Highway Administration (FHWA) is the federal agency most typically involved in transportation projects undertaken with federal funding and/or approval action for the programs discussed in the LAPM. FHWA has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these programs. When a project involves federal-funding, FHWA is involved according to these responsibilities and the delegations in the Stewardship and Oversight Agreement (S&O). When another federal agency has permit jurisdiction or other role in the development of a project, FHWA frequently becomes involved in the process as either lead or co-lead federal agency.

Caltrans obtained major delegations of authority and/or responsibility from FHWA and has passed on these delegations to LPA partners to the greatest extent possible. Delegation includes the accountability for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or State oversight. Caltrans has the responsibility to ensure that LPAs are administering the Federal-Aid Highway Program (FAHP) in conformance with the applicable federal requirements. Federal-aid projects must be included in a regional transportation plan and the approved Federal Statewide Transportation Improvement Program (FSTIP). This inclusion must precede fund authorization for any activity for which Federal-aid funds are being sought. The responsibility for selecting the program of projects for inclusion in the urbanized area Federal Transportation Improvement Program (FTIP) resides with the Metropolitan Planning Organizations (MPOs). The County Transportation Commissions and Regional Transportation Planning Agencies (RTPAs) also have a role in programming projects for the FSTIP and the state funded State Transportation Improvement Program (STIP). Their selections must be done in consultation with the state, cities, counties, and other transportation agencies within the area. The FTIPs are incorporated into the FSTIP. Caltrans works with the non-MPO LPAs to program projects in the FSTIP. Exhibit 2-B: Federal-aid Project Responsibilities List for Delegated Projects off the State Highway System outlines the roles and responsibilities of the parties involved in Local Federal-

aid transportation projects. The subsequent chapters in this manual provide the details for carrying out these responsibilities.

2.2 National Highway System

The National Highway System (NHS) provides an interconnected system of principal arterials that serve major population centers, international border crossings, ports, airports, public transportation facilities, intermodal transportation facilities, and other major travel destinations; meets national defense requirements; and serves interstate and interregional travel. The NHS was developed by the United States Department of Transportation (USDOT) in cooperation with the states, local officials, and MPOs.

The California Highway System Map displays authoritative, statewide road system information along California's highways, including Functional Classification roadways and the NHS.

2.3 Stewardship and Oversight Agreement (S&O)

The FHWA/Caltrans S&O defines roles and responsibilities, outlines authorities, and assures accountability in effectively and efficiently managing program and project delivery of the FAHP.

Authority for the S&O comes from 23 U.S.C.106(c) which requires the USDOT and the State to enter into an agreement for the extent to which the State assumes the project approval and oversight responsibilities of the USDOT.

Unlike previous stewardship agreements, the current S&O utilizes a risk-based approach to manage the FAHP. This innovative way of doing business represents a paradigm shift in the joint and collaborative management of the FAHP.

2.4 Delegated Projects

Caltrans has authority for all aspects of a Federal-aid project except those activities which may not be delegated by federal law (requiring FHWA approval). Prior to September 2007, these projects were referred to as state-authorized projects defined by set criteria (rather than risk) such as Resurfacing, Restoration, and Rehabilitation (3R) projects, Interstate construction projects under $1 million, non-NHS projects, etc. Delegated projects include projects that are routine and inherently low risk in which Caltrans has a high level of experience and well-documented procedures and processes in place for ensuring compliance with federal requirements. Project level approval authority for these projects follows that outlined in Exhibit 2-B: Federal-aid Project Responsibilities List for Delegated Projects off the State Highway System.

Over 99% of Local Assistance projects are delegated in which Caltrans or the LPA has approval authority for most project level activities. FHWA's delegation of low-risk project level approval to Caltrans only functions as long as those activities remain low risk. If oversight reveals concerns with Caltrans approval process for delegated activities, these activities have the potential to become high risk, and therefore could alter Caltrans or FHWA's involvement in their approval.

2.5 Risk-Based Project Involvement (RBPI)

Risk-Based Project Involvement (RBPI) is FHWA's annual process that considers risk, data, and judgment to select Risk-based Involvement (RBI) projects and provide stewardship and oversight beyond what is required. The annual list of RBI projects and involvement activities are established and communicated to Caltrans by October 31st.

RBI projects are those in which Caltrans has assumed Section 106(c) responsibilities, but FHWA has decided to provide stewardship and oversight beyond what is required as a result from risks, data, and judgment considerations. Prior to 2019 these projects were referred to as Projects of Division Interest (PoDI) based on risk-based criteria such as meeting Major Projects requirements (23 U.S.C.106(h)), utilizing Innovative Financing and/or Contracting, etc. While Caltrans was responsible for approving most project level activities on low risk (delegated) projects, FHWA maintained some project level approval activities for PoDI projects.

Approval authority for RBI projects is delegable per statute or regulation, as documented in the current FHWA/Caltrans S&O. Retaining a delegable action by FHWA requires approval by FHWA's Division Administrator.

2.5.1 Annual RBI Project Selection Process

FHWA's annual selection of RBI projects and development of involvement activities are based on risks, data, and professional judgment. FHWA's process ensures consistency with the RBPI process and documentation from year to year but allows flexibility and discretion to adapt to dynamic risks and workloads. Projects not meeting the criteria below are considered delegated.

Several parameters are established to ensure FHWA's risk-based involvement is impactful and manageable and provides a statewide presence. There is no maximum number of RBI projects each year, but FHWA will select at least 24 projects.

- At least one Caltrans-administered RBI project in each of the 12 Caltrans districts
- At least one locally-administered RBI project in each of the 12 Caltrans districts
- FHWA will establish the approximate number of RBI projects to be selected in each Caltrans District based on available resources and workloads

Project screening, selection of RBI projects, and development of involvement activities are all based on risk, data, and judgment. Project screening uses both required and discretionary criteria to identify RBI candidates.

2.5.2 Risk-Based Project Involvement Screening Criteria

FHWA will consider the following criteria in screening the project universe. A project meeting any of the following criteria is an RBI candidate but there is no requirement to be selected as an RBI project.

1. Discretionary Grants and Financing - Any projects that were funded or financed through discretionary programs or by statutory direction. These include, but are not limited to, sources such as:
    - Infrastructure for Rebuilding America (INFRA) Grants (formerly Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies (FASTLANE) Grants)
    - Better Utilizing Investments to Leverage Development, or BUILD Transportation Discretionary Grant Program (formerly Transportation Investment Generating Economic Recovery (TIGER) projects)
    - Surface Transportation System Funding Alternatives Program
    - Advanced Transportation and Congestion Management Technologies Deployment programs
    - Transportation Infrastructure Finance and Innovation Act (TIFIA)

2. Major Projects - Projects with a total estimated project cost of $500 million or more and any amount of Federal-aid in the construction phase are Major Projects as defined by 23 U.S.C.106(h).
3. Public-Private Partnerships (PPP) - Any project that includes private financing.
4. Unusual Bridges and Structures - All projects that meet the criteria described in the 1998 memorandum on Project Oversight Unusual Bridges and Structures.
5. Program Involvement Findings - Any project that aligns with the top risk(s) identified by the division office from their program involvement findings.

FHWA also develops California-specific discretionary project screening criteria informed by:

1. Nationally identified focus areas such as Inactive Obligations
2. Office of the Inspector General and Government Accountability Office Reviews
3. FHWA California Division Office (CADO) Program Review observations
4. All CADO Unit's Program Analyses and Risk Assessments
5. CADO Focus Areas and Top 10 Risks (actual number of risks identified in the Unit Plan varies annually)
6. Consideration of CADO's unit plan objectives and activities
7. Innovative technologies

2.5.3 Identifying and Selecting RBI Projects

Once the qualitative screening criteria are established, data is used to identify projects that meet any of the criteria. FHWA must use care to ensure all projects meeting the required or discretionary screening criteria are screened. It is impossible for FHWA to be familiar with all of California's 5,000+ active Federal-aid projects. FHWA uses available data and avoids considering only RBI candidates they are familiar with. The primary project data source is the Financial Management Information System (FMIS), but there are some projects without a Federal Project Number and not reflected in FMIS. For example, some Emergency Relief (ER) projects have been determined eligible for ER funding but have not yet requested authorization. LPA Direct Recipient projects are never authorized within FMIS and so it is important to include the non-FMIS projects in the project candidate universe.

After identification, FHWA will discuss the reduced list of RBI candidates and make final RBI project selections that address risks statewide. This part of the RBPI process acknowledges the large number of Federal-aid projects, the State and many local partners, and the difficulty for FHWA to maintain a presence throughout California. To ensure federal requirements and priorities are widely understood, FHWA will select some RBI projects to engage with Caltrans Districts and local agency partners of all capacities. This gives FHWA the opportunity to understand the project delivery processes and challenges of small, medium, and large transportation agencies and their differences.

2.5.4 Developing Involvement Activities and Stewardship & Oversight Plans

Just as the selection of RBI projects is based on risks, data, and professional judgment, so is the development of involvement activities. The development of involvement activities does not rely on the final selection of RBI projects, and the two steps should be performed concurrently. Involvement activities may be of the stewardship variety such as providing technical assistance

and guidance and identifying opportunities for innovation. Other activities are compliance-oriented such as post-approval reviews and compliance spot checks. Construction project inspections offer an opportunity to provide stewardship and verify compliance. The overall list of involvement activities is developed based on CADO's risk priorities and does not rely on final RBI project selection. CADO will not retain project approval actions delegated to Caltrans under the S&O Agreement unless there are elevated risks and FHWA approves the retention of the project approval action.

Once the overall list of involvement activities is completed and the final RBI projects have been determined, FHWA completes an S&O Plan for each RBI project by selecting the relevant activities. Some activities will be relevant to all RBI projects (i.e., validating the Project End Date) while others may only apply to Discretionary Grant or ER projects. The S&O Plan also includes the project description, key milestone dates, and descriptions of the project's risks. If an RBI project is funded by a Discretionary Grant or is a Major Project, the S&O Plan must include required activities in addition to the risk-based discretionary activities.

2.6 Right of Way (R/W) Certification Delegation

In addition to the delegations discussed above, guidance regarding Caltrans delegation for R/W certification approval is described in LAPM Chapter 13 (Section 13.2: Federal Aid and the Federal/State/Local Agency Relationship).

2.7 Projects Off the National Highway System (Non-NHS)

Many of the responsibilities delegated to Caltrans under the S&O are further delegated to the local project sponsors for non-NHS projects. Caltrans preliminary engineering, construction review and approval activities are reduced. Other activities involving environmental reviews, project authorization, Disadvantaged Business Enterprises (DBE), consultant selection, and agreement procedures are streamlined to eliminate duplication of effort and multiple reviews.

2.8 Projects on the National Highway System (NHS)

The delegation of responsibilities to LPAs described above for non-NHS projects also applies for NHS projects. With the following exceptions (discussed in detail in the appropriate chapters of the LAPM), procedures are the same for both types of projects.

Field Reviews

Field reviews are required for significant LPA projects on the NHS and encouraged for all other Federal-aid projects. If the field review is not performed, document on the field review form the reasons why the field review was not performed, as a completed field review form is required for all Federal-aid projects.

PS&E Procedures for Significant NHS Projects

When Caltrans requires a field review for significant NHS projects, plans, specifications and estimate (PS&E) procedures (standards, agencies involved, use of consultants, project management, specifications, etc.) will be discussed. These procedures will be put in writing for Caltrans approval before final design is initiated. With approval, the LPA will then certify their PS&E(s) for these projects the same as they do for non-NHS projects upon completion of the PS&E. Caltrans may review the PS&E(s) if resources are available, or as part of a process review. NHS projects that are not significant will not require these approval procedures.

Design Standards

LPAs are required to use only American Association of State Highways and Transportation Officials (AASHTO), 3R, and other design standards officially approved for use on NHS projects that are off the State Highway System (SHS). For SHS projects, Caltrans standards are to be used. Locally approved design standards are not allowed on NHS projects; however, Caltrans may approve exceptions on a project-by-project basis.

Method of Construction

In general, an open and competitive bidding process must be used for construction contracts on Federal-aid projects. Exceptions to competitive bidding of construction contracts must include a Public Interest Findings approved by Caltrans for Delegated Projects.

Restricted Construction Contract Provisions

Warranty clauses are restricted on NHS projects unless an exception is approved.

Construction Administration for Significant NHS Projects

When Caltrans requires a field review for significant NHS projects, the LPA's construction administration procedures (staging, agencies involved, use of consultants, project management, quality assurance, etc.) will be discussed. These procedures will be put in writing for Caltrans approval before the Request for Authorization for Construction is approved. Caltrans will not review the construction administration unless requested and resources are available, or as part of a process review.

Quality Assurance Programs

LPAs are required to have a Quality Assurance Program (QAP); refer to LAPM 16.11: Quality Assurance Program for details.

Final Inspection

The LPA must perform a final inspection of completed projects and ensure compliance with contract requirements prior to contract acceptance. See LAPM 16.17: Final Inspection and Contract Acceptance for details.

2.9 Federal-aid Projects of $100 Million or More

The requirements of this section only apply if Federal-aid is used in any construction activity.

2.9.1 Projects of $500 Million or More (Major Project)

LPAs receiving any amount of federal financial assistance for a Major Project with an estimated total cost of $500 million or more (includes all phases) and LPAs for such projects as may be identified by FHWA, submit to Caltrans for each project:

- Project Management Plan (PMP)
- Financial Plan which consists of an Initial Financial Plan (IFP) and Financial Plan Annual Updates (FPAU)

A Cost and Schedule Risk Assessment (CSRA) must be completed by FHWA prior to the Final NEPA document, and prior to the construction authorization for all major projects (≥ $500 million).

Project Management Plan

A draft Project Management Plan (including the Project Management Plan Checklist) must be submitted prior to the finalization of the IFP. The plan must:

- Document the procedures and processes that are in effect to provide timely and appropriate information to the project decision makers to effectively manage the scope, costs, schedules, quality of, and the federal and state requirements applicable to the project.
- Document the role of the agency leadership and management team in the delivery of the project
- Be updated and submitted with the construction authorization request and updated thereafter, as required.

Financial Plan

A Financial Plan (including the Financial Plan Checklist) for projects of $100 million but less than $500 million and major projects over $500 million must:

- Be submitted when all elements of the plan are fully completed, but not later than when requesting federal authorization to proceed with construction. If the LPA waits until requesting authorization to submit the IFP for projects $500 million or more, the authorization will be delayed since FHWA headquarters has to concur in the approval of the IFP. For design/build projects, the plan must be received prior to award of the design/build contract.
- Be updated and submitted annually (FPAU) once the IFP is approved until construction is substantially complete. The FPAU must be submitted no later than 90 days after the end of the annual reporting period; to expedite FPAU submittals a draft (uncertified) FPAU should be submitted within 60 days of the annual reporting period.
- Be based on detailed estimates of the cost to complete the project as defined in the NEPA document.
- Provide for the annual submission of updates to Caltrans that are based on reasonable assumptions as determined by Caltrans of future increases in the costs to complete the project.
- Use costs expressed in year of expenditure dollars and estimated using a risk-based approach consistent with current FHWA Cost Estimating Guidance.

Assistance

Information regarding the preparation, timing, etc., of the above plans is available through the DLAE. Other valuable information that may be helpful in the preparation of the above plans as well as other project areas is available at the FHWA Major Projects website.

2.9.2 Projects between $100 Million and $500 Million (Mini-Major Project)

LPAs receiving any amount of Federal-aid for a project with an estimated total cost of $100 million or more (includes all phases) must prepare an IFP and FPAU and make the plan available to Caltrans/ FHWA upon request. Financial Plans for projects with an estimated total cost of $100 million or more, but less than $500 million, must be approved prior to Construction Authorization and must be submitted with the Construction Authorization request.

2.10 FHWA Responsibilities

FHWA has the overall responsibility for the FAHP pursuant to 23 U.S.C.106 except for the environmental responsibilities under 23 U.S.C.326/327. In addition, FHWA is ultimately responsible for ensuring the financial integrity and compliance with applicable federal laws and regulations.

Through the S&O, FHWA and Caltrans have committed to work cooperatively to identify appropriate stewardship and oversight initiatives using a risk-based, performance management approach. At the program level, strategic stewardship and oversight are to be achieved by effectively managing the program through: continuous program-level involvement; promoting new initiatives and concepts; participating on relevant joint task forces, joint committees, and joint quality improvement teams; assisting other stakeholders with program-related issues; conducting program assessments; conducting program reviews; and performance monitoring via performance measures and indicators.

2.10.1 Project Implementation

At the project-level, strategic stewardship and oversight are accomplished by conducting routine approval actions, verifying compliance through project-level samples, and conducting strategic project oversight. Routine approval actions are identified in Exhibit 2-B: Federal–Aid Project Responsibilities List for Delegated Projects off the State Highway System and are those actions which have not been delegated to Caltrans. These include, but are not limited to:

- Federal-aid project agreements and modifications
- Obligation of federal funds
- Reimbursement to Caltrans of interim and final vouchers
- Project-level conformity determinations
- R/W Certificate 3
- Protective buying and hardship acquisition
- New/modified interstate access determination of engineering and operations acceptability (minor access changes assigned to Caltrans)
- Buy America waivers
- Innovative contracting practices

Strategic project oversight is accomplished through the Risk-based Project Involvement (RBPI) Process described in Section 2.5: Risk-based Project Involvement (RBPI) Process.

2.10.2 Program Reviews

FHWA California Division Office (CADO) verifies Caltrans and LPA compliance with federal regulations via annual program reviews for Federal-aid projects and programs. CADO uses the following reviews in their verification which typically result in observations, findings, and corrective actions that need to be implemented by the Division of Local Assistance:

Compliance Assessment Program Annual Reviews

Based upon random selection of LPAs or LPA Federal-aid projects, FHWA performs reviews of the Federal-aid program and LPA Federal-aid projects to establish a confidence level that

verifies LPAs and their Federal-aid projects fully comply with federal and state laws and regulations.

Financial Integrity Review and Evaluation (FIRE)

Improper Payment Reviews, Inactive Obligation Reviews, Financial Management Reviews and other reviews may be performed to fulfill, in part, the requirements of the FIRE Program established via FHWA Order 4560.1C. Performance of these reviews and other oversight activities are necessary to support FHWA's annual certification of the adequacy of the internal and financial controls in place to support the agency's financial statements. Improper Payment Reviews are one of the tools that can be used by FHWA in support of the FIRE.

Other Program Reviews

FHWA identifies high-risk areas to the FAHP through annual risk assessments and on an ongoing basis based on information gleaned through day-to-day interactions with Caltrans and LPAs. Based on this information, FHWA performs program reviews of high-risk program areas. These reviews typically involve an assessment of policies and procedures, and their program and project implementation by Caltrans and LPAs. The goal of these reviews is to identify program improvements to mitigate program risks and increase compliance.

2.11 Caltrans Responsibilities

Caltrans is responsible and accountable to FHWA for administering the successful implementation of Federal-aid programs and projects in accordance with laws, regulations, and policies that govern the Federal-aid program. Caltrans also administers the implementation of state-funded programs and projects for the CTC and State Legislature. These responsibilities are divided into three areas: Policy and Procedures, Program Management, and Project Implementation.

2.11.1 Policy and Procedures

Caltrans establishes uniform policies and procedures to assist the LPAs in meeting the program requirements for their projects. Caltrans, in collaboration with FHWA, interprets federal and state laws, rules and regulations, and provides guidance in the form of manuals, guidebooks, handbooks, reference materials and service, and training to assist the agencies in planning, designing, constructing, and maintaining their transportation systems.

Caltrans policy and procedure development are achieved in coordination and consultation with the FHWA, representatives of LPAs, MPOs, RTPAs, other affected agencies, and organizations.

2.11.2 Program Management

Each specific Local Assistance Program provides funding which requires distribution, management, and oversight control to ensure that the funds are expended in accordance with the program requirements and that allocations and budget authority are not exceeded. Caltrans distributes both state and federal fund allocations to the MPOs, RTPAs, cities, counties and others as specified by law.

Once the distributions are established, Caltrans provides program guidance for their expenditure. Some programs may require annual or periodic project application and selection to establish eligibility lists. Caltrans also monitors project implementation to ensure that the projects are implemented in a timely manner to achieve program goals. The LAPG describes each current program.

2.11.3 Conflict of Interest

49 CFR 19.36(b)(3) states that grantees and subgrantees will maintain a written code of standards of conduct, governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the grantee, or subgrantee, shall participate in selection, or in award of administration of a contract supported by federal funds, if a conflict of interest, real or apparent, would be involved. Such a conflict arises when: (i) the employee, officer, or agent (ii) any member of his immediate family (iii) his or her partner (iv) an organization, which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. In response to the above requirement and other laws and regulations, Caltrans has issued policy under Deputy Directive DD-09-R5: Incompatible Activities and Conflict of Interest. This directive is to ensure that California Department of Transportation employees do not willfully engage in any employment or activities that are illegal, that are or give the appearance of being incompatible or in conflict with their duties as State employees, that discredit their profession, Caltrans, or the State, or that have an adverse effect on the confidence of the public in the integrity of government.

Compliance with this policy helps safeguard state and federal funds and the public's interest. Non-compliance with this policy could result in the loss of delegated purchasing or contracting authority for the individual or the entire Department.

2.11.4 Project Implementation

Some major Federal-aid project implementation steps delegated by the FHWA to Caltrans cannot be further delegated to the LPA level and remain Caltrans' responsibility.

These are shown in Exhibit 2-B: Federal–Aid Project Responsibilities List for Delegated Projects off the State Highway System and include:

- Ensure project in Federal Statewide Transportation Improvement Program (FSTIP)/ Transportation Improvement Program (TIP)
- Identify proposed funding category
- All EA/FONSI/ROD, 4(f), 106, 6(f) and other approval actions required by federal environmental laws and regulations included in the FHWA-CA 327 NEPA Assignment MOU
- Airway highway clearance coordination and respective public interest finding (if required)
- Provide approval of preliminary plans for unusual/complex bridges or other structures (non-interstate)
- Retaining R/W encroachments
- Use of local force account agreements
- Use of publicly owned equipment

Note: For complete listing refer to Attachment A of the S&O.

The individual chapters covering these topics should be consulted for details concerning the responsibilities. Where FHWA has not delegated final approval, Caltrans monitors LPA activities, reviews or prepares documents, and makes recommendations to FHWA.

Caltrans also aids LPAs in interpreting the regulations, manuals, and guidelines as they apply to specific project conditions. The District Local Assistance offices and Headquarters DLA personnel are available to aid the LPA through the required process and procedural steps.

Where expertise is not otherwise available, the LPA may also request assistance from Caltrans technical specialists in solving special technical problems. Environmental issues, engineering services, right of way concerns, hazardous wastes, labor compliance, equal employment opportunity, Title VI, and DBE are among these areas where assistance is available. The use of this expertise must be requested early and be well coordinated to assure that Caltrans' limited resources and personnel will be available when needed.

2.11.5 Oversight

For purposes of this chapter, Oversight is defined as the act of ensuring that the FAHP is delivered in accordance with applicable laws, regulations, and policies. Oversight is the compliance or verification component of the joint FHWA/Caltrans stewardship activities. Narrowly focused, oversight activities ensure that the implementation of the FAHP is done in accordance with the applicable laws, regulations, and policies. Broadly focused, oversight activities enable both agencies (FHWA and Caltrans) to ensure the effective delivery and operation of the transportation system envisioned in governing laws and regulations. Oversight activities include process reviews, program evaluation, program management activities, and project involvement activities. Oversight procedures apply to all Federal-aid projects.

Project oversight is used to evaluate all aspects (which primarily emanate from the LAPM) of the Caltrans oversight and management of LPA Federal-aid and state-funded projects, and to identify areas and procedures needing improvement. One major goal of Caltrans oversight is to demonstrate that requirements imposed by the federal and state governments are being met and that correct procedures are being followed and performed by LPAs administering Federal-aid projects. A second major goal of Caltrans oversight is to maintain a continual process of updating and improving Local Assistance procedures.

2.11.6 Maintenance Reviews

Annually, Caltrans reviews project maintenance for selected LPAs using Federal-aid funds so that every agency is covered during a four-year cycle. LAPM Chapter 18: Maintenance describes these maintenance review procedures in detail.

2.12 City, County, and Other Local Public Agency Responsibilities

The cities, counties, joint power authorities, transit agencies, and other public agencies have the primary responsibility for implementing the specific projects which carry out the programs described in this manual. Nonprofit entities may also qualify for this.

2.12.1 Project Implementation

The LPA is responsible for the conception, planning, programming, environmental investigation, design, right of way, construction, and maintenance of the projects on their local transportation system. It must ensure that its staff members, consultants, and contractors comply with the applicable state and federal laws, regulations, and procedures in developing and constructing its projects.

If the LPA has never implemented a Federal-aid or state-funded project, or does so infrequently, it should review the processes with the DLAE prior to beginning any implementation activity. It may wish to seek the administrative services of another agency, which is more familiar with the process and procedure details.

Caltrans exercises its FHWA-delegated authority by further delegating federal authority to LPAs to the greatest extent possible for those Federal-aid projects that are located off the State

Highway System (SHS). The LPA is delegated decision-making authority and responsibility for most design and construction-related activities of Federal-aid projects. These include:

- Getting the project into the FSTIP
- Preparing the Request for Authorization for each project phase
- Determining Project DBE contract goals
- Making a preliminary classification of High-Risk, Low-Risk, or Exempt for ITS projects and other projects with ITS elements.
- Selecting consultant and approving consultant contracts
- Approving local design standards for projects off the NHS
- Approving design exceptions for projects on or off the NHS
- Preparing and certifying PS&E (Caltrans must approve the LPA PS&E procedures for most NHS projects)
- Qualifying/selecting right of way consultants
- R/W acquisitions and relocation
- Preparing and approving Quality Assurance Programs
- Advertising and awarding construction project
- Construction contract administration and inspection (Caltrans must approve the LPA construction administration procedures for high cost, complex, corridor-type NHS projects)
- Construction contract acceptance on delegated projects
- Coordinating railroad agreements
- Contract compliance

The individual chapters covering these topics should be consulted for details concerning the responsibilities.

2.12.2 Responsible Charge

Consistent with 23 CFR 172.9, the LPA must designate a full-time, public employee in responsible charge of each project. The role of the responsible charge is to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. The responsible charge's duties include:

- Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant.
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant.
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel.

- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones.
- Ensuring consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work.
- Evaluating and participating in decisions for contract modifications.
- Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.334.

The responsible charge must be employed directly by the LPA directly receiving federal funds. A consultant cannot be designated as the responsible charge of a project. The responsibilities of the responsible charge may be shared among a number of public employees. A public employee may be the responsible charge of several projects.

Note: This regulation is silent about engineering credentials, thus the LPA's employee in responsible charge need not to be an engineer.

2.12.3 Unique Entity ID

As of April 4, 2022 the Data Universal Numbering System (DUNS) Number is no longer valid for federal award identification. The Unique Entity ID is now the identifier of record and can be generated at SAM.gov.

2.12.4 Local Public Agency Records and Documentation

Upon request, LPAs must make all project documentation and backup records available for inspection by Caltrans and FHWA reviewing personnel. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and positive findings. Good records of all project-related activities clearly demonstrate to all concerned that project supervision and control were maintained on the project. Project records are to be retained by LPAs for a period of three years once Caltrans transmits the final voucher to FHWA.

2.13 California Transportation Commission (CTC)

The California Transportation Commission (CTC) has programming and fund allocation responsibility for some Federal-aid and state-funded programs used for Local Assistance projects. It is the LPA's responsibility to submit a request for allocation on time per the CTC preparation schedule: https://catc.ca.gov/.

Programming

The CTC currently selects federal Active Transportation Program projects for inclusion in the STIP.

Fund Allocation

When a project is ready for implementation, the CTC must vote to allocate funding to the programs. This action is commonly called the second vote.

2.14 Metropolitan Planning Organizations, Regional Transportation Planning Agencies, and County Transportation Commissions

These organizations have broad transportation planning duties and responsibility for programming most projects using Federal-aid or state allocations from the programs described in this manual.

These organizations are responsible for providing each LPA with their application rules, procedures, and timelines. They are also responsible for providing the LPA with results of the decisions about its projects and the agency, CTC, and federal approval dates.

The LPA must work closely with these organizations to ensure that its projects are placed in the appropriate TIP with the correct funds in the proper years. Federal funds and many state funds cannot be obtained without this programming step.

Caltrans Project Development Procedures Manual (PDPM) Chapter 4: Programing discusses the programming process in more detail.

2.15 Other Public Agencies and Organizations

Other federal, state, regional, and local entities may have an interest, role, or jurisdiction in the development and implementation of a local project. Examples at the federal level include the Environmental Protection Agency, the Army Corps of Engineers, and the Fish and Wildlife Service. At the state level, examples include the Department of Fish and Game, Air Resources Board, and State Historic Preservation Officer. Regional agencies include the Air or Water Quality Control Boards and Flood Control Districts.

The role of these agencies will vary with the project scope, location, and environmental impact. Coordination should begin early to prevent critical delays later in the project development.

Quasi-public or nonprofit organizations may apply for and receive programmed funds for some programs. These agencies must follow the same rules and regulations, which apply to any other LPA developing a state or Federal-aid funded project. When such an agency does not have a full staff of administrative, engineering, contracting, or accounting personnel, Caltrans encourages it to work through an LPA that can provide these services and is familiar with the applicable rules.

2.16 References

23 U.S.C.106
https://www.govinfo.gov/content/pkg/USCODE-2011-title23/pdf/USCODE-2011-title23-chap1-sec106.pdf

California Highway System Map
https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=026e830c914c495797c969a3e5668538

FHWA Major Projects website
https://www.fhwa.dot.gov/majorprojects/

Stewardship and Oversight Agreement
http://www.fhwa.dot.gov/federalaid/stewardship/agreements/ca.pdf

Chapter 3 **Project Authorization**

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Exhibit 3-H: Request For Capital Subvention Reimbursement Allocation/De-Allocation
Exhibit 3-I: Request For Local Advance Construction Authorization
Exhibit 3-J: Request For Transfer of Federal Funds to the Federal Transit Administration (FTA)
Exhibit 3-K: Administrative Procedures for Transfer of Local Federal-Aid Funds to FTA
Exhibit 3-P: Sample “Delegated Project Authorization”
Exhibit 3-R: Non-Infrastructure Project Work Plan Sample

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 3 **Project Authorization**

3.1 Introduction

Prior to beginning highway work for which federal reimbursement will be requested, the project or project phase must be formally authorized (approved) by the Federal Highway Administration (FHWA). Each federally-funded phase of work such as Preliminary Engineering (PE), Right of Way (R/W), Utility Relocation (R/W-UTIL), and Construction (CON), requires a separate federal authorization (the authorization of federal funds may be subdivided within a phase as well). Any work performed prior to federal Authorization to Proceed, excluding At-Risk Preliminary Engineering (At-Risk PE) described in Section 3.3, is not eligible for federal reimbursement. Construction phase work performed prior to authorization may disqualify that phase.

The FHWA/Caltrans Stewardship and Oversight Agreement (S&O) outlines the roles and responsibilities for oversight and approval of federally-funded transportation projects under the jurisdiction of the FHWA.

Exception: For Emergency Relief projects, prior FHWA approval is not required for Emergency Opening and PE. Permanent Restoration work must have prior FHWA program approval and authorization unless the work is done as part of Emergency Opening repairs.

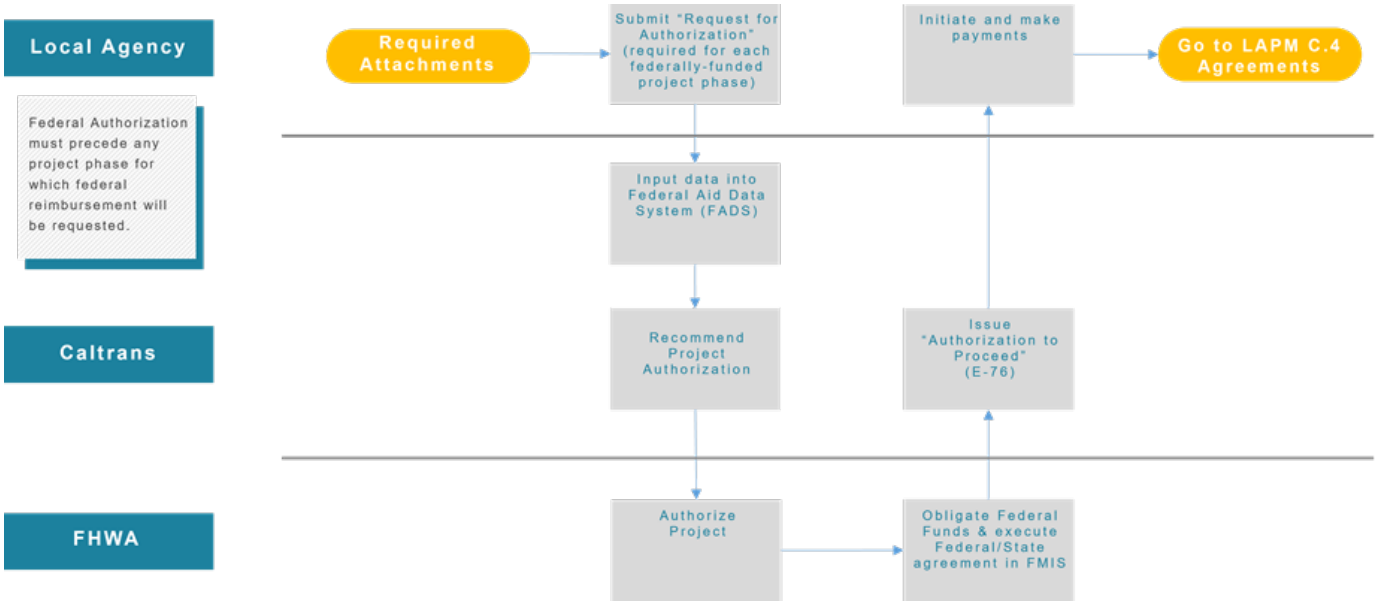


Figure 3-1: Financial Management Procedures
Project Authorization / Obligation for Developing All Local Federal-aid Projects

3.2 Prior to Federal Authorization

Prior to federal authorization, all federally-funded transportation projects must be included in the current federally approved Federal Transportation Improvement Program/Federal Statewide Transportation Improvement Program (FTIP/FSTIP). The FTIP/FSTIP (or amendment thereto) must identify scope of work, project location, project sponsor, federally-funded phases of work, programmed Federal Fiscal Year (FFY), and the types and amounts of federal funds. Emergency Relief (ER) projects that involve substantial functional, locational, or capacity changes also must be included in the FTIP/FSTIP.

For Intelligent Transportation Systems (ITS) projects and other projects with ITS elements, a preliminary classification of the project should be made as High-Risk (formerly Major), Low-Risk (formerly Minor), or Exempt (reference LAPG Chapter 13: Intelligent Transportation Systems (ITS) Program for further information).

Non-capacity increasing projects funded by the following federal programs are typically included in Caltrans' administered Lump Sum listing of projects. The following Lump Sum listings of projects are developed in cooperation with the Metropolitan Planning Organizations/Regional Transportation Planning Agencies (MPOs/RTPAs) and Local Public Agencies (LPAs):

- Highway Bridge Program (HBP)
- Local Bridge Seismic Retrofit Program (LBSRP)
- Local Highway Safety Improvement Program (HSIP)
- Federal Active Transportation Program (ATP)
- Federal State Transportation Improvement Program (STIP)

Projects funded with regionally programmed Surface Transportation Block Grant Program (STBGP) or Congestion Mitigation and Air Quality Improvement (CMAQ) funds may be included in a Regional Lump Sum listing of projects as adopted by the appropriate MPO/RTPA. The MPO/RTPA is responsible for project eligibility determination and financial constraint of the regional program. When the LPA requests federal authorization of a project, the MPO/RTPA's approved list of projects must be provided to the Caltrans District Local Assistance Engineer (DLAE).

Planning type projects funded with MPO Planning Funds, or Section 5303 funds are not required to be listed in the FTIP/FSTIP when they do not lead to construction, however, these projects must then be included in a federally approved planning document such as an Overall Work Plan (OWP).

Soon after a project is selected and programmed for inclusion or amended into the FTIP/ FSTIP, the sponsoring agency should contact the DLAE to discuss how and when they plan to proceed with project implementation. The discussion should cover the timing and process for the authorization/obligation of federal funds, whether a Formal Field Review is required or recommended (see LAPM Chapter 7: Field Review), and the California Transportation Commission (CTC) allocation(s) of STIP funds, if necessary.

If federally-funded work is to be performed by a consultant or contractor, the LPA must have a Caltrans approved Exhibit 9-A: Disadvantaged Business Enterprise (DBE) Implementation Agreement and the approved Exhibit 9-B: Local Agency DBE Annual Submittal Form. The Local Agency DBE Annual Submittal Form is due to the DLAE by June 30 of each year for the following FFY (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprise).

Each LPA must provide the DLAE with a completed Exhibit 9-C: Local Agency ADA Annual Certification Form by June 30 of each year for the following federal fiscal year (October 1 to September 30). The form must be received prior to submitting a Request for Authorization to proceed with a Federal-aid project.

If a Cooperative Agreement is necessary for the project, it should be executed prior to requesting authorization to proceed (see PDPM Chapter 16: Cooperative Agreements).

3.3 Request for Authorization

The project sponsor identified in the FTIP/FSTIP to receive the federal funds is responsible for requesting the Federal Authorization to Proceed. The project sponsor must prepare and submit a Request for Authorization to Proceed package to the appropriate Caltrans District Local Assistance Office. The request package should include, as a minimum, the LPA's Request for Authorization to Proceed (LAPM 3-A: Project Authorization/Adjustment Request) and all required supporting documentation.

If the Request for Authorization package is complete and all federal and state requirements have been satisfied, a minimum of three (3) weeks processing time should be allowed to receive federal Authorization to Proceed. Additional time may be required near the beginning or end of the FFY.

If the Request for Authorization to Proceed package is incomplete, unacceptable, or missing information that cannot be quickly obtained by FAX, telephone, e-mail, or other source, the package will be returned to the LPA for resubmittal.

Simultaneous Submittal of Allocation/Authorization Requests

Projects programmed with federal funds requiring project specific CTC allocations (such as those in the State Transportation Improvement Program (STIP) and the Active Transportation Program (ATP)) also require federal authorization to proceed before commencing with reimbursable work; see LAPG Chapter 25 for detailed procedures.

3.3.1 Preliminary Engineering

Eligible preliminary engineering (PE) work includes location and environmental studies, NEPA approval (LAPM Chapter 6: Environmental Procedures), preliminary utility investigations and engineering work associated with utility relocation, final design (Plans, Specifications and Estimates) and other related work including the cost of advertising leading to physical construction of a project. Preliminary R/W activities that may be considered eligible and authorized as part of PE include pre-acquisition activities such as estimating, title search, and preliminary property map preparation and studies, as needed for NEPA compliance (see LAPM Chapter 13: Right of Way).

After a construction contract has been awarded, support activities should typically be included under Construction Engineering rather than the Preliminary Engineering phase.

Only work performed after the date of federal authorization is eligible for federal reimbursement unless At-Risk PE is utilized. The preliminary studies portion of PE may be authorized prior to an optional or mandatory field review (see LAPM Chapter 7). This allows for the reimbursement of selecting consultants and other specialists who may be needed for field review.

At-Risk Preliminary Engineering

Section 1440 of the FAST Act (Section 1440) authorizes FHWA to reimburse recipients and subrecipients for PE costs incurred prior to project authorization, assuming the costs are for

otherwise eligible activities on eligible projects, and the project and phase are included in a federally-approved FSTIP document or amendment. If eligible, and once federal authorization is received, incurred costs can be reimbursed back to the effective date of the FAST Act, October 1, 2015, or the federal approval date of the FTIP/FSTIP, whichever occurs later.

Section 1440 does not waive any additional Federal-Aid Highway Program (FAHP) requirements. Projects must still meet all applicable cost eligibility conditions, and all conformity requirements of the Clean Air Act must be met. Section 1440 does not waive any federal Architectural and Engineering (A&E) requirements and approvals (as documented in LAPM Chapter 10), such as for Consultant in a Management Support Role (CMSR), nor does it release LPAs from establishing DBE goals and requirements and evaluating Good Faith Efforts (GFEs).

However, until authorized and obligated, these funds are still considered "At-Risk". There is no guarantee of federal funding for any pre-authorized/pre-obligated PE work. Recipients and subrecipients invoking Section 1440 authority assume all risk.

Reimbursements of funds can begin after funds are authorized and obligated by FHWA via the E-76. To ensure timely processing of invoices, LPAs will need to include the Effective PE Reimbursement Date on all invoices (LAPM 5-A) for reimbursement of incurred PE costs on all projects invoking Section 1440.

Policy

- Except for projects with federal funds that require allocation by the CTC (e.g., ATP, Trade Corridor Enhancement Program, and STIP funds), LPAs may begin reimbursable PE work prior to receiving federal authorization for such work, assuming the project and phase are included in a federally-approved FSTIP document or amendment prior to incurring costs. Programming projects in the FSTIP or starting reimbursed work prior to authorization does not necessarily constitute eligibility of such projects for federal aid reimbursement.
- For projects with federal funding that require CTC allocation, only costs incurred **after** CTC allocation are eligible for reimbursement.
- Full funding for a subsequent phase of the project (final design, right-of-way acquisition, or construction) must be included in an approved FSTIP document or amendment before the NEPA document can be signed. Also, all project phases must be included in the fiscally constrained Regional/Metropolitan Transportation Plan before a NEPA document can be signed. If the "No Build" alternative is selected, the project may still be eligible for reimbursement under Section 1440.

Provided by LPA

- To invoke the flexibilities allowed under Section 1440 when submitting a request for authorization for the PE phase (LAPM 3-A), the LPA must provide both the original and current FSTIP document listing or amendment as supporting documents. As an alternative, only the current FSTIP listing may be provided if it references the date of the original FSTIP listing. However, in such instances, the original listing must be provided if requested by Caltrans to meet programming requirements or if there are any questions or concerns for funding authorizations. The original FSTIP federal approval date documenting inclusion of the PE phase will be the "Effective PE Reimbursement Date", whereby all otherwise eligible costs incurred on or after this Effective PE Reimbursement

Date will be reimbursable. The original FSTIP listing does **not** need to specify federal funds to begin reimbursable work; however, federal funds will need to be included in the current FSTIP when an agency submits their authorization request.

3.3.2 Intelligent Transportation Systems

ITS projects with no construction phase will be authorized as “Other” under the "Requested Reason." If an ITS project has an infrastructure construction phase, then the design funding will be authorized as “Preliminary Engineering” and the Construction/Integration funding will be authorized as “Construction” under the "Requested Reason."

For ITS projects, PE includes Systems Engineering, equipment, software development, and use of a Systems Manager or Systems Integrator (see LAPG Chapter 13: Intelligent Transportation Systems (ITS) Program for details on Systems Engineering and the project development process for ITS projects).

The Systems Engineering Review Form (SERF) of High-Risk ITS projects must be approved by FHWA prior to or shortly after PE authorization. Development of the Systems Engineering Management Plan (SEMP) is contingent upon federal review comments and approval of the SERF. FHWA approval of the SEMP is required prior to proceeding to detailed component design.

Low-Risk ITS projects can undergo the traditional one PE phase authorization and will not require FHWA approval of the SERF and SEMP. However, the LPA still must complete the SERF as part of the Field Review Form.

Exempt ITS projects can undergo the traditional one PE phase authorization and will not require the SERF and SEMP.

3.3.3 Right of Way

Eligible R/W work includes the preparation of R/W plans, making economic studies, other R/W related-preliminary work, appraisal for parcel acquisition, review of appraisals, payments for real property acquired, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation assistance, and other related labor expenses (see 23 CFR 710 for details). This work is reported in the LPA’s LAPM 3-A: Project Authorization/Adjustment Request. Only eligible work performed after federal Authorization to Proceed with R/W may receive federal reimbursement.

As noted above, some pre-acquisition R/W activities and studies necessary for project agreement approval and completion of the NEPA process may be authorized as part of PE. However, an approved NEPA document is required prior to the majority of R/W activities (e.g., negotiating with property owners, acquisition, and relocation assistance), refer to LAPM Chapter 13: Right of Way. The request for R/W authorization must include an approved NEPA document and when required, the NEPA/CEQA Re-Validation Form.

3.3.4 Right of Way Utility Relocations

If federal reimbursement is sought for utility relocations (adjustments), all work must be performed in accordance with the FHWA’s Alternate Procedure 23 CFR 645.119(e)(2). Refer to LAPM Chapter 14: Utility Relocations, for detailed information and procedures related to eligible costs, required federal actions (Authorization to Proceed (E-76), FHWA Specific Authorization to Relocate Utilities, and FHWA Approval of Utility Agreement(s)), sequence of activities, notifications, support documentation, and federal reimbursement.

Note: Investigative and preliminary utility engineering work associated with utility relocation necessary to complete NEPA and PS&E may be authorized under Preliminary Engineering.

3.3.5 Construction and Construction Engineering

Eligible construction costs include the actual cost to construct the highway itself, including its appurtenant facilities and any removal, adjustment or demolition of buildings or major obstruction, utility or railroad work that is a part of the physical construction of the project construction engineering, and administrative settlement of cost for contract claims. Construction costs exclude costs of PE, R/W, and construction engineering. If work to be done by a Utility or Railroad entity is to be federally participating under the Construction phase of work, the LPA must coordinate to ensure that work does not begin until after execution of the E-76 for construction authorization, otherwise the utility or railroad work will be ineligible for reimbursement with federal funds.

Federal Authorization to Proceed with construction must be received prior to advertising. Projects advertised for a construction contract prior to federal authorization are not eligible for federal reimbursement.

The request package for Authorization to Proceed with construction must include LAPM 3-A, a copy of the approved NEPA document (either a signed Categorical Exclusion, Finding of No Significant Impact (FONSI), or Record of Decision (ROD)), if not previously submitted, NEPA/CEQA Re-Validation Form, approved Right of Way Certification, engineer's estimate (the engineer's estimate may be included on the LAPM 3-A), Exhibit 12-D: PS&E Checklist and PS&E package.

For projects of $100 million or more, but less than $500 million, a Financial Plan must be prepared and submitted to the DLAE with the request for construction authorization. For Major Projects of $500 million or more, a Financial Plan must be submitted prior to the request for construction authorization. A Project Management Plan (including the Project Management Plan Checklist) must be submitted prior to the finalization of the Initial Financial Plan. A Cost and Schedule Risk Assessment (CSRA) is required before the Initial Financial Plan. Both the Financial Plan and Project Management Plan are to be submitted to the DLAE for FHWA approval for Major Projects. The requirements for both plans are discussed in LAPM Chapter 2: Roles and Responsibilities.

Construction Engineering (CE) includes the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into the construction, checking shop drawings, and measurements needed for establishing pay quantities. CE costs must be specifically included in the LAPM 3-A and authorized to be eligible for federal reimbursement. If CE is authorized after construction begins, only those CE costs incurred after the date of the CE authorization are eligible for federal reimbursement.

LPAs are responsible for maintaining a detailed estimate of project CE costs in their project files. It is highly recommended that LPAs use 15% as a guide for estimating CE costs and maintain justification for higher CE costs (see LAPM Chapter 12: Plan, Specifications & Estimate, Section 12.12: Construction Engineering).

If Caltrans source inspection services will be requested, the LPA must submit/justify their request at least 30 days prior to LPA submittal of their Request for Authorization to Proceed with

Construction. Caltrans may perform the requested source inspection services, subject to the availability of their inspectors.

Some ITS projects may be fully deployed without any construction. There are other ITS projects with non-construction activities, which might be handled as consultant, low-bid, or service contracts (see LAPG Chapter 13, Section 13.9: Procurement/Construction).

3.3.6 Non-Infrastructure Projects

Non-infrastructure (NI) projects are those transportation-related projects that will NOT involve engineering design, right of way acquisition, and the eventual physical construction of transportation facilities. Examples of non-infrastructure projects include public awareness campaigns and outreach, Traffic Demand Management (TDM), traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, freeway service patrol, ridesharing activities, commuter incentives, and the purchase of alternative-fueled vehicles.

Federal-aid highway funds have primarily been used on highway construction projects. Recent highway acts have authorized the use of Federal-aid highway funds for non-construction projects. The eligibility of non-infrastructure projects for federal participation is governed by the various federal funding program guidelines, such as ATP and CMAQ Programs. While it is apparent that projects receiving funding from the ATP program should be processed as NI projects, project sponsors receiving funding from other Federal-aid programs should consult with their DLAE to see if their projects can be processed as NI projects.

For typical Federal-aid highway construction projects, authorizations to proceed for Federal-aid projects are granted to one of the project delivery phases, i.e., PE, R/W/Utility Relocation, or CON. NI projects do not neatly fit under any of the above traditional project phases. Due to various considerations such as the PE over 10 years rule and FTIP programming issues, Federal Authorization to Proceed for NI projects will be processed under the NI phase using LAPM 3-A.

FTIP/FSTIP

Most NI projects are programmed in the FTIP/FSTIP as Grouped projects, also known as Lump-sum projects. As such, they are traditionally programmed in the Construction phase. NI projects that are individually listed in the FTIP/FSTIP must also be programmed under Construction.

Environmental Review

Even though NI projects do not involve the traditional engineering design, right of way, and ground disturbance during construction, environmental reviews are still required to ensure that the project will not have negative impacts on the environment. A full-scale preliminary environmental study (PES), however, may not be required for NI projects. Instead, the Preliminary Environmental Screening Form for Non-Infrastructure Projects (PES-NI) may be used to streamline the environmental reviews of NI projects. The approval of the PES-NI will result in a Categorical Exclusion as the NEPA determination. A copy of the PES (NI) Form is available on the LAPM Forms webpage.

Right of Way

Since NI projects will not involve right of way acquisition or utility relocation, FHWA has agreed with Caltrans that Right of Way Certifications will NOT be required.

Plans, Specifications, and Estimates (PS&E)

Any NI project requesting authorization to proceed must include a NI project work plan in lieu of the traditional PS&E. The work plan must be of sufficient detail to describe project tasks, schedule, activities, deliverables, and budgets/costs. A sample work plan is shown in Exhibit 3-R: Non Infrastructure Project Work Plan Sample.

3.3.7 Project End Date

The period of performance is the period when allowable costs may be incurred by the LPA. The start date of the period of performance is the date FHWA authorizes the project with the Authorization to Proceed (E-76) for the identified phase and scope of work, and the end date of the period of performance is the Project End Date (PED). The PED is the final date when the LPA may perform federally reimbursable work. Invoicing must be submitted within 120 calendar days of the PED for FHWA to consider it eligible for reimbursement.

Establishing the PED

LPAs are required to include the PED at the time of the authorization request on LAPM 3-A: Project Authorization / Adjustment Request. The PED is automatically calculated on the LAPM 3-A by adding 12 months to the LPA's estimated date of completing the authorized phase of work. The completion of the Preliminary Engineering and Right of Way phases of work is estimated as the anticipated advertising date for construction. For the Construction phase of work, completion is estimated as board/council construction contract acceptance.

After Caltrans concurrence and FHWA approval, the accepted PED is shown on the E-76.

Revising the PED

Typically, the PED is revised as part of the LPA’s authorization request when the project progresses from one phase of work to the next, as the project's delivery schedule will be more refined.

In some cases, however, the PED may need to be revised while working within a particular phase of work. Examples of situations which may justify a revision to the PED include, but are not limited to: litigation, major changes in design, environmental or permit issues, construction claims, differing site conditions, significant additional work, area-wide material shortages, labor strikes, unusually severe weather, or other events which are outside the control of the LPA.

If the PED is revised after the authorized PED has past, any costs incurred between the expiration of the authorized PED and the revised PED are ineligible for reimbursement. In cases where only the PED needs to be extended, the LPA must use the PED Extension Tool and a justification is required. If the PED is being revised along with project costs, the LPA must submit LAPM-3A and include justification for the revised PED in the Remarks section.

3.4 Administrative Procedures

The Caltrans Federal-Aid Data System (FADS) and the FHWA Financial Management Information System (FMIS) are the databases used in the federal authorization/obligation process.

Upon receipt of a complete and acceptable LPA Request for Authorization to Proceed package, Caltrans District Local Assistance Office creates an electronic project file (E-76) and inputs the required project information into FADS. The Caltrans District Local Assistance Office then transmits the E-76 project file and required backup information to Caltrans Headquarters (HQ) Division of Local Assistance (DLA). The DLA Area Engineer reviews the submittal package for

completeness and accuracy, focusing on project eligibility, federal and state requirements, availability of federal funds and obligation authority, and required support documentation before transmitting the E-76 to FHWA California Division Office (CADO). FHWA approves/authorizes all projects and transmits all federally-funded project records to FMIS.

Upon the federal obligation of funds, the DLAE notifies the project sponsor and issues an Authorization to Proceed (see Exhibit 3-P: Sample Delegated Project Authorization) and a federal project summary, and then documents the federal authorization and obligation dates. Costs incurred prior to federal authorization are not eligible for reimbursement. Projects advertised prior to federal authorization are not eligible for federal reimbursement.

For significant changes in Scope of Work and cost increases or reductions, the LPA must submit a modified Request for Authorization to Proceed package. The District, DLA, and FHWA will process this E-76 request in the same manner as above.

3.4.1 Budget Authority for Projects on the State Highway System (SHS)

For Caltrans-administered projects located on the SHS financed with local assistance funds, the Caltrans Project Manager assigned to the project must submit Exhibit 3-H: Request for Capital Subvention Reimbursement Allocation/De-Allocation, to the DLAE when requesting federal authorization. Once the request is approved, the Division of Budgets will provide an approved reimbursement authority memo to expend the funds for capital outlay costs (utility relocation, right of way acquisition, and construction capital).

If the estimated federal share of project costs has decreased by $250,000 or more, the Caltrans Project Manager must submit Exhibit 3-H: Request for Capital Subvention Reimbursement Allocation/De-Allocation to the DLAE to de-allocate the reimbursement authority to comply with 23 CFR 630.106(a)(4).

The capital subvention reimbursement allocation and de-allocation process is detailed in Figure 3-2: Capital Subvention Reimbursement Allocation and De-Allocation Process.

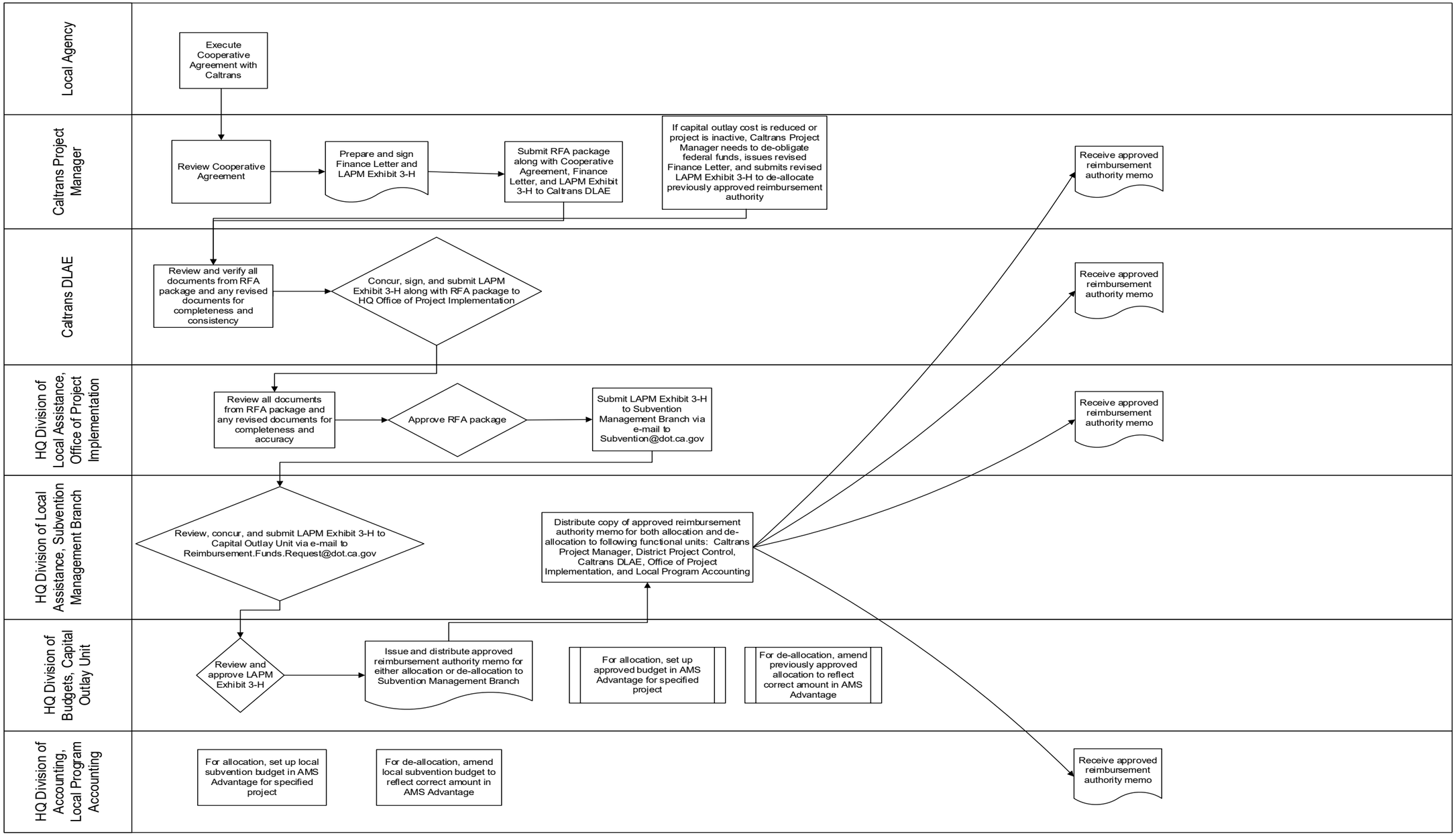


Figure 3-2: Capital Subvention Reimbursement Allocation and DE-Allocation Process

3.5 Allocation, Authorization, Encumbrance, & Reimbursement

The obligation of federal funds is a commitment by FHWA to reserve the authorized federal funds for the project. FHWA obligates federal funds for all federally funded projects under their jurisdiction. Typically, the obligation of federal funds is automatic upon federal authorization of the project (or phase of work) provided the state has sufficient Obligation Authority (OA) and federal fund balances for the current FFY.

3.5.1 DLA Finance Letter

For each request for federal authorization, the project sponsor must include LAPM 3-A, identifying the phases of work for which federal reimbursement is sought. In addition, the LAPM 3-A must specify the types and amounts of federal, state, and local match funds contributing to the project.

The DLA Finance Letter (LP2000 Finance Letter) is a project-specific financial summary document (prepared by the DLAE as part of the LAPM 3-A and approved by Caltrans DLA) required by Caltrans Local Programs Accounting (CLPA) as support documentation for the project funding agreement. The Finance Letter identifies:

- Project reference data such as responsible and administering agency, project number, Project ID, PPNO, whether or not the project is on the State Highway, etc.
- Federally-funded phases of work, to date
- Total project costs and cost eligible for federal participation by phase of work, to date
- Federal, state, local, and other fund sources (by fund type and amount) funding each phase of work, to date
- Federal reimbursement rates for progress invoice purposes (by phase of work and fund types)
- LPA certification and signature
- Project specific remarks

3.5.2 Program Supplement Agreements and State Budget Authority

Following the obligation of federal funds, State Budget Authority must be reserved by encumbering the funds on a project-specific Program Supplement Agreement (PSA). The PSA must be signed by the project sponsor and executed by Caltrans prior to requesting the reimbursement of funds (see LAPM Chapter 4: Agreements). The LP2000 Finance Letter is made part of the PSA by reference and contains the information in the bulleted list above.

To streamline the agreement process, revised agreements are typically no longer required for each phase of work. California Government Code 16304 stipulates that any federal and state local assistance funds encumbered for a project are typically available for disbursement for a period of six years from the beginning of the fiscal year(s) the funds are appropriated in the State Budget Act. A DLA prepared project Finance Letter (based on information provided by the project sponsor) is sent to the project sponsor and reflects various project fund reversion dates. It is imperative that the LPA request federal authorization only when they are ready to do the work and only for work that will be completed and invoiced within this time period. Federal authorization for the remaining project work should be requested at a future date.

Once the PSA has been executed by CLPA will encumber the funds with an appropriation year corresponding to the state fiscal year authorized for expenditure in the State Budget Act.

Since 2008-09, each annual State Budget Act has provided six years to encumber and liquidate (expend) all state and federal Local Assistance funding. This six-year term, or appropriation period, always begins on July 1 of the appropriation year even if the State Budget Act is signed late and also applies if funds are encumbered after July 1 of the state budget year. State budget authority lapses on June 30, six years after the appropriation period.

Section 16304.3 of the Government Code authorizes the Department of Finance to extend the liquidation period of an encumbrance up to eight years. If an encumbrance cannot be fully reimbursed (liquidated) within the six-year appropriation period, the LPA may apply for a Cooperative Work Agreement (CWA) to extend the liquidation period for up to two years. The LPA will need to apply for the CWA in the fall of the fifth year. For more information on the CWA process, please visit DLA's CWA website.

If the LPA chooses not to apply for a CWA and the appropriation period lapses, the LPA will be responsible to finance the remaining balance with their own funding.

3.6 Underfunded Projects

When the federal funds programmed for a project in the FTIP/FSTIP are insufficient to reimburse an LPA at the maximum federal reimbursement rate (legal pro rata) permitted for a federal fund type, the project is defined as federally underfunded. From a federal perspective, underfunded projects result in more federal projects for a given amount of federal funds. The increased oversight/administration costs make this an inefficient way of utilizing federal funds.

23 CFR 630.106 stipulates:

1. The Federal-aid share of eligible project costs must be established at the time of project authorization in one of the following manners:
    - Pro rata, with the authorization stating the federal share as a specified percentage; or
    - Lump sum, with the authorization stating that federal funds are limited to a specified dollar amount not to exceed the legal pro rata.
2. The pro rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the State Transportation Department's (STD's) estimated cost of the project at the time of FHWA authorization, provided that federal funds are available.
3. Federal participation is limited to the agreed federal share of eligible costs incurred by the state, not to exceed the maximum permitted by enabling legislation.
4. The state may contribute more than the normal nonfederal share of Title 23 U.S.C. projects. In general, financing proposals that result in only minimal amounts of federal funds in projects should be avoided, unless they are based on sound project management decisions.

Therefore, except as permitted by 23 CFR 630.106(f)(2), once a federal fund source is placed under agreement (E-76) for a phase of work, the pro rata reimbursement rate for that federal fund type (apportionment) and phase of work is fixed for the life of the project. In other words, when a phase of work is placed under federal agreement (E-76), the project sponsor has

agreed to deliver a scope of work for an agreed upon amount of federal funds. If project costs increase, the federal share of the eligible costs is fixed at the federal pro rata established at the time of the project was placed under agreement. For this reason, MPOs/RTPAs should strive to fund projects at the maximum federal reimbursable rate.

3.6.1 Administrative Rules

The DLAE will consider underfunding on a project-by-project basis. However, if there is a potential for a Region to lapse funds to the Use It or Lose It provisions of AB1012, Caltrans will not permit the initial underfunding of projects for that Region.

Many federal earmark and discretionary federal funding programs (e.g., Historic Bridge) release or allocate federal funds on an annual basis. For long-term or high-cost projects, the total anticipated federal funds might not be available at the time of the initial federal authorization for the project phase of work. Therefore, for these types of funds, FHWA will permit adjustment to the federal pro rata as the federal funds become available.

3.6.2 Federal Reimbursement of Underfunded Projects

At the time of Federal Authorization (E-76), the federal reimbursement rate for a project or phase of work is established by dividing the authorized federal funds by the federal participating costs of work, not to exceed the legal pro rata.

For progress invoices, the federal reimbursement rate is limited to the rate established in FMIS by the most current Federal Authorization to Proceed/Obligation of Funds (E-76) at the time of award. On the final invoice, if the lump sum designation has been chosen, the federal reimbursement rate may fluctuate to ensure that the LPA receives the total federal funds to which it is entitled not to exceed the legal pro rata or obligated federal funds.

3.7 Local Advance Construction Procedures

When federal funds are not available for obligation due to an insufficient balance of funds or OA, an LPA may request in writing federal authorization to proceed with the project (or project phase) under advance construction procedures (see Exhibit 3-I: Request for Local Advance Construction Authorization).

Under local advance construction procedures, following federal authorization to proceed, the LPA will use its own funds to perform work eligible for future federal reimbursement. The LPA must have sufficient local funds to pay for all project costs until such time as federal funds become available. An FTIP amendment may be required when the Advance Construction Authorization is converted to a real obligation of federal funds (see Exhibit 3-I: Request for Local Advance Construction Authorization). The LPA must consider the risk that the federal funds may never become available. The following Local Federal-aid programs are eligible for Advance Construction:

- Congestion Mitigation & Air Quality Improvement (CMAQ) Program
- Regional Surface Transportation Block Grant Program (RSTBGP)
- Highway Bridge Program (HBP)
- Emergency Relief (ER) Program

A project authorized under advance construction procedures must comply with all federal requirements including programming in the FTIP. Local advance construction federal authorization does not constitute a commitment of federal funds to the project, and a program supplement agreement will not be issued. The Federal Authorization date establishes the start date for performing federally reimbursable work. If and when federal funds become available, a follow-up Authorization to Proceed (E-76) must be processed to obligate the federal funds (i.e., place funds under agreement with FHWA). The project or project phase must be listed in the current FTIP/FSTIP at this time. The program supplement agreement between Caltrans and the LPA also must be executed and/or Finance Letter signed/approved by Caltrans before an LPA can receive federal reimbursement.

Note: Federal-aid projects utilizing tapered match provisions (discussed below) are not eligible for advance construction authorization.

3.8 Tapered Match

The use of tapered match provisions enables a project sponsor to vary the non-federal share of a Federal-aid project over time, provided the federal contribution toward the overall project does not exceed the federal pro rata limit.

Traditionally, a project sponsor is responsible for paying the required nonfederal share of the project costs on each invoice submitted for reimbursement. Under the tapered match approach, a nonfederal-matching ratio is assigned to the project, rather than individual payments. The federal share can be as high as one-hundred percent in the early stages of project reimbursement provided, that the overall federal contribution does not exceed the statutory Federal-aid limit at the end of project completion.

Tapered match provisions cannot be used on advance construction projects, STP-funded projects where the nonfederal match is being provided on program-wide-basis, and bond projects authorized under Title 23 Section 122. These activities are considered inconsistent with the intent of tapered match.

The use of tapered match provisions is subject to review and approval by both Caltrans (Office of Federal Resources) and FHWA CADO. The project sponsor must submit written taper match plan to the DLA for review. The project sponsor must also show that they have their matching pro rata share available and are committed to providing it as applicable. The request must include the justification and a tapered match schedule.

FHWA may approve cases where tapered match would:

- Expedite project completion.
- Reduce the project's overall cost.
- Provide incentive to attract additional nonfederal funds to the project.

3.9 Flexible Match

Federal flexible match provisions allow a wide variety of public and private contributions to be credited toward the nonfederal match for Federal-aid projects. Eligible contributions include donations of public and private cash, R/W (Acquisition), and in certain cases, public and private materials or services rendered.

The use of flexible match also is subject to review and approval by both Caltrans (Office of Federal Resources) and the FHWA CADO. The project sponsor must submit a written flexible

match plan to the DLAE for review. The plan must specify the appraised value (fair market value) of donated property, materials, and/or services.

Eligibility of flexible match for credit against nonfederal match is subject to the following:

- **Cash** – Private, state, and local entity funds must be received during the period between project approval/authorization and submittal of the project final voucher.
- **Right of Way** – Private, state, LPA property may be donated any time during the project development process. The property must be appraised to determine the fair market value and must be included in the total project cost. The donation of the property must not influence the NEPA process.
- **Materials** – Private and local entity donation of materials must be appraised to determine fair market value. Credit for state donated materials is not permitted.
- **Services** – State and local entity services may only be credited toward the nonfederal match for Transportation Enhancements (TE) projects. Private donation of services must be documented as to fair market value.

In addition to the referenced flexible match opportunities above, certain sources of federal grant funds may be eligible to match certain categories of highway projects.

3.10 Toll Credit in Lieu of Non-Federal Match

Title 23 U.S.C. authorizes states to use certain toll revenue expenditures as a credit toward the non-federal matching share of programs authorized by Title 23 (except for the ER Program) and for transit programs authorized by Chapter 53 of Title 49 U.S.C.

Federal-aid highway projects typically require the project sponsors to provide a certain percentage of non-federal funds as match to the federal funds. For example, Surface Transportation Program (STP) funded projects require a minimum of 11.47% of non-federal match funds. Through the use of toll credits, the non-federal share match requirement can be met by applying an equal amount of toll credits and therefore allow a project to be funded at 100% federal for federally participating costs. Toll credits can be used on all Federal-aid highway funding programs EXCEPT for the ER Program.

Caltrans policies limit the use of toll credits for On-System HBP projects and Local HSIP projects because all available funds have been programmed and there are more needs than funding capacity. However, LPAs may use other federal funding to dual-fund both On-System HBP projects and Local HSIP projects, and apply toll credits to each federal fund in the project to increase the federal reimbursement rate to 100% (see example Scenario C).

For LPAs that wish to use toll credits for the Federal Planning and Federal Transit Administration (FTA) funds additional information is provided at: https://dot.ca.gov/-/media/dot-media/programs/rail-mass-transportation/documents/f0010110-toll-credits-fact-sheet-a11y.pdf.

One of the conditions for FHWA's approval of the toll credits is that its use does not reduce the state's non-federal transportation capital expenditures. To conform to this policy, California must demonstrate continued efforts to maintain its non-federal transportation expenditures. Therefore, project sponsors that have savings of transportation dollars due to toll credit match of federal funds must spend that savings on other transportation related projects.

In addition, it needs to be noted that the use of toll credits does not generate any additional federal funding. Its use is merely to meet the non-federal match requirement of the federal

participating cost. The amount of toll credit available each year is limited by the amount of annual Federal Obligation Authority (OA).

Caltrans policy does not allow the retroactive use of toll credits for funds that have already been obligated. However, subsequent obligations can be authorized to use toll credits.

In order to use toll credit, the following requirements MUST be met:

- The intended use of toll credits is explicitly expressed in the LAPM 3-A by marking the appropriate toll credit box;
- Federal reimbursement rate of those funds utilizing toll credits must be 100%, excluding federally non-participating costs;
- Programmed in the current Federal Statewide Transportation Improvement Program (FSTIP), or post-programmed, as using toll credits;
- The project is funded from one of the programs listed in Caltrans' Statewide Toll Credit Use Policy.

The following examples demonstrate how the use of toll credits is different than the normal federal/non-federal match funding.

Scenario A – Traditional Project Funding with Match

For a project with a total cost of $120,000 including $20,000 of federally non-participating costs ($100,000 federally participating) using a federal reimbursement rate of 88.53%, the funding plan would normally be as indicated in the following Table 1.

Table 1 - Traditional Funding

Prog Code	Total Cost	Participating Cost	Federal Funds	Non-Federal Funds	Toll Credit
M240	$120,000	$100,000	$88,530	$31,470	$0

The federal fund amount required in this scenario is $88,530 (88.53%) of the participating cost and the non-federal funding amount is equal to the non-participating amount $20,000 plus the required $11,470 (11.47%) non-federal match for a total amount of $31,470.

Scenario B – Toll Credit Funding

When toll credit is being applied to the project, it will be used as a credit toward the non-federal share or $11,470. Since toll credits are not federal funds, federal share must be increased to accommodate the reduction of non-federal funds resulting from the toll credit being used as indicated in the following Table 2.

Table 2 - Use Toll Credit

Prog Code	Total Cost	Participating Cost	Federal Funds	Non-Federal Funds	Toll Credit
M240	$120,000	$100,000	$100,000	$20,000	$11,470

The federal fund amount required is changed from $88,530 (88.53%) to $100,000, the total Participating Cost, and the non-federal funding amount is equal to the non-participating amount. This option is not applicable for Local HBP projects on the State Highway System and Local HSIP projects (see Scenario C below).

Scenario C – Toll Credit with Dual Federal Funding

This scenario is for a Local HSIP project using STP funds as a match. When other types of federal funding are being applied as a match to the project, each fund must be treated as a separate funding component with 100% federal funding and a corresponding toll credit. A toll credit value equal to the required non-federal match will be applied to each of the federal funding lines as indicated in Table 3.

Table 3 - Use Toll Credit with Federal Funding

Funding Line	Prog Code	Total Cost	Participating Cost	Federal Funds 1	Federal Funds 2	Toll Credit
1	MS30 (HSIP)	$90,000	$90,000	$90,000	$0	$9,000
2	M240 (STP-Match)	$10,000	$10,000	$0	$10,000	$1,147
	Total	**$100,000**	**$100,000**	**$90,000**	**$10,000**	**$10,147**

For this example, the required non-federal match for Local HSIP funding line #1 is $9,000 (10%). For funding line #2 the required match for STP funding is $1,147 (11.47%). Therefore, the total amount of toll credit applied to this project is $10,147. This option is applicable for On-System Local HBP projects and Local HSIP projects.

Local Public Agencies

- Work with the respective Metropolitan Planning Organization (MPO) or RTPA to ensure the use of toll credit is appropriate and that such use is properly programmed in the MPO's Federal Transportation Improvement Program (FTIP), and subsequently in the Federal Statewide Transportation Improvement Program (FSTIP);
- Submit LAPM 3-A indicating the use of toll credits for the project; federal funds must equal 100% of the total participating costs. Include a comment in the Remarks section of the Finance letter for the use of toll credits; and
- After receiving Authorization to Proceed, an executed Program Supplemental Agreement (PSA), and a State-approved Finance Letter. Invoices for eligible costs may be billed at 100% of the participating costs.

Assume a project need of $100,000.

With funds that you can normally use toll credits with, you have the breakdown below:

	TOTAL	PARTICIPATING	FEDERAL 1	LOCAL	TOLL CREDIT
Traditional	$100,000	$100,000	$88,530	$11,470	$0
Toll Credit	$100,000	$100,000	$100,000	$0	$11,470 ($100,000 x .1147)

Using On-System Bridge funds, you must have a second non-HBP source of federal funds to make it work:

			Federal 1	Federal 2		
	TOTAL	PARTICIPATING	ON SYS HBP	STP	LOCAL	TOLL CREDIT
Traditional	$100,000	$100,000	$88,530	$0	$11,470	$0
Toll Credit (HBP piece)	$88,530	$88,530	$88,530	$0	$0	$10,154 ($88,530 x .1147)
Toll Credit (STP piece)	$11,470	$11,470	$0	$11,470	$0	$1,316 ($11,470 x .1147)
TOTAL	$100,000	$100,000	$88,530	$11,470	$0	$11,470

If, for example, the second fund source is DEMO, it would breakdown like this:

			Federal 1	Federal 2		
	TOTAL	PARTICIPATING	ON SYS HBP	DEMO	LOCAL	TOLL CREDIT
Traditional	$100,000	$100,000	$88,530	$0	$11,470	$0
Toll Credit (HBP piece)	$88,530	$88,530	$88,530	$0	$0	$10,154 ($88,530 x .1147)
Toll Credit (DEMO* piece)	$11,470	$11,470	$0	$11,470	$0	$2,294 ($11,470 x .20)
TOTAL	$100,000	$100,000	$88,530	$11,470	$0	$12,448

Note: Eligibility must be checked when using DEMO or any other federal funds in-lieu of the Local match.

Figure 3-3: Toll Credit Example

3.11 FTA Transfer

State, regional, and LPAs have the opportunity to select transit-related projects to meet their transportation needs. These provisions include:

- Expanded eligibility criteria under major funding programs (including STBGP and CMAQ) to implement both highway and transit improvements,
- The ability to transfer federal funds from one funding program to another permitting the implementing agencies to capitalize on expanded eligibility (e.g., HBP to STBGP), and
- The ability to transfer federal funds from the jurisdiction of the FHWA to that of the FTA and vice versa.

23 U.S.C.134(k) requires that Title 23 funds made available for public transit projects, typically administered by the FTA, be transferred from FHWA to the FTA. These transferred funds are administered in accordance with the requirements of Chapter 53 (Mass Transportation) of Title 49 (Transportation), except that Title 23 (Highways) provisions related to the nonfederal share must apply. Transit-related highway projects, typically administered by FHWA, should remain under the jurisdiction of FHWA. For transit projects that could be processed through either FHWA or FTA, the LPA and/or MPO may select the administering federal agency via placement of the project in the FTIP or FSTIP.

All FHWA apportioned federal funds must be programmed in an FHWA/FTA approved FSTIP prior to transferring the funds to FTA. The transferred funds must be used for the original programmed intent and remain eligible under the funding program. In other words, using the transferred federal funds for a different purpose than originally programmed is not permitted.

The FTA will only accept transfer applications from recognized transit operators. Most transit agencies are familiar with and often prefer to use FTA project implementation procedures. If a project is programmed to receive both FHWA and FTA apportioned funds, the transfer of funds facilitates the use of one set of project implementation procedures.

3.11.1 Highway Funds Eligible for Transfer

From a procedural perspective, local assistance federal funds, which can be transferred to FTA, fall into two categories: 1) Local Federal-aid funds, and 2) Federal STIP funds. The Caltrans District Local Assistance Office and HQ DLA process the transfer of Local Federal-aid funds and ATP funds. The Headquarters Division of Mass Transportation (DMT) and Office of Federal Resources (OFR) process Federal STIP fund transfers except for STIP ATP funds.

Local Federal-aid fund categories eligible for transfer to FTA include:

- **Regional Surface Transportation Block Grant Program (RSTBGP)** - Eligible transit activities include transit capital projects, including vehicles and facilities, publicly or privately owned that are used to provide intercity bus service, and safety improvements for transit. However, RSTP funds may not be used for Section 5307 (Urbanized Grant Program) operating expenses.
- **Congestion Mitigation and Air Quality Improvement (CMAQ) Program** - CMAQ funds must be used to support transportation projects in air quality nonattainment areas. A CMAQ-funded project must contribute to the attainment of the national ambient air quality standards by reducing pollutant emissions from transportation sources. Eligible

transit activities include transit capital projects and up to three years of operating expenses for new eligible services.

- **Active Transportation Program (ATP)** - ATP funds infrastructure projects, non-infrastructure projects, and plans that encourage increased use of active modes of transportation, such as biking and walking and projects that meet at least one of the program goals.
- **FHWA Discretionary Funds** (including: High Priority Demonstration, Ferry Boat Discretionary, Federal Lands Highway Program, and Transportation and Community and System Preservation Pilot (TCSP) Program) - These funds may only be used for the designated purpose (line item description), as authorized by Congress or FHWA.

Federal STIP funds under the programming control of the RTPAs may be transferred to the FTA but must be allocated by the CTC prior to transfer to the FTA.

3.11.2 FTA Grant Programs

FHWA funds may be transferred to three different FTA Formula Grant Programs. These programs are contained in Title 49 (Transportation), Subtitle III (General Intermodal Programs), Chapter 53 (Mass Transportation) of the United States Code (U.S.C.). They are the Section 5307 Urbanized Area Formula Grant Program, Section 5311 Formula Grants for Other than Urbanized Areas Program, and Section 5310 Formula Grants and Loans for Enhanced Mobility of Seniors and Individuals with Disabilities Program. These programs vary by population density and whether the purchase of buses and vans for the elderly and disabled are involved.

Section 5307 – Urbanized Area Formula Grant Program

Section 5307 Grant Program procedures are used by LPAs in urbanized areas of over 200,000 populations, as well as, in urban areas with populations of 50,000 to 200,000. Under Section 5307 Grant Program procedures, each LPA submits one grant application per fiscal year to the FTA. Following the FTA Transfer, the Applicant Agency will deal directly with the FTA on all project-related activities. Remember that the FTA only will accept grant applications from agencies that they have certified (i.e., recognized transit agencies). Non-certified agencies must find a certified project sponsor.

Section 5311 – Non-Urbanized Area Formula Grant Program

Section 5311 Grant Program procedures are used in non-Urbanized areas and cities of under 50,000 populations. Every year, the FTA allocates apportioned Section 5311 Program funds to each state. For California, Caltrans is the delegated recipient of these FTA funds. The Caltrans DMT Office of Rural and Small Transit Operators manages the Section 5311 Program jointly with the assistance of the District Transit Offices.

Under the Section 5311 Program, the Caltrans DMT acts as the grant applicant on behalf of the LPAs and deals directly with the FTA. The Caltrans DMT submits one annual statewide grant application to the FTA that includes both local and state-sponsored projects. Detailed procedures for the processing FTA transfers to the Section 5311 Program are contained in the Caltrans Section 5311 Handbook and Guide and are briefly summarized in Exhibit 3-K: Administrative Procedures for Transfer of Local Federal-Aid Funds to Federal Transit Administration (FTA).

Section 5310 – Enhanced Mobility of Seniors and Individuals with Disabilities Program

Section 5310 Grant Program procedures are used by nonprofit organizations and public agencies (approved by the State) for the purpose of meeting the transportation needs of the elderly and individuals with disabilities where existing public transportation services are, otherwise unavailable, insufficient or inappropriate. Similar to Section 5311 procedures, the Caltrans DMT Specialized Federal Transit Branch acts as the grant applicant on behalf of the LPA and works directly with FTA. Section 5310 funds typically are used to purchase vans and small buses for the elderly and persons with disabilities.

3.11.3 FTA Transfer Procedures

Under ISTEA the transfer of FHWA funds to the FTA was accomplished via the Federal Authorization and Obligation Process (E-76). The transferred federal funds remained with FHWA until the FTA submitted project invoices that were reimbursed by FHWA.

FHWA and FTA have since developed procedures that provide for the direct transfer of federal funds and Obligation Authority (OA) to the recipient federal agency. Caltrans submits a formal FTA transfer request to FHWA CADO via an Exhibit 3-J: Request for Transfer of Federal Funds to the FTA letter. Upon FHWA concurrence, the federal funds are transferred and deducted from the appropriate State and MPO/RTPA apportionment balances.

See Exhibit 3-K: Administrative Procedures for Transfer of Local Federal-aid Funds to the Federal Transit Administration for a step-by-step discussion of the transfer of FHWA apportioned Local Federal-aid funds to the FTA.

STIP

Federal-aid funds programmed in the STIP also may be transferred to the FTA. The DLAE and DLA are not involved in the transfer process (except for ATP funds) instead, Caltrans DMT and the Office of Federal Resources within the Division of Budgets process the transfer of these funds. Detailed procedures for Transfer of STIP to the FTA funds under the Section 5307, 5311, and 5310 Grant programs are available on the Caltrans DMT website.

Upon transfer of FHWA-apportioned federal funds to the FTA, the Applicant Agency typically will deal directly with the FTA on all subsequent project-related matters. However, occasionally an FTA transfer project may qualify to receive State Match Funds through the STIP.

The project must be programmed to receive the STIP State Match Funds by an MPO/RTPA and be used, eligible activities under Article XIX of the California State Constitution.

Prior to reimbursement with STIP State funds: 1) the CTC must allocate the STIP match funds; 2) a Program Supplement Agreement (PSA) between the Applicant Agency and Caltrans must be signed and executed; 3) the Applicant Agency must prepare and sign a project-specific Finance Letter; and 4) the Applicant Agency must provide evidence that payment of federal funds was invoiced/received from the FTA. Invoice format and procedures must adhere to LAPM Chapter 5: Invoicing.

3.12 MPO/RTPA Programmed Fund Balances

Under state law, certain federal funds are apportioned to the MPO/RTPA regions by formula. These funds include RSTP and CMAQ funds. These funds are programmed to LPAs for specific projects through the FTIP/FSTIP processes. Both Caltrans and FHWA monitor the obligation and balance of federal funds. Caltrans maintains reports showing the obligation of funds summarized at the district, MPO and county levels. These reports show fund balances and list

the individual city and county projects; refer to the Division of Local Assistance website for balances.

3.13 References

A Guide to Federal-Aid Programs and Projects
https://www.fhwa.dot.gov/federalaid/projects.pdf

Cooperative Work Agreement
https://dot.ca.gov/programs/local-assistance/projects/cooperative-work-agreement-cwa

Financing Federal-Aid Highways, Federal Publication No. FHWA-PL-99-015 dated August 1999.
https://www.fhwa.dot.gov/reports/fifahiwy/finfahwy.pdf

Joint Stewardship and Oversight Agreement (S&O)
http://www.fhwa.dot.gov/federalaid/stewardship/agreements/ca.pdf

Title 23, United States Code
https://www.fhwa.dot.gov/map21/docs/title23usc.pdf

Title 49, United States Code
https://www.govinfo.gov/content/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleIII-chap53-sec5301.pdf

Chapter 4 **Agreements**

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Exhibit 4-C: Master Agreement - Administering Agency-State Agreement for Federal-Aid Projects
Exhibit 4-D: Sample - Program Supplement Agreement
Exhibit 4-E: Master Agreement - Administering Agency-State Agreement for State-Funded Projects

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

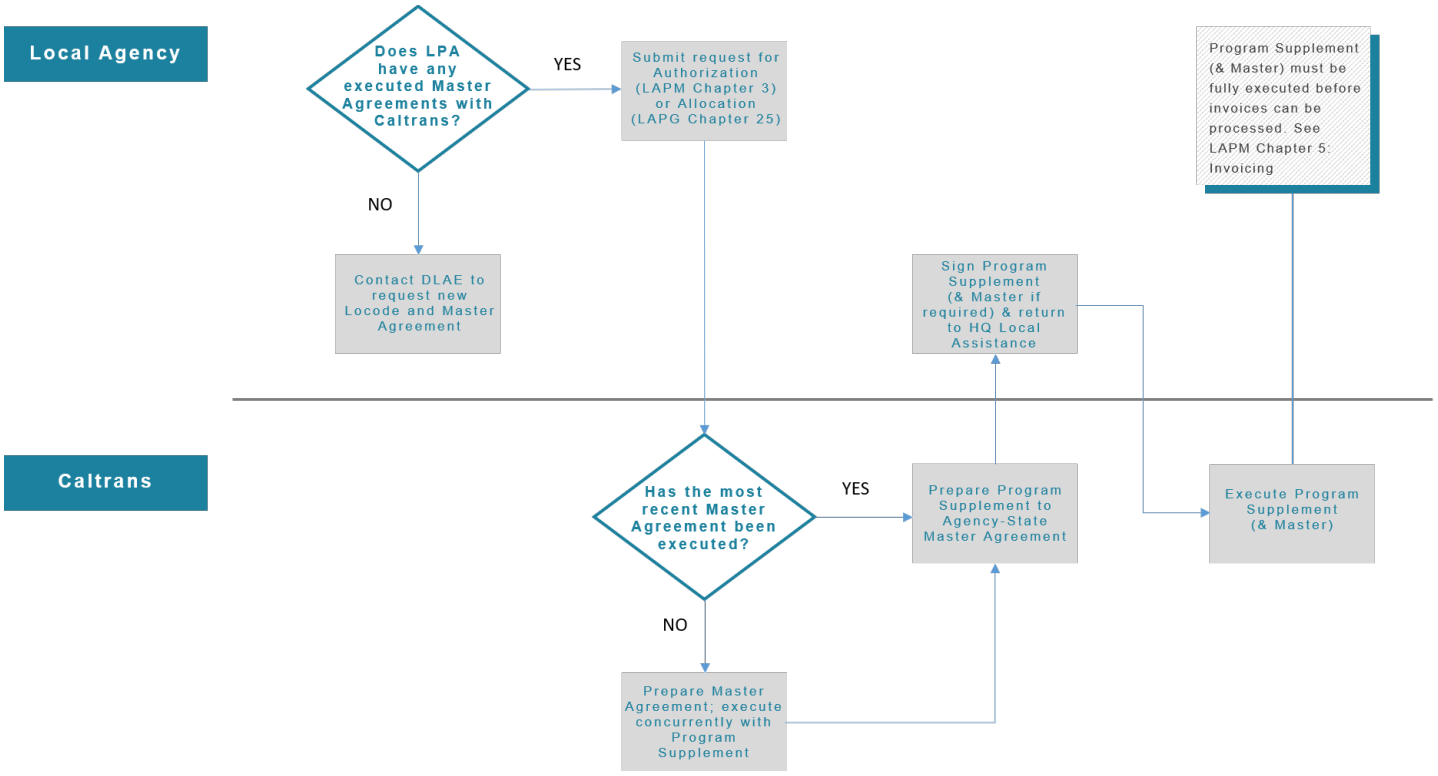


Figure 4-1: Developing Local Federal-aid and State-funded Projects

Chapter 4 **Agreements**

4.1 Introduction

The Federal-Aid Highway Program (FAHP) and most Local Assistance programs funded with state-only funds are reimbursable programs. Agreements (contracts) must be executed in order to pay funds to a Local Public Agency (LPA). The Division of Local Assistance (DLA) prepares and sends these agreements directly to the LPA. The agreements must be executed before any invoices for payment can be processed.

This discussion applies to all LPA projects receiving Federal-aid highway project funds administered by the Federal Highway Administration (FHWA) and state-only funds administered by DLA as discussed in this chapter.

4.2 General Agreements

The Master Agreement and the Program Supplement Agreement are general agreements between the LPA and the State defining the general terms and conditions which must be met to receive Federal-aid or state funds.

Master Agreement

A Master Agreement is required with the LPA whenever federal or state funds are to be used on a local project funded from the programs noted above. Respectively, there are two primary types of Master Agreements:

1. Federal-Aid Highway Program

   Administering Agency-State Agreement for Federal-aid Projects, or Federal-aid Master Agreement

2. State-only Funded Programs

   Administering Agency-State Agreement for State-Funded Projects (with no federal funds), or State-only Master Agreement

In the Master Agreement, the LPA agrees to comply with all federal and state laws, regulations, policies, and procedures relative to the design, right of way acquisition, environmental compliance, construction, and maintenance of the completed facility. It is normally processed once with the LPA when it begins its first Federal-aid or state-funded project. The Local Agency-State Master Agreements are periodically updated and re-executed to account for changes in laws and policies. An example of when a Master Agreement will be updated is after a new Transportation Act has been passed that correspondingly results in broad changes that need to be made in the agreement provisions. After the Master Agreement has been updated, for LPAs that already have a prior executed Master Agreement, Caltrans will normally send the newer agreement for signature to the LPA as part of the implementation process for its next Local Assistance project. New projects to be implemented will be tied to the newer Master Agreement, while prior projects will continue to be tied to the version of the Master Agreement that they were originally associated with. During periods between Master Agreement updates, changes or updates may be addressed via the special covenants in individual project Program Supplement Agreements.

Program Supplement Agreement (PSA)

The supplement to the Master Agreement is a project-specific agreement that formalizes the financial responsibilities and provisions for a specific Federal-aid or state-only funded project in the categories defined above. This program supplement identifies the types and amounts of federal, state, and local funds used to finance the locally sponsored project. It is the contractual basis for the state to pay the LPA for work done.

Special covenants or clauses in the agreement define the LPA's specific responsibilities in implementing and maintaining the project. Others define state or local responsibilities for providing project funds.

No reimbursement payments can be made until the PSA has been fully executed. Invoices must not be submitted prior to this execution.

4.3 Special Program Agreements

Agreements are required for several programs which are prepared on a programmatic or project-by-project basis and do not follow the Master Agreement/Program Supplement process. These are briefly described below. Refer to the Local Assistance Program Guidelines for full details of the agreement processes and conditions for these programs.

Federal Apportionment Exchange Program and State Match Program Agreement

This program is commonly called the Exchange/Match or Match and Exchange Program. Under the provisions of Streets and Highways Code 182.6 et seq., MPOs, RTPAs and counties are allowed to exchange certain portions of their Federal-aid funds for State Highway Account funds (see LAPG Chapter 18: Optional Federal Exchange and State Match Programs for details).

The DLA prepares the agreement for the maximum allowable amount that each LPA can exchange and sends it to the LPA for signature. The signed agreement is sent back to DLA. The agreement takes effect upon signature by appropriate DLA staff. If the LPA does not wish to participate, they will send the agreement back with a letter notifying DLA to cancel the agreement.

4.4 Process and Procedure

A new Locode and Master Agreement will normally be requested by the LPA soon after their first Local Assistance project is selected and programmed for inclusion or amended into a federal or state programming document. Neither a Master Agreement nor project-specific requests or agreements will be processed until after the associated pre-award audit process is completed and Caltrans has determined that findings (if any) have been addressed satisfactorily; see LAPM Chapter 3: Project Authorization (Section 3.2: Prior to Federal Authorization).

Federal-aid projects must be authorized and have funds obligated, and projects requiring a vote by the California Transportation Commission (CTC) must have received an allocation by CTC, before a project-specific agreement is prepared. All project-specific agreements are contingent on budget actions by the federal and state governments.

A project-specific agreement is normally prepared only once for each project after the initial authorization/obligation or CTC allocation. In certain cases, an agreement will need to be revised upon a subsequent authorization/obligation or CTC allocation for a project. This typically occurs because of pertinent requirements having changed since the initial authorization, or as a result of funds having been added from a new Program for which additional requirements are

applicable and need to be reflected in the agreement. In such instances, the DLA will identify the need and prepare a revised agreement.

Processing

After the funds have been allocated and/or obligated, the DLA prepares the agreement. Once the requested funds have been encumbered by Caltrans Local Programs Accounting (CLPA), the DLA sends the agreement to the LPA for signature. The agreement must be signed by the LPA and returned to the DLA along with a signed and dated authorizing resolution as soon as possible. Exhibit 4-B: Local Agency Agreement Execution Checklist, identifies key actions to be taken in the agreement execution process. Any changes in funding or agreement language made by the LPA will void the agreement.

The LPA may pass a resolution for each agreement as it is presented or may pass a resolution authorizing an individual, e.g., public works director, to execute specific types of agreements as they occur. The latter method may reduce significant amounts of effort and time and should be considered by any LPA that administers a large number of Federal-aid or state-funded projects. In either case, the resolution should clearly indicate the title of the person who is authorized to sign and for which agreement(s) or agreement types.

Upon receipt of the signed agreement and resolution, the DLA must review and sign the agreement before it can be conformed and executed. A copy of the executed agreement is then sent to the LPA and CLPA at which time invoices may then be submitted for payment.

4.5 Federal-aid Project Authorization to Proceed (E-76)

In accordance with Section 106(a) of Title 23 of the United States Code (U.S.C.), the project authorization, obligation of funds, and execution of the Federal-aid project agreement between Caltrans and FHWA are accomplished in a single action in FHWA's Financial Management Information System (FMIS) utilizing an electronic form titled Authorization to Proceed (E-76).

4.6 State Highway System and Other Agreements

Various types of agreements are required when working within the State Highway right of way or with other state agencies. Included are: Grade Separation Fund, Cooperative, Joint Powers, Highway Powers, Highway Improvement, Escrow, Maintenance, Petroleum Violation Escrow Account (PVEA), and Contribution Agreements and Service contracts. These are not processed with LPAs by DLA but are developed and processed as defined in other Caltrans manuals and documents. The LPA should not overlook the need for one or more of these agreements during project development.

Railroad Service Contracts

These contracts are required when a railroad company will perform work on a project. When the work is funded with Grade Crossing funds, the contracts are made between Caltrans and a railroad company and are directly processed with the railroad.

The PSAs for these Federal-aid projects are processed as described previously.

4.7 References

23 U.S.C. Section 106
https://www.govinfo.gov/content/pkg/USCODE-2010-title23/html/USCODE-2010-title23-chap1-sec106.htm

Chapter 5 **Invoicing**

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Exhibits

LAPM 5-A: Local Agency Invoice

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

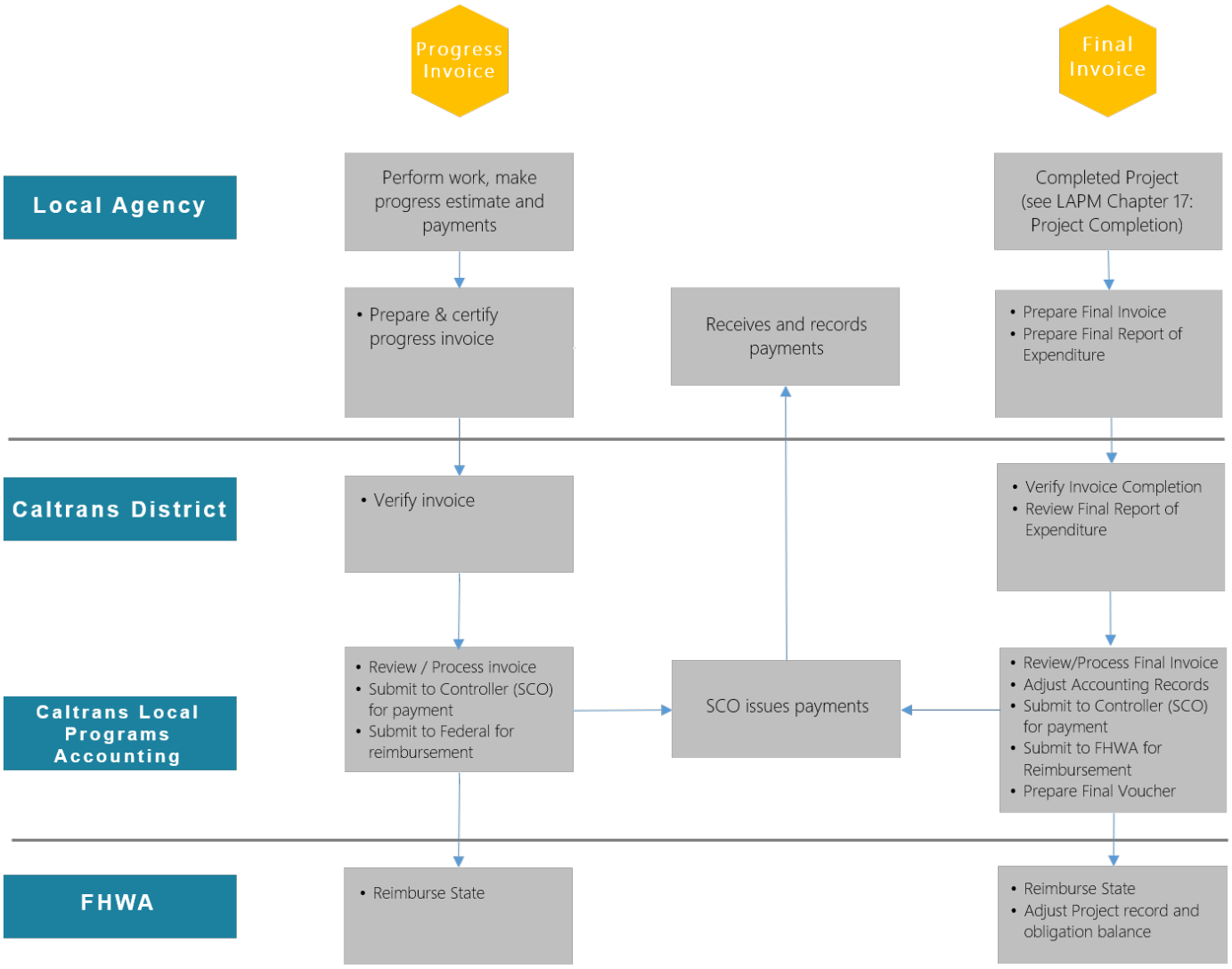


Figure 5-1: Invoice Flowchart

Chapter 5 **Invoicing**

The purpose of this chapter is to provide Local Public Agencies (LPAs) with basic information required to obtain reimbursement for their expenditures on Local Federal-aid and state-funded projects. Additional information may be obtained from Caltrans Local Program Accounting (CLPA) through the District Local Assistance Engineer (DLAE). Payments made under these provisions are for expenditures paid by the LPA prior to claiming reimbursement from the California Department of Transportation (Caltrans).

5.1 Tracking Status of Invoices

As invoices are processed by CLPA, LPAs can monitor the status of their invoices by viewing the data at the Vendor Payment History website: https://dot.ca.gov/programs/accounting/vendor-payment-history. This website is updated daily and contains all invoices for projects for the past 18 months.

5.2 Requirements for Reimbursement

The following conditions must be met prior to reimbursement of costs:

5.2.1 Budget Authority

The State Legislature and Federal Government have provided budget authority and the projects have met all program budget conditions, e.g., timely use of funds.

5.2.2 Agreement

1. The Administering Agency-State Master Agreement (Master Agreement) must be fully executed (all required signatures obtained) if one is used. This is an agreement between the state and a city, county, or other LPA defining the general terms and conditions, which must be met to receive Federal-aid (Federal Master Agreement) and/or state funds (State Master Agreement).
2. The Program Supplement Agreement (PSA), project agreement, or some other required applicant state agreement must be fully executed. These documents are agreements between the State and LPA (or applicant) identifying the type and amounts of funds used to finance the project and the specific covenants related to the project. The State can only reimburse the agency that signed this contractual document, unless there is a covenant in the PSA authorizing another entity to bill and/or be paid on behalf of the agency signing the PSA.

For additional information about agreements refer to LAPM Chapter 4: Agreements.

5.2.3 Federal-aid Project Authorization (E-76)

Prior to the beginning of the reimbursable work, the project phase of work eligible for reimbursement from federal funds must be formally authorized (approved) by Caltrans and FHWA. The payment of federal funds is limited to the amounts approved on the Authorization to Proceed or E-76. To initiate a federal project authorization for a phase(s) of work, or to increase a prior authorization, the LPA must prepare the Request for Authorization package (see LAPM Chapter 3: Project Authorization) that provides the information needed by Caltrans and FHWA to process the request in a timely manner.

Note: Costs incurred prior to the authorization date are not eligible for FHWA reimbursement except for At-Risk Preliminary Engineering, Emergency Opening, and Preliminary Engineering work that is part of the Emergency Relief program; see LAPM Chapter 3 (Section 3.3: At-Risk Preliminary Engineering) and LAPG Chapter 11: Emergency Relief Program for additional details.

For additional information about phases of work and the project authorization process refer to LAPM Chapter 3.

5.2.4 State-only Funded Project Allocation

For projects funded with state-only funds, reimbursable work begins the day of fund allocation. For more information on allocation procedures go to LAPG Chapter 25: State Programs for Local Agency Projects.

5.2.5 Invoice Submittal

The LPA may submit monthly invoices for reimbursement of participating costs (costs eligible for state and/or federal reimbursement). Amounts claimed must reflect the cost of completed work, which has been paid for. The LPA must claim all reimbursable work within 180 days of project completion or prior to the expiration date of the project agreement, whichever comes first. Per the Master Agreement, an invoice must be submitted at least every six months to avoid being classified as inactive. Refer to the Inactive Projects webpage for more details: https://dot.ca.gov/programs/local-assistance/projects/inactive-projects

Towards the end of the State fiscal year (June 30), it is very important for LPAs to submit invoices timely for all incurred project costs so that accrued expenditures are properly identified on Caltrans financial statements.

Each fiscal year, the Division of Local Assistance (DLA) will notify LPAs regarding projects funded from lapsing appropriations (funds that will expire/not be available for spending June 30 of that fiscal year). They will be notified of the deadline for submitting invoices for these projects.

5.2.6 Award Package

The LPA must submit a complete Award Package to the DLAE within 60 days of the award of the construction contract and prior to the LPA's first invoice for construction capital costs. The DLAE will forward a copy of the Award Package to DLA and Exhibit 15-L: Local Agency Contract Award Checklist to CLPA for processing.

If the DLAE does not receive a copy of the Award Package with the first invoice for construction capital costs, the invoice will be returned to the LPA unpaid. No award package is required if the LPA utilizes only its own work forces (force account); however, a Public Interest Finding (Exhibit 12-F) approved by the DLAE must be included with the first invoice. Note: an Award Package is not required prior to Construction Engineering reimbursement.

The Award Package for Federal-aid funded construction contracts must consist of the documents outlined in Award Package; see LAPM Chapter 15: Advertise and Award Project (Section 15.6: Award Package).

The Award Package for state-only funded construction contracts must consist of the completed Award Information for STIP Projects (see LAPG 25: State Programs for Local Agency Projects).

5.3 Reimbursable Project Costs

The costs of salaries, wages, and related project costs may be reimbursable for the following activities. All costs must be broken down into eligible direct and/or indirect cost components. For a list of ineligible costs see LAPM Chapter 16: Administer Construction Contracts (Section 16.10: Change Order).

5.3.1 Phases of Work

1. **Preliminary Engineering:** Preliminary Engineering is the initiation, design, and related work preparatory to the advancement of a project to physical construction. For local STIP and ATP projects, the Preliminary Engineering costs must be segregated into:
   - Project Approval / Environmental Document (PA&ED)
   - Plans, Specifications & Estimate (PS&E)

2. **Right of Way:** Acquisition of Right of Way, real property, or rights thereto is included. It also includes the preparation of Right of Way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition, review of appraisals, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation advisory assistance, utility relocation, and other related labor expenses.

   Note: Right of Way rental income and the proceeds from the sale of excess land may be retained by LPAs if it is used for a valid Title 23 purpose. It is the LPA's responsibility to assure they comply with Title 23 if this option is selected. For additional information about Right of Way topics, see LAPM Chapter 13: Right of Way.

3. **Construction Engineering:** Construction Engineering is the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into construction, checking shop drawing, and measurements needed for the preparation of pay estimates. Construction Engineering must be authorized to be eligible for reimbursement.

4. **Construction:** Eligible construction costs include the actual costs to construct the transportation facility and its appurtenant facilities. It also includes: removal, adjustment or demolition of buildings or major construction; utilities or railroad work that is a part of the physical construction of the project; and administrative settlement cost of contract claims.

5. **Administrative Settlement Costs:** These are service costs related to contract claims related to the review and defense of claims against Federal-aid-projects (see LAPM Chapter 16: Administer Construction Contracts).

5.3.2 Direct Costs

Direct costs are costs incurred solely for a specific state/Federal-aid funded transportation project direct costs must be reasonable and allowable per 2 CFR 200. These costs include contractor payments, Right of Way acquisition, direct materials, salaries, wages, fringe benefits and related costs, approved equipment and other capital expenditures, contracted services, and other items of expense furnished specifically for the Federal-aid project. Refer to 2 CFR 200, Subpart E: Cost Principles and 2 CFR 200.439 for additional information regarding reasonable and allowable costs and equipment thresholds.

5.3.3 Indirect Costs

At the discretion of the LPA, indirect costs are eligible for reimbursement on their Federal-aid transportation projects, as well as STIP and ATP projects, and state-funded projects. Should the LPA seek reimbursement of their indirect costs, they must receive an Approval/Acceptance Letter of the LPA's Indirect Cost Rate Proposal (ICRP)/Indirect Cost Allocation Plan (ICAP) for the fiscal year(s) involved from Caltrans Internal Audits Office (CIAO) prior to billing for any indirect costs. If a project involves more than one fiscal year, approval of the indirect cost rate(s) for each fiscal year for each unit of the government wishing to bill indirect costs are required prior to claiming reimbursement. The Indirect Cost Calculation section on the invoice must be completed and the summary data transferred to the first page of the invoice. Indirect costs must not be combined with direct costs on invoices. Refer to the CIAO website for details on obtaining approval/acceptance of ICRP/ICAP: https://dot.ca.gov/programs/audits.

After obtaining approval/acceptance, and at the discretion of the LPAs, indirect costs may be included when seeking reimbursement. However, any completed project with a Final Report of Expenditures (FROE) will not be eligible for retroactive indirect cost reimbursement.

Note: Some programs may have special requirements or restrictions for indirect costs. For example: the Freeway Service Patrol program does not allow the use of state funds for administrative purposes pursuant to Streets and Highways Code Section 2564.

LPAs may be eligible to use the 15% de minimis indirect cost rate per 2 CFR 200.414. If LPAs would like to apply the de minimis rate of up to 15% to their modified total direct costs, then LPAs must submit both the Application form and the De Minimis Submission Certification to CIAO at ICAP-ICRP@dot.ca.gov.

The CIAO application and De Minimis forms are available at CIAO's website: https://dot.ca.gov/programs/audits.

5.3.4 Underfunded Projects

When LPA personnel request federal funding for a project, it is either:

1. Fully funded (federal funds requested at maximum federal reimbursement rate, i.e., 88.53% for Surface Transportation Program projects), or
2. Underfunded (federal funds requested at less than maximum reimbursement rate, i.e., 75% vs. 88.53%. See example below), or
3. There is nonparticipating work (costs that are not eligible for federal reimbursement).

The calculated federal reimbursement ratio is computed by dividing the amount of federal funds authorized by the total participating costs.

For example, project CML – XXXX (XXX) has:

- Federal participating ratio of 100%
- Normal pro rata share of 88.53%
- Total estimated costs of the project are $1,000,000
- Total federal funds are $750,000
- The Federal Appropriation Code is Q240
- The reimbursement ratio would be: $750,000/$1,000,000 = 75%

If the federal funding ($750,000) divided by the federally participating costs ($1,000,000) is less than the full pro rata share (88.53%), the project is considered underfunded. In this case, the progress payments must be reimbursed at the lower reimbursement ratio, which is 75%.

5.3.5 Pro Rata vs. Lump Sum

23 CFR 630.106(f)(1) requires the federal share of eligible project costs to be established at the time of project agreement execution either by pro rata with the agreement stating the federal share as a specified percentage, or by lump sum with the agreement stating that federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

In requests for federal authorization to proceed, LPAs must document whether the Federal-aid share is to be pro rata or lump sum, by phase and fund type. Caltrans will then enter the pro rata or lump sum share in the Federal-Aid Data System (FADS) E-76 transmittals. For the construction phase of work, the pro rata or lump sum share may be adjusted before or shortly after contract award in accordance with 23 CFR 630.106(f)(2). Requests for award adjustment must be submitted by an LPA to Caltrans within 90 days of contract award.

Subsequent to an award adjustment, an increase in the federal funding obligation beyond the established lump sum share may be allowable as a result of an increase to the total project construction cost. A prior established lump sum amount less than the legal federal share does not prohibit reimbursement up to the maximum legal share. For pro-rata projects, subsequent cost adjustments will maintain the established reimbursement rate. If no additional federal funds are added, the reimbursement rate will be reduced. In no cases will the reimbursement rate be increased.

On existing projects for which the lump sum or pro rata method had not been established during previous project agreement processing, the next request for adjustment must indicate the method to be established. Otherwise, the pro rata method will be assigned by default.

The federal share to be established will be identified in the LPA's LAPM 3-A: Project Authorization/Adjustment Request submittal, on the project's LP2000 Finance Letter utility, and in FADS Fund Detail Screen prior to District E-76 transmittal to headquarters.

Upon establishment of a pro rata or lump sum share for a specific Fund Detail line in FHWA's Financial Management Information System (FMIS), the same share method must be set for that Fund Detail line for the life of the project. While not a preferred option, a multi-funded project may have a combination of lump sum and pro rata for different types of funds within the project (under such a scenario, the different types of funding must be shown in separate rows in a project finance letter).

It is recommended that LPAs fully fund (meaning that a project's federal share is the maximum allowable) projects whenever possible. If it is necessary to program a project phase as underfunded in anticipation that additional federal funds might become available to the project at a later date to increase the federal share, an LPA may consider programming Local Advance Construction in the project Federal Transportation Improvement Program/ Federal Statewide Transportation Improvement Program (FTIP/FSTIP) prior to a request for authorization for the respective phase of work.

Tables 5-1 and 5-2 provide sample funding scenarios to help illustrate some possible adjustments that might be made for the construction phase of a project established as either pro rata or lump sum share.

Table 5.1: Pro Rata vs Lump Sum – Fully Funded Scenario

	Pro Rata Agreement (Maximum Reimbursement Rate: 88.53%)	**Regulation/Policy Basis**
Initial authorization	**Project A: Construction Phase ; Fully funded at maximum** Total project cost: $1,000,000[1] Federal funds: $885,300 Pro rata Federal share: **88.53%**	23CFR 630.106(f)(1)
Adjustment at contract award	***Scenario 1*** *– Reduced Cost:* Revised total project cost: $900,000[1] Adjusted federal funds: $796,770 Pro rata Federal share: **88.53%**	23 CFR 630.106(f)(2)
Post-award Adjustments prior to final invoice (for CCOs. Etc)	***Scenario 1*** *– Reduced Cost:* Revised total project cost: $800,000[1] Adjusted federal funds: $708,240 Pro Rata Federal share: **88.53%** ***Scenario 1*** *– Increased Cost:* Revised total project cost: $1,050,000[1] Adjusted federal funds: $929,565 Pro Rata Federal share: **88.53%**	23CFR 630.110(b)
Adjustment at contract award (interpreted as within 90-days)	***Scenario 2*** *– Increased Cost:* Revised total project cost: $1,200,000[1] Adjusted federal funds: $985,300[2] Pro Rata Federal share: **82.11%**[2] ***(After award adjustment, reimbursement not to exceed this percentage)***	23 CFR 630.106(f)(2)
Post-award adjustments prior to final invoice (for CCOs. Etc)	***Scenario 2*** *– Reduced Cost:* Revised total project cost: $1,100,000[1] Adjusted federal funds: $903,191 Pro Rata Federal share: **82.11%** ***Scenario 2*** *– Increased Cost:* Revised total project cost: $1,250,000[1] Adjusted federal funds: $1,026,354 Pro Rata Federal share: **82.11%**	23CFR 630.110(b)
Final Invoice/Voucher	*No upward adjustment of federal funds will be allowed*	

Notes

1. Dollar figure chosen arbitrarily, solely for the purpose of illustrating sample adjustments that could be allowable.
2. Dollar figure chosen arbitrarily for illustration purposes. In this example, MPO/RTPA has allowed obligation of an additional 100,000 of Federal Funds as a result of high bids. An amount up to the maximum Pro Rata may be added provided that MPO/RTPA adds adequate funding to the project (in which case, post-award adjustments would be similar to those shown under Scenario 1). An LPA may also choose to utilize Advance Construction (AC) if Federal funds are not currently available for the increased cost but are anticipated to become available in the future (potentially allowing the project to be fully funded).

Table 5.2: Pro Rata vs Lump Sum – Underfunded Scenario

	Lump Sum Agreement (Maximum reimbursement rate: 88.53%)	Regulation/Policy Basis
Initial authorization	**Project B: Construction Phase; Underfunded** Total project cost: $1,000,000[3] Federal funds: $750,000[3] Lump Sum Federal share: **$750,000** Effective reimbursement: 75% (<88.53%)	23CFR 630.106(f)(1)
Adjustment at contract award	***Scenario 1*** *– Reduced Cost:* Revised total project cost: $900,000[3] Adjusted federal funds: $750,000 Lump Sum Federal share: **$750,000** Effective Reimbursement: 83.33% (< 88.53%)	23 CFR 630.106(f)(2)
Post-award Adjustments prior to final invoice (for CCOs. etc.)	***Scenario 1A*** *– Reduced Cost:* Revised total project cost: $800,000[3] Adjusted federal funds: $708,240 (vs $750,000) Lump Sum Federal share: **$708,240** Effective Reimbursement: 88.53% (= 88.53%) ***Scenario 1B*** *– Increased Cost:* Revised total project cost: $1,050,000[3] (additional $150,000 of approved CCOs) Adjusted federal funds: $882,795 ($750,000 plus $150,000 x 88.53%) Lump Sum Federal share: **$882,795** Effective Reimbursement: 84.07% (< 88.53%)	23CFR 630.110(b), FHWA Memo HCFM-10(HCF-2-12-002) This memorandum allows adjustment of lump-sum projects to cover additional costs associated with approved change orders, not to exceed maximum legal share.
Adjustment at contract award (interpreted as within 90-days)	***Scenario 2*** *– Increased Cost:* Revised total project cost: $1,200,000[3] Adjusted Federal funds: $950,000[4] Lump sum federal share: **$950,000** Effective reimbursement: 79.17% (<88.53%)	23 CFR 630.106(f)(2)
Post-award Adjustments prior to final invoice (for CCOs. etc.)	***Scenario 2A*** *– Reduced Cost:* Revised total project cost: $1,100,000[3] Adjusted federal funds: $950,000 Lump sum federal share: **$950,000** Effective Reimbursement: 86.36% (< 88.53%) ***Scenario 2B*** *– Increased Cost:* Revised total project cost: $1,250,000[3] (additional $50,000 of approved CCOs) Revised Federal funds: $994,265 ($950,000 plus $50,000 x 88.53%) Lump sum federal share: **$994,265** Effective reimbursement: 79.54% (<88.53%)	23CFR 630.110(b), FHWA Memo HCFM-10(HCF-2-12-002) This memorandum allows adjustment of lump-sum projects to cover additional costs associated with approved change orders, not to exceed maximum legal share.
Final Invoice/Voucher	*No upward adjustment of federal funds will be allowed*	

Notes

3. Dollar figure chosen arbitrarily, solely for the purpose of illustrating sample adjustments that could be allowable.

4. Dollar figure chosen arbitrarily for illustration purposes. In this example, MPO/RTPA has allowed obligation of an additional $200,000 of Federal Funds as a result of high bids. The Lump Sum share may be increased such that the resulting effective reimbursement rate is up to the maximum Pro Rata, provided that MPO/RTPA adds adequate funding to the project. An LPA may also choose to utilize Advance Construction (AC) if Federal funds are not currently available but are anticipated to become available in the future (potentially allowing the project to be fully funded).

5.4 Methods of Reimbursement

LPA invoices are routinely processed for payment within 45 days after Caltrans receives a complete and accurate invoice. The State Controller's Office (SCO) issues payments within 15 days after receiving the claim schedules from CLPA. To receive reimbursement ten days sooner, see Electronic Fund Transfer (EFT) Reimbursement Method below.

LPA invoices should be submitted no more than once per month. The invoice format must follow the requirements in this chapter. If they do not follow the format, they will be returned to obtain the additional information needed by Caltrans to process the payment.

5.4.1 Payment in Arrears

State and federal law requires that all federal and most state-funded LPA project payments be done on a reimbursement basis. Therefore, the LPA must incur and pay for project costs prior to invoicing Caltrans for reimbursement. The LPA is required to submit two copies of proper documentation with their invoices to validate that the expenditures were properly incurred. Acceptable documentation is discussed in Section 5.5: Invoice Guidelines, Format, and Checklist.

5.4.2 Lump Sum Payment Up Front

Projects in which there is a request for direct deposit of funds into an escrow account must be approved by the DLAE and submitted to CLPA 30 days prior to closing escrow for the purchase of the property. CLPA will not process the invoice unless the local entity is able to provide a firm escrow closing date.

Planning, Programming & Monitoring and Freeway Service Patrol projects - Agreement clauses, when used, allow lump sum advance payments to all agencies, which receive $300,000 or less per fiscal year. 60 days after all expenditures have been made by the LPA; they must submit a Final Report of Expenditures (FROE), including a final invoice, to Caltrans showing how the advance has been spent. Agencies that receive over $300,000 will be paid on a reimbursement basis.

State Match and Exchange Program (X projects) - These funds are advanced to the LPAs to be spent in accordance with the provisions in the Local Agency – State Agreement. It is the responsibility of the Regional Transportation Planning Agencies (RTPA) to provide the DLA's Office of Implementation with an annual report on these funds. The report with an as-of date of June 30, is due August 1 of each year. It must show the amounts given to each city and/or county. Failure to provide this report will result in future exchanges being held in abeyance. The SCO will review the actual expenditures to verify compliance with state law.

5.4.3 Electronic Fund Transfer (EFT) Reimbursement Method

Caltrans offers an EFT option to LPAs. Participation in the EFT program is limited to the LPAs that do not have a delinquent account receivable with Caltrans. EFT is the transfer of funds from the SCO to a State-contracted bank and then directly into a LPA's designated bank account.

1. **EFT Processing Time**
   The processing time within CLPA for invoices paid by either EFT or warrant will be the same. EFT, however, will decrease the processing time at the SCO from 14 days to 4-6 days. With EFT, CLPA will forward the EFT claim schedules to the SCO on Mondays and Thursdays. In general, the SCO will process the payments for the claim schedules

submitted on Monday by electronically depositing the payments to the LPA's bank account on Thursday of the same week. The payments for claim schedules submitted on Thursday will be deposited on Tuesday of the following week.

2. Enrolling in the EFT Program

The EFT program involves the electronic direct deposit of the LPA's invoice payments to their banking account. Therefore, it is very important that LPAs verify with their financial institution that EFT payments are allowable. Download the EFT Enrollment Form or request it from CLPA if a form cannot be obtained.

If the LPA has not done business with Caltrans before, they are required to fill out the Payee Data Record Form, STD 204 (request from CLPA), and Enrollment Form, FA-2656.

If the LPA has done business with Caltrans and has several accounts with Caltrans (multiple remittance addresses in Caltrans accounting system), the LPA's Finance and Public Works Directors must jointly decide if one or more of those accounts will be designated for EFT payments. Each account to be converted to an EFT account must have a complete separate Enrollment Form. Once an account has been identified to receive EFT payments, all payments will be made through EFT. Contact CLPA for help in identifying the Vendor Number(s) that Caltrans uses to identify each mailing address.

For each account to be converted to EFT, the LPA must complete a separate Enrollment Form. Sections I and II of the Enrollment Form must be filled out by the LPA by typing or printing the following information:

- Name of the LPA and the address that will receive the Automated Clearing House (ACH) payment
- The LPA Federal Tax ID
- The designated contact person and phone number
- The signature of the authorized contact person

Section III of the Enrollment Form is filled out by the LPA's financial institution, which will receive the ACH payment by printing or typing the following information:

- Name and the address of the agency's financial institution, which will receive the ACH payments
- ACH coordinator's name and phone number
- Nine-digit routing transit number, depositor (agency) account title and account number. The bank account numbers must not exceed 17 digits.
- Type of accounts (select either checking account or savings account)
- Signature of authorized banking official
- Name, title, and phone number of the authorized banking official
- Caltrans will complete Section IV of the Enrollment Form

Caltrans also requires a voided check or a savings deposit slip for the checking or savings account, into which the EFT payments will be electronically deposited, to be mailed to Caltrans along with the Enrollment Form. The voided check or savings deposit slip will aid in verifying the bank account and routing transit numbers.

After the Enrollment Form is completely filled out, mail it along with the voided check or deposit slip to:

Department of Transportation
Division of Accounting - MS 33
P.O. Box 168043
Sacramento, CA 95816-8043
Attn: Payee Data Records Unit

Do not mail the Enrollment Form to CLPA. Caltrans will process the EFT Enrollment packet and work with the LPA's financial institution to establish the EFT payment processing of LPA invoices. During the initial set up period (up to 30 days), Caltrans will regularly perform pre-note tests to verify that all financial routing and transit numbers are accurate while continuing processing payments of the LPA invoices the usual way. Once the EFT information has been verified, CLPA will begin making all payments via the EFT payment process.

For additional information about the EFT program, please visit the Caltrans EFT website.

5.5 Invoice Guidelines, Format, and Checklist

LAPM 5-A: Local Agency Invoice is used for all reimbursements (with the exception of PPM funds $300k or less which can be invoiced upfront with a single lump sum payment). It includes the invoice, billing summary, invoice checklist, and instructions. CLPA no longer accepts invoices created by LPAs.

5.5.1 General Guidelines

1. The LPA may submit invoices once a month for reimbursement but must submit an invoice at minimum every six months to avoid inactivity on a project.
2. The first time that an LPA invoices Caltrans, they must fill out a Payee Data Record Form, STD 204. This Payee Data Record Form is required in lieu of IRS Form W-9 when doing business with the State of California. This form is also used to set up the vendor's account in the Caltrans financial system.
3. Progress and final invoices are submitted directly to the DLAE and should include an original invoice (see Table 5-3). Submit invoices by April 1st to avoid funds lapsing on the June 30th reversion date and to allow sufficient time for CLPA and SCO year-end closing procedures.
4. Final invoices must include the FROE package. The DLAE verifies the project completion and approves payment before forwarding the FROE package, including the original final invoice, to CLPA. More information regarding final invoice procedures is described in Section 5.6: Final Report of Expenditures & Final Invoice.

   Note: According to the Federal/State Master Agreement, the state will withhold the greater of either two percent of the total of all state/federal funds encumbered for each PSA or $40,000.

5. For state-funded projects, the preliminary engineering phase must be separated into PA&ED and PS&E.
6. The first invoice for construction capital must include Exhibit 15-L: Local Agency Contract Award Checklist (for federally-funded projects). State projects should include the Award Information checklist.
7. For Right of Way Acquisition, if payment is to be made to a Title Company, the invoice and the covenants must identify the Title Company to be paid, address, escrow number, contact name, and include the Remarks and Covenants Form. If payment is to be made to the LPA for locally acquired Right of Way, a Right of Way Report of Expenditures is needed.
8. Invoices must have a current date when sent to the district or CLPA. If for any reason an invoice is returned to the LPA, the resubmitted invoice must have a revised current date and number (e.g., rejected invoice 1 becomes 1A upon submittal).
9. Invoices must be certified and signed by the appropriate responsible persons in the LPA.
10. Invoices must list the name and phone number of the contact person should Caltrans staff need additional information about invoices.

Table 5-3: Invoice Documents

Document	LPA Submits to DLAE	DLAE Submits to CLPA	CLPA Submits to SCO
Invoice	Original*	Original*	Original
Invoice Review Checklist	Original*	Original signed by DLAE*	None
Billing Summary	Original*	Original*	None
* Electronic submittals accepted			

5.5.2 Invoice Checklist

LPAs are required to complete and sign LAPM 5-A, Section 4: Checklist and submit as part of the Invoice Package for each invoice. Additional documents may be required per the Checklist.

The DLAE will ensure that the checklist and appropriate documentation are included, will concur, and complete and sign the Section 4: Checklist.

Provided LPAs adhere to the format described in this chapter, invoices are typically paid by warrant within 60 days after being received by the DLAE, or 50 days if the agency is signed up for EFT. Please refer to and use Section 4: Checklist prior to sending invoices to the district for reimbursement. Invoices with significant errors will be returned to the LPAs for correction.

5.6 Final Report of Expenditures & Final Invoice

The LPA must submit the Final Report of Expenditures (FROE), which includes the final invoice, to the DLAE within six months of project completion. If the submittal deadline occurs in the year funds will lapse, the FROE must be submitted to the DLAE by April 1 of that year. The FROE is to be signed by the person in responsible charge of the project for the LPA. After the DLAE approves the FROE, including the final invoice, it will be forwarded to CLPA for processing of

the final invoice. Refer to LAPM Chapter 17: Project Completion for detailed instructions on completing the FROE.

If the final invoice is returned to the LPA for error correction, it must be re-dated with a current date and number before being resubmitted to the DLAE.

When preparing the Final Expenditure Report, follow the instructions in Chapter 17: Project Completion. At a minimum, ensure that:

- The following are shown, for each phase of work:
  - Total Costs
  - Participating Costs
  - Nonparticipating Costs
  - Federal Funds
  - Other Funds (local, state, etc.)
- The costs shown, by phase of work, are the same on the:
  - Final Invoice
  - Exhibit 15-M: Detail Estimate (federal-funded projects),
  - Exhibit 15-M: Detail Estimate Summary (pg.2 of 4) (federal-funded projects)
  - Exhibit 17-M: Final Project Expenditures Report (state-funded projects)
- If there are Liquidated Damages, they are shown on both the Final Invoice and the Final Detail Estimate. If there were none, write None.
- A Change Order Summary is provided, whether there were change orders or not. If there were none, write None.
- Contractor Claims are listed. If there were no claims, write None.

5.7 Final Project Costs

The final project cost listed in the LPA's Final Report of Expenditures will be analyzed by Accounting's Local and Reimbursement Final Vouchering Section to determine if the costs reported for each phase of work are eligible for federal reimbursement. Eligible amounts for each phase of work, as determined from the analysis, are reconciled with the costs recorded in the Caltrans financial system. If it is determined that the funds paid to the LPA are more than the amount eligible for reimbursement, Accounting's Local and Reimbursement Final Vouchering Section will initiate an Accounts Receivable billing to the LPA for recovery of the overpayment.

5.8 Audit of Local Public Agency Expenditures

The LPA must maintain written source document records that account for agency costs and payments made to consultants, vendors, and contractors. Contract records must be retained by the LPA for a minimum period of three years from the date of final voucher submission to FHWA by the State. Refer to 2 CFR 200.334 federal requirements for retention and access of records. LPA expenditures for all Local Assistance programs are subject to financial and compliance audits by Caltrans Independent Office of Audits and Investigations (IOAI) or designee. Audits performed by IOAI may, at a minimum, include an audit of the LPA's financial management system, project costs incurred and reimbursed, and indirect cost allocation plans/ICRPs if applicable. Any audit findings will be discussed with the LPA before finalizing the audit report.

LPAs are also subject to the audit requirements of 2 CFR 200. A single audit is required if an agency receives and spends more than $1M in federal funds from all sources in their fiscal year. Refer to LAPM Chapter 20: Audits & Corrective Actions for specific details.

5.9 Final Report of Expenditures on Projects Administered by the State

The FROE for state-administered Local Assistance projects is prepared by a Caltrans Project Manager. On some projects, the state performs only specific phases of work associated with a Local Assistance project. For example, design engineering, Right of Way acquisition, or striping may be performed by the LPA for a construction project administered by the state. In such instances, the Caltrans Project Manager is responsible for preparing a Final Report of Expenditures for the work performed by state staff. The LPA is responsible for preparing the FROE for work it performed and for any expenditure it incurred.

5.10 Audit of State Expenditures

Caltrans internal procedures and controls for major contracts do not require a formal audit of each construction project. However, projects may be selected on a random basis for an audit of extra work paid by a force account method of payment (see Chapter 12: Plans, Specifications & Estimate). State expenditures for Local Assistance Federal-aid major construction contracts (greater than $500,000) may be audited based on a risk assessment established by IOAI, as well as by the California State Auditors when they perform the annual single Audit of the State of California.

5.11 Final Project Costs of State-Administered Projects

Each final report of contract expenditures for state-administered Local Assistance projects is analyzed by Accounting's Local and Reimbursement Final Vouchering Section to determine the final amount of federal, state, and LPA funds expended for the project. The final expenditure of LPA funds is compared to the LPA deposit for the project. Refunds or billings are made upon completion of the Final Voucher analysis.

When all pending claims by the contractor have been settled, the Final Voucher package is prepared and submitted to FHWA via FADS.

Note**:** If the Report of Contract Expenditures indicates that a claim by the contractor has not been settled, the final expenditure of federal, state, and LPA funds cannot be determined. Consequently, the submittal of the Final Voucher is delayed until all pending claims are settled.

The Final Project Cost Adjustment analysis is prepared concurrently with the Final Voucher to determine the final allocation of federal, state, and LPA funds for each phase of work. Budgeted amounts are adjusted to reflect the actual amount of funds expended for the project.

If during the final adjustment it is determined that the deposit of LPA funds is less than the agency's share of expenditures, Accounting's Local and Reimbursement Final Vouchering Section will initiate an Accounts Receivable Invoice, which is sent to the LPA for recovery of the required funds. If the deposit exceeds the agency's share of expenditures, the excess funds are refunded to the LPA.

5.12 Service Contracts

Invoices for work performed by LPAs, consultants, or other contractors under Caltrans Service Contracts must be submitted to the designated program manager (e.g., Railroad Crossing Program Manager) for review and verification. The manager then forwards the invoice to CLPA for payment.

5.13 References

2 CFR 200, Subpart E - Cost Principles
https://www.ecfr.gov/current/title-2/part-200/subpart-e

2 CFR 200, Subpart F - Audit Requirements
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-F

State Administrative Manual
http://sam.dgs.ca.gov/

Chapter 6 **Environmental Procedures**

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Exhibits

Exhibit 6-A: Preliminary Environmental Study (PES)
Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES) Form
Exhibit 6-J: Preliminary Environmental Screening for Non-Infrastructure Projects PES (NI)
Exhibit 6-K: Instructions for Completing the Preliminary Environmental Screening for Non-Infrastructure Projects (PES [NI]) Form

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

SER Forms and Templates are located at:
https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates

Chapter 6 **Environmental Procedures**

6.1 Introduction

One of the most important phases of the project development process is full and early compliance with the National Environmental Policy Act (NEPA) and other applicable federal environmentally related laws. Local Public Agencies (LPAs) may not proceed with the final design of a project, or request "Authorization to Proceed with Right of Way," or "Authorization to Proceed with Construction" until California Department of Transportation (Caltrans) has signed a Categorical Exclusion (CE), a Finding of No Significant Impact (FONSI), or a Record of Decision (ROD). Failure to follow this requirement will make the project ineligible for federal funds reimbursement. Upon final environmental approval, it is incumbent upon the District Local Assistance Engineer (DLAE) to provide the LPA with immediate notification and a copy of the signed CE, FONSI, or ROD, so the LPA can commence with final design.

This chapter provides an overview of the NEPA process and contains procedural guidance for preparing and processing CEs, routine Environmental Assessments (EAs), complex EAs, and Environmental Impact Statements (EISs) in support of local assistance projects (LPA federal-aid transportation projects "off" the State Highway System (SHS)). The LPA is required to complete the Preliminary Environmental Study (PES) Form, or the Preliminary Environmental Screening Non-Infrastructure (PES(NI)) form, if applicable, first, and then follow the step-by-step procedures beginning at Section 6.4 (if applicable) or Section 6.5 of this manual.

LPA projects proposed on the SHS are called "locally sponsored" projects. For locally sponsored projects, the LPA is required to prepare a Preliminary Environmental Analysis Report (PEAR) first, and then follow the procedures set forth in the Project Development Procedures Manual (PDPM). The content and format requirements of environmental technical studies/reports and NEPA documents prepared in support of either a Local Assistance project or a locally sponsored project must follow the guidance set forth in the Caltrans Standard Environmental Reference (SER) at: http://www.dot.ca.gov/ser/.

Authority

National Environmental Policy Act (NEPA) and its supporting federal regulations establish certain requirements that must be adhered to for any project "...financed, assisted, conducted or approved by a federal agency...." In short, federal regulations require that a federal agency "...determine whether the proposed action may significantly affect the quality of the human environment." https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-1-federal-requirements.

Fixing America's Surface Transportation Act (FAST Act). On December 4, 2015, President Barack Obama signed the Fixing America's Surface Transportation (FAST) Act which is a five-year legislation to improve the Nation's surface transportation infrastructure, including our roads, bridges, transit systems, and rail transportation network. The FAST Act reforms and strengthens transportation programs, refocuses on national priorities, provides long-term certainty and more flexibility for states and local governments, streamlines project approval processes, and maintains a strong commitment to safety. Furthermore, Section 1304 of the FAST Act made several changes to the Efficient Environmental Review Process codified in 23 U.S.C.139. Some

of these changes are summarized below. The changes apply to projects that have a notice of intent to develop an EIS published after December 4, 2015 (note: the requirements of 23 U.S.C.139 remain mandatory only for EISs (23 U.S.C.139(b)(1)). The requirements listed in 23 U.S.C.139 would only apply to EAs if FHWA, or Caltrans as assigned, chose to apply the Efficient Environmental Review Process to a project for which an EA was being prepared.

The FAST Act makes the following changes to the 23 U.S.C.139 Efficient Environmental Review Process:

- The lead agency must now identify participating agencies no later than 45 days after the date of publication of a notice of intent (NOI) to prepare an EIS or the initiation of an EA.
- A coordination plan must now be established no later than 90 days after the date of publication of an NOI or the initiation of an environmental assessment.
- A schedule is now REQUIRED as part of the coordination plan.
- The lead agency now has the responsibility to consider and respond to comments received from participating agencies on matters within the special expertise or jurisdiction of those agencies.
- To the maximum extent practicable and consistent with federal law, all federal permits and reviews for a project must rely on a single environmental document prepared under NEPA under the leadership of the lead agency.
- The lead agency for a project, in consultation with participating agencies, must develop, as appropriate, a checklist to help project sponsors identify potential natural, cultural, and historic resources in the project area.

  Note: FHWA is developing a checklist for projects subject to 23 U.S.C.139. Until this checklist is available, this requirement can be met through the completion of a PES Form (for Local Assistance projects).
- To the maximum extent practicable and consistent with federal law, the range of alternatives determined for the project must be used for all federal environmental reviews and permit processes required for the project unless the alternatives must be modified to address significant new information or circumstances or for the lead agency or participating agency to fulfill the responsibilities of the agency under NEPA in a timely manner.
- The lead agency may eliminate from detail consideration an alternative proposed in an EIS if, as determined by the lead agency, it meets one of the criteria listed in 23 U.S.C. 139(f)(4)(E)(ii).
- The FAST Act reiterates that errata sheets can be attached to a Draft EIS (DEIS) in-lieu of preparing a traditional Final EIS (FEIS) when the comments received on a DEIS are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response.
- The FAST Act reiterates that to the maximum extent practicable, the lead agency should develop a single document that combines a FEIS and ROD (23 U.S.C.139(n)(2)), unless:

- The FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or
- There is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action.

Moving Ahead for Progress in the 21st Century (MAP-21). On July 6, 2012, President Barack Obama signed into law the new Federal Transportation Act with an effective date of October 1, 2012. MAP-21, a two-year funding bill, is the first long-term highway authorization enacted since 2005.

MAP-21 promotes accelerating project delivery and encourages innovation through the increased use of CE, programmatic approaches, and planning and environmental linkage (http://www.fhwa.dot.gov/map21/legislation.cfm).

Two provisions in particular, "Section 1312 State Assumption of Responsibility for CEs" and "Section 1313 Surface Transportation Project Delivery Program" provide for the continuation of the formal assignment from FHWA to any qualified State Department of Transportation responsibility and authority for the federal environmental review process, thus eliminating the need for separate FHWA review of environmental documents. These processes together are referred to in Caltrans as "NEPA Assignment," (formerly called NEPA Delegation).

Memorandum of Understanding (MOU) between FHWA, California Division and the California Department of Transportation State Assumption of Responsibility for Categorical Exclusions (effective June 7, 2007, June 7, 2010, and June 7, 2013). On May 31, 2016, FHWA renewed the 23 U.S.C. 326 CE MOU for another 3-year term. No comments related to the MOU were received during the public comment period. Section 1312 of MAP-21 allows the USDOT Secretary acting through FHWA to assign responsibilities for CE determinations to Caltrans through a MOU (326 MOU).

The 326 MOU stipulates that the CE responsibilities assigned to the state by FHWA include:

- Activities listed in 23 CFR 771.117(c)
- The example activities listed in 23 CFR 771.117(d)
- Additional actions listed in Appendix A of the MOU

The 326 MOU transfers to Caltrans all responsibilities for approving the CEs designated in Stipulation I(B) and any required reevaluations of CEs under 23 CFR 771.129. The Renewed 326 MOU supersedes the original June 7, 2007, 326 MOU.

Memorandum of Understanding between FHWA and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program (effective October 1, 2012). Section 1313 of MAP-21, codified in Title 23 U.S.C. 327, allows FHWA and Caltrans to make permanent, but renewable through a MOU (327 MOU), the Surface Transportation Project Delivery Pilot Program (NEPA assignment program) established by SAFETEA-LU Section 6005. It also had provisions that allow any state to apply for and assume (if assigned) USDOT Secretary responsibilities for NEPA and all or part of the USDOT Secretary's responsibilities for

environmental review, consultation, or other action required under any federal environmental law and regulation for highway projects within that state.

MAP-21 amended 23 U.S.C.327 to establish a revised and permanent Surface Transportation Project Delivery Program. As a result, on October 1, 2012, the Department entered into a memorandum of understanding pursuant to 23 U.S.C.327 (NEPA Assignment MOU) with FHWA. On April 1, 2016, that MOU was approved by FHWA for extension to December 31, 2016, and on December 23, 2016, the MOU was renewed for a 5-year term.

A list of applicable federal environmental statutes, regulations, policy, and guidance are provided below:

- 40 CFR 1500, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," (CEQ, November 29, 1978)
- USDOT Order 5610.1C, (September 18, 1979)
- 23 CFR 771, "Environmental Impact and Related Procedures"
- Technical Advisory T6640.8A
- Clean Air Act (CAA) (42 U.S.C.7401-7671(q), except for Conformity Determinations required under CAA (42 U.S.C.7506, Section 176)
- Compliance with the Noise Regulations under 23 CFR 772
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C.1531-1544 and Section 1536
- Marine Mammal Protection Act, 16 U.S.C.1361
- Anadromous Fish Conservation Act, 16 U.S.C.757(a)-757(g)
- Fish and Wildlife Coordination Act, 16 U.S.C.661-667(d)
- Migratory Bird Treaty Act, 16 U.S.C.703-712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C.1801 et seq.
- National Historic Preservation Act of 1966, Section 106 as amended, 16 U.S.C.470(f) et seq.
- Archeological Resources Protection Act of 1977, 16 U.S.C.470(aa)-11
- Archeological and Historic Preservation Act, 16 U.S.C.469-469(c)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C.3001-3013
- American Indian Religious Freedom Act, 42 U.S.C.1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C.4201-4209
- Clean Water Act, 33 U.S.C.1251-1377: Section 404, Section 401, and Section 319
- Coastal Barrier Resources Act, 16 U.S.C.3501-3510
- Coastal Zone Management Act, 16 U.S.C.1451-1465
- Land and Water Conservation Fund Act (LWCF), 16 U.S.C.4601-4604
- Safe Drinking Water Act (SDWA), 42 U.S.C.300(f)-300(j)(6)
- Wild and Scenic Rivers Act, 16 U.S.C.1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C.3921, 3931
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR 777
- TEA-21 Wetlands Mitigation, 23 U.S.C.103(b)(6)(m), 133(b)(11)

- Flood Disaster Protection Act, 42 U.S.C.4001-4128
- 23 U.S.C.138 and Section 4(f) of the Department of Transportation Act of 1966
- 49 U.S.C.303 and implementing regulations at 23 CFR 774
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.9601-9675
- Superfund Amendments and Reauthorization Act of 1986 (SARA)
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C.6901-6992(k)
- Executive Order 11990 - Protection of Wetlands
- Executive Order 11988 - Floodplain Management
- Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Executive Order 13112 - Invasive Species

Refer to the SER (Chapter 1) for a description of each of the above statutes, regulations, policy, and guidance.

Roles and Responsibilities

Local Public Agency

1. Programs project in current federally-approved Federal Statewide Transportation Improvement Program (FSTIP).
2. Develops complete Project Description consistent with the FSTIP. Defines project limits and purpose and need. For EAs or EISs, justifies logical termini and independent utility. Prepares project area maps and cross-sections showing existing and proposed project.
3. For non-infrastructure projects, completes Preliminary Environmental Screening form-Non-Infrastructure projects (PES (NI)) according to the instructions.
4. For all other projects, completes the PES form according to the instructions.
5. Submits the PES or PES (NI) to the DLAE according to the Step-by-Step Procedures provided at Section 6.4 of this chapter.
6. Waits to initiate required technical studies until the PES Form has been signed by Caltrans DLAE and Senior Environmental Planner (SEP).
7. Waits to proceed with final Design, property acquisition, or construction until after Caltrans has approved the CE, FONSI, or Final EIS/ROD.
8. Prepares a draft Area of Potential Effect (APE) map, and once the APE map is signed by Caltrans Professionally Qualified Staff (PQS) and DLAE, identifies historic properties.
9. Ensures that consultants preparing technical studies meet the preparer qualifications identified in the SER for the appropriate discipline.
10. Ensures that consultant contracts and scopes of work direct the development of technical studies and reports consistent with the fully signed PES form, and that the format and content of all technical reports and the NEPA document is consistent with SER templates and annotated outlines.

11. Utilizes the NEPA-Only EA or EIS Annotated Outline, or the Joint EIR/EIS, Joint EIR/EA, or Joint IS/EA Annotated Outlines.
12. Performs the External Quality Control Review on all Draft and Final EAs and EISs and their supporting technical studies.
13. Completes the Environmental Document Review Checklist and the External Readiness Certification form for all EAs and EISs.
14. Prepares the Notice of Availability (NOA) of EAs and EISs and provides copy of the Draft EA and EIS to the state and area wide clearinghouses.
15. Prepares and places Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper and provides a copy to Caltrans.
16. Attends and supports public hearings on EAs and EISs.
17. Is responsible for complying with applicable federal, state, and local laws, obtaining necessary permits, and ensuring that mitigation commitments are fully incorporated into Final Plans, Specifications and Estimates (PS&E), and fully implemented during construction.
18. Provides Caltrans with a list of mitigation commitments required to comply with NEPA.

    Note: Reference to mitigation is in a NEPA context, not CEQA.
19. Provides Caltrans with a copy of all environmental permits, approvals, and agreements from resource and regulatory agencies, including all terms and conditions of the permits, agreements, and approvals.
20. Maintains copies of NEPA documentation and supporting technical reports for a period of 3 years following FHWA reimbursement for final project costs. When mitigation is required, environmental documentation must be maintained until all terms of required mitigation have been fully implemented. This includes any required monitoring period. The 327 MOU stipulates the following specific record retention requirements (327 MOU 8.3.2).
21. For Major Projects exceeding $500 million, a draft Project Management Plan (PMP) must be submitted by the LPA to the DLAE prior to the finalization of the Initial Financial Plan (IFP); see LAPM Chapter 2: Roles and Responsibilities for details.
22. Notifies the DLAE of changes in project scope, cost, schedule, or project limits, and requests NEPA Reevaluation.

Caltrans

1. District Local Assistance

1.1. DLAE or designee when applicable

1.1.1. Reviews the PES form or PES (NI) form, if applicable, and supporting documentation for all projects.

1.1.2. Verifies that project is properly listed in the Regional Transportation Program (RTP) and FSTIP prior to signing PES and CE form.

1.1.3. Reviews and signs PES form, indicating concurrence with Preliminary NEPA Class of Action (CE, EA, EIS) and required technical studies.

1.1.4. Reviews and signs PES (NI) form, if applicable, indicating concurrence with Preliminary NEPA Class of Action and non-infrastructure nature of project.

1.1.5. Ensures that, where the PES form indicates that no technical studies are required, the continuation sheet of the PES form summarizes how the requirements of relevant federal environmentally related laws have been met.

1.1.6. Arranges and attends Early Coordination Meeting.

1.1.7. Jointly approves CE Determinations (with District SEP).

1.1.8. Informs the District SEP (or designee) of the LPA project delivery schedule, tracks review of LPA technical reports and NEPA documents, and notifies the District SEP (or designee) when issues arise, or any changes occur that may affect the NEPA process.

1.1.9. Reviews and signs APE map (in coordination with district PQS) for undertakings, when applicable.

1.1.10. Immediately notifies LPA in writing of NEPA approval so that they may commence with final design.

1.1.11. Serves as the focal point (unless otherwise designated) between the LPA and Caltrans.

1.1.12. Serves as the focal point for coordination with FHWA regarding engineering decisions and design exceptions.

1.1.13. Transmits (unless otherwise delegated) all correspondence and documentation between the LPA and Caltrans.

1.1.14. Transmits (unless otherwise delegated) all correspondence and documentation between Caltrans and FHWA.

1.1.15. Determines and approves Reasonable and Feasible Noise Abatement Measures.

1.1.16. Jointly approves Summary of Floodplain Encroachment Form (with District SEP).

1.1.17. Makes Only Practicable Alternative Finding (for significant Floodplain encroachments).

Note: If a significant floodplain encroachment is identified as a result of floodplains studies, FHWA will need to approve the encroachment and concur in the Only Practicable Alternative Finding. See SER: Chapter 17 for additional information regarding floodplains.

1.1.18. Attends and supports public hearings on EAs and EISs.

1.1.19. Determines in coordination with the District SEP (or designee) whether mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures (23 CFR 771.105(d)(2)).

1.1.20. Maintains project files and general administrative files.

1.1.21. Ensures project files and general administrative files are available for inspection by FHWA staff upon reasonable notice.

1.1.22. Assists, as needed, with the self-assessment of the Caltrans Quality Control and Quality Assurance process in the identification of areas needing improvement and the implementation of corrective actions necessary to address areas needing improvement.

1.1.23. Assists, as needed, in the development of the 23 U.S.C.326/327 Quarterly Reports to FHWA.

1.1.24. Assists, as needed, with any monitoring or process reviews pursuant to 23 U.S.C. 326/327.

1.1.25. Maintains adequate organizational resources and sufficient staff capability and expertise to carry out the responsibilities assigned under the 23 U.S.C.326/327 MOUs effectively.

1.2. District SEP or Designee

1.2.1. Reviews the PES form or PES (NI) form, if applicable, and supporting documentation.

1.2.2. Ensures that where the PES form indicates that no technical studies are required, the continuation sheet of the PES form summarizes how the requirements of relevant federal environmentally related laws have been met.

1.2.3. Signs PES form indicating concurrence with Preliminary NEPA Class of Action (CE, EA, EIS) and required technical studies.

1.2.4. Ensures that clarification of each “TBD” response, identified under Section A of the PES (NI) form, is provided on the PES (NI) Continuation Sheet.

1.2.5. Signs PES (NI) form, if applicable, indicating concurrence with NEPA Class of Action and non-infrastructure nature of project.

1.2.6. Attends Early Coordination Meeting when requested.

1.2.7. After review of CE Checklist and Air Quality Conformity Findings Checklist, determines if the CE/CE Determination Form is ready for signature. Jointly signs the NEPA section of the CE/CE Determination Form with DLAE.

Note: District SEP signature on CE/CE Determination Form may not be delegated below the level of the District SEP.

1.2.8. Reviews NEPA documents and supporting technical reports and determines if they are complete and sufficient according to the guidance set forth in the SER.

1.2.9. Jointly signs the Summary of Floodplain Encroachment form with DLAE.

1.2.10. Initiates Section 7 Conference Opinion for Endangered Species Act (ESA) Proposed Species or Proposed Critical Habitat.

1.2.11. Initiates Section 7 Formal and Informal Consultation with USFWS or NMFS for ESA listed species or their critical habitat and NMFS essential fish habitat (EFH) consultations.

1.2.12. Ensures establishment of the environmental project file utilizing the Caltrans Uniform Environmental File System as soon as environmental studies begin.

1.2.13. Ensures completion of all environmental fields in the LP2000 database in support of all reporting requirements and compliance with performance measures.

1.2.14. Monitors District Local Assistance environmental process relating to project determinations, environmental analysis, and project file documentation, checks for errors and omissions, and takes corrective action as needed.

1.2.15. Provides training to both internal and external partners on environmentally related topics, as requested or as resources allow.

1.2.16. Cooperates in monitoring performance under the 23 U.S.C.326 MOU and modifies practices as needed to assure quality performance.

1.2.17. Assists, as needed, with any Monitoring or Process Reviews pursuant to 23 U.S.C. 327.

1.2.18. Assists with the development of the 23 U.S.C.327 Quarterly Reports and the Quarterly Performance Reports under 23 U.S.C.326.

1.2.19. Cooperates fully with FHWA in all quality assurance activities.

1.2.20. Provides FHWA with any information necessary in order for the FHWA to carry out its government-to-government consultation.

1.2.21. Ensures that the NEPA compliance and any other environmental responsibilities assigned under the 23 U.S.C.326/327 MOUs have been completed according to the MOUs.

1.2.22. Carries out assigned consultation, review, and coordination activities in a timely and proactive manner.

1.2.23. Makes all reasonable and good faith efforts to identify and resolve conflicts with federal, state, and LPAs.

1.2.24. Performs Document Quality Control Review and signs Certification forms for EAs and EISs.

1.2.25. Makes Wetlands Only Practicable Alternative Finding (WOPAF) and Least Environmentally Damaging Practicable Alternative (LEDPA) Finding.

1.2.26. Makes determination that proposed action includes all Practicable Measures to Minimize Harm.

1.2.27. Approves WOPAF.

1.2.28. Coordinates with the U.S. Army Corps of Engineers (USACE), Environmental Protection Agency (EPA), USFWS, and NMFS prior to making Wetland Determination.

1.2.29. Approves Section 4(f) de minimis and Programmatic Section 4(f) Evaluations.

1.2.30. Jointly approves Draft Section 4(f) Evaluations for Public Circulation with HQ District Environmental Coordinator and Legal.

1.2.31. Determines validity of approved CEs, EAs, and EISs for FHWA NEPA Reevaluations (23 CFR 771.129) and Caltrans NEPA/CEQA Revalidation Form.

1.2.32. Approves Notice of Intent (NOI) to prepare an EIS and sends to FHWA for publication in the Federal Register (FR).

Note: Only a federal agency can post in the FR.

1.2.33. Attends public hearing on EAs and EISs.

1.3. District Professionally Qualified Staff (PQS)

1.3.1. Reviews the PES Form and supporting documentation for all projects.

Note: PQS does not review PES (NI) form.

1.3.2. Reviews the PES form and indicates the results of their review in the PQS signature block of the PES form and prepares screening memo if applicable.

1.3.3. Indicates appropriate response to Question #35 under Section A of the PES form, completes Sections B, C, and D (regarding Section 106), and signs the Section G of the PES form for all projects.

1.3.4. Reviews and signs (with the DLAE) the LPA-prepared APE maps, indicating approval.

1.3.5. Attends Early Coordination Meetings when requested and provides the LPA with guidance on proper procedures and required format and content of all cultural reports.

1.3.6. Reviews and approves cultural resource reports and transmits them to the State Historic Preservation Officer (SHPO) or Caltrans Cultural Studies Office (CSO) when required.

1.3.7. Provides the DLAE and project Generalist with periodic updates and copies of all transmittals to the SHPO.

1.4. District Local Assistance NEPA Assignment Coordinator/QC Reviewer

1.4.1. Assists as needed with the district review of EISs and routine and complex EAs.

1.4.2. Assists with record-keeping and reporting to document Caltrans' performance, and measures how 23 U.S.C.326/327 streamline the project delivery process.

1.4.3. Participates in 327 Monitoring Review and reviews of 326 CEs of Local Assistance projects.

1.4.4. Assists with FHWA Process Reviews.

1.4.5. Assists with training internal staff and LPAs on required forms and procedures needed to implement 23 U.S.C.326/327.

1.4.6. Provides training to LPAs and internal staff on procedures under NEPA Assignment and assists them through the processes.

1.4.7. Assists in maintaining consistency in document review, reporting, and training between cross-district allocations.

1.4.8. Reviews Draft and Final EISs, routine EAs, Complex EAs, and technical reports as needed.

1.4.9. Signs Internal Quality Certification form.

1.5. Deputy District Director (DDD) for Environmental or Designee

1.5.1. Approves stand-alone Individual Section 4(f) Evaluation

1.5.2. Signs EA (NEPA-only) title page, FONSI, and Supplemental EIS.

1.6. District Director (DD) or Designee

1.6.1 Signs EIS title page and ROD.

1.6.2 Signs Section 106 MOAs as concurring party.

2. Division of Environmental Analysis (DEA)

2.1. HQ Division of Environmental Analysis Environmental Coordinator (HQ EC)

2.1.1. Provides guidance and assistance to resolve disputes on environmental findings according to the protocols in the SER.

2.1.2. Reviews and comments on EISs, complex EAs, and routine EAs (when requested) and Individual Section 4(f) Evaluations for compliance per Quality Control/Quality Assurance procedures set forth in the 327 MOU.

2.1.3. Provides expertise as needed.

2.1.4. Provides concurrence with NEPA Class of Action (via email) or on PES form for EAs, Complex EAs, and EISs.

2.2. Chief, HQ Division of Environmental Analysis

2.2.1. As the Caltrans-designated Preservation Officer, signs Section 106 MOAs as signatory for Caltrans.

3. Division of Legal

3.1. Reviews local assistance Draft and Final EISs and Complex EAs (if requested) to ensure their legal sufficiency in final document.

3.2. Defends local assistance NEPA documents in federal court.

3.3. Reviews Individual Section 4(f) Evaluations to ensure they are legally sufficient.

3.4 Reviews local assistance Draft and Final routine EAs if requested, to ensure their legal sufficiency in final document.

4. Division of Local Assistance (DLA)

4.1. Statewide Local Assistance NEPA Assignment and Office of Environmental Compliance and Outreach (ECO)

4.1.1. Manages the implementation of the NEPA Assignment Program for the Local Assistance Program.

4.1.2. Ensures the questions and concerns of Caltrans District Local Assistance offices, cities, counties, Regional Transportation Planning Associations (RTPAs), Metropolitan Planning Organizations (MPOs), other Headquarters units, and FHWA are addressed in Caltrans DEA policies and procedures.

4.1.3. Serves on or leads statewide and corporate teams regarding NEPA Assignment and other federal environmental requirements.

4.1.4. Participates in FHWA Process Reviews as requested.

4.1.5. Ensures statewide quality control of local assistance environmental reporting.

4.1.6. Ensures statewide consistency and quality in NEPA compliance for the Local Assistance Program by informing District Local Assistance SEPs and DLAEs of changes in policy and procedures, and by providing training.

4.1.7. Monitors Local Assistance Program environmental resources and takes appropriate action to obtain the additional resources as needed to implement the requirements set forth in 23 U.S.C.326 and 327 and respective MOUs.

4.2. Statewide NEPA Compliance Coordinators (Policy and Reporting)

4.2.1. Maintains and updates the NEPA compliance components of the LAPM, LAPG, relevant components of the SER, and DLA Environmental webpage.

4.2.2. Serves on or leads statewide and corporate teams to ensure Local Assistance Program environmental needs and issues are addressed.

4.2.3. Maintains environmental screens in LP2000 database, coordinates with districts regarding data completeness and accuracy, and produces environmental reports required for NEPA Assignment, Workload Norms, and as needed to satisfy other federal environmental requirements.

4.2.4. Develops and provides training to DLAEs, district local assistance environmental staff, and LPAs as needed.

4.2.5. Performs process reviews to assess compliance with federal requirements.

4.2.6. Assists with or coordinates the resolution of issues that cannot be resolved in the district.

4.2.7. Assists as needed with FHWA's Process Reviews, Risk Assessments, and Compliance Assessment Program reviews.

5. FHWA

5.1. Posts Notices of Intent (NOI), Records of Decision (ROD), and Statute of Limitation (SOL) Notices in the Federal Register (FR).

5.2. Performs environmental review, consultation, or other related action for the following types of projects not assigned to Caltrans pursuant to 23 U.S.C.326/327:

- Projects requiring FTA funding or approval
- Projects involving international and state border crossings
- High priority projects under E.O.13274
- Projects funded by Federal Lands Highway Program unless Caltrans or LPA designs and constructs

5.3. Performs all government-to-government consultation with Indian Tribes as defined in 36 CFR 800.16(m).

5.4. Makes Air Quality Conformity Determinations for 327 CEs, EAs, and EISs.

5.5. Approves Significant Floodplain Encroachments and concurs in Only Practicable Alternative Findings.

5.7. Performs USDOT responsibilities for statewide and metropolitan planning.

5.8. Provides and assists with training as necessary.

6. Other State and Federal Responsible and Regulatory Agencies

6.1. Determine whether the LPA's action complies with the provisions of law germane to their statutory responsibility.

Applicability

Pursuant to 40 CFR Part 1508.18(a): any local assistance project, "... financed, assisted, conducted, regulated or approved by federal agencies..." is subject to compliance with the provisions of the NEPA.

Any amount of federal involvement in a project requires that the entire project be included in the process, regardless of phases or segments not funded by FHWA. The scope of NEPA responsibility is not determined based on funding alone.

Scientific and Commercial Data

NEPA requires that environmental information be "... of high quality based on accurate scientific analysis and expert agency comment…" (40 CFR Part 1500.1(b)).

LPAs are required to follow Caltrans policy and guidance set forth in the SER to ensure that NEPA determinations and documents reflect the most current scientific methodologies, and that analysis is of the highest quality.

Scope

Pursuant to 40 CFR Part 1500.1(b), NEPA further and most importantly requires that the "... NEPA document concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."

6.2 An Overview of the Environmental Process

This section provides a general overview of the NEPA process and the three classes of actions possible to achieve compliance with the requirements of NEPA. A brief overview of other applicable federal environmental requirements and general procedures for demonstrating compliance with these requirements is also provided.

A list of MOUs intended to expedite compliance with NEPA and other federal environmental requirements are provided later in this section. Information on the integration of CEQA and NEPA time frames for achieving environmental compliance, general information on permits, mitigation, scope change, and reevaluations are also discussed in this section.

NEPA

As discussed in Section 6.1, the NEPA process is guided by the Act and its implementing regulations, 23 CFR Part 771.

The process helps determine the appropriate class of action (EIS, EA, or CE) based on the potential for "significant" impact as defined in 40 CFR 1508.27.

Other federal-environmentally related laws are intended to protect a specific element of the environment. These include, but are not limited to, Section 4(f) (Protection of Publicly Owned Park, Recreation Area, Wildlife or Waterfowl Refuge or Land from Historic Sites), Section 106 (Protection of Cultural Resources & Historic Properties), Section 7 (Protection of Endangered Species), E.O.11990 (Protection of Wetlands), E.O.11998 (Protection of Floodplains), and E.O.13112 (Invasive Species). These laws and others are discussed in additional detail later in the chapter.

Federal actions must comply with the provisions of NEPA and all applicable federal environmentally-related laws. The NEPA document is a summary of the findings made and conclusions reached during the environmental analysis of a proposed federal action. Therefore, when other federal environmentally related laws are involved, it is expected that compliance with these laws will be completed prior to completion of the NEPA process.

Early Scoping

Preliminary Environmental Study (PES) Form

The PES form is designed to provide the early coordination needed to determine required technical studies, level of analysis, and NEPA Class of Action (CE, EA or EIS) pursuant to 23 CFR 771.111.

Preliminary Environmental Screening Form for Non-Infrastructure (PES (NI)) Projects

On November 8, 2011, in response to legislation allowing or mandating that a percentage of program funds (e.g., Active Transportation Program (ATP), Transportation Enhancement (TE), and Congestion Mitigation and Air Quality (CMAQ)) be used for non-infrastructure projects, it

was decided that a lower level of analysis may be appropriate for non-infrastructure projects, resulting in the development of the PES (NI) form.

Non-infrastructure projects are those transportation-related projects that will not involve engineering design, right of way acquisition, or physical construction of transportation facilities. Examples of non-infrastructure projects include but are not limited to: public awareness campaigns and outreach, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, freeway service patrol, ridesharing activities, and purchase of vehicles. The eligibility of non-infrastructure projects for federal participation is governed by the various federal funding program guidelines, that is, ATP, and CMAQ Programs.

While non-infrastructure projects will not involve engineering design, right of way, ground disturbance, or construction, review by Caltrans is still necessary to ensure none of the activities would affect the environment in unanticipated ways. A copy of the PES (NI) form is provided at Exhibit 6-J: PES (NI) Form, and the Instructions for Completing the PES (NI) form are provided at Exhibit 6-K: PES (NI) Form Instructions and Attachments A and B to Exhibit 6-K.

The checklist on the PES (NI) form enables LPAs and Caltrans staff to document that no environmental studies would be needed and that the normal PES form is not required.

Both the PES form and the PES (NI) form identify the Preliminary NEPA Class of Action CE, EA, or EIS. Each of these Classes of Action are discussed below.

NEPA Class of Action

Categorical Exclusion (CE)

CEs are actions that, as defined in 40 CFR 1508.4, do not have significant environmental impacts. 23 CFR Part 771.117(a) further defines CEs as actions that do not: (a) induce significant impacts to plan growth or land use for the area, (b) require the relocation of significant numbers of people, (c) have a significant impact on any natural, cultural, recreational, historical, or other resources, d) involve significant air, noise, or water quality impacts, and e) have significant impacts on travel patterns, or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

A CE determination may be made when environmental documentation supports the conclusion that no significant environmental impacts will occur as a result of the action. Refer to the SER: Chapter 30 for details on preparing CEs and Section 6.6: Step by Step Procedures - Categorical Exclusion with no Technical Studies and Section 6.7: Step by Step Procedures - Categorical Exclusion with Technical Studies (in this chapter) for local assistance procedures on processing CEs.

23 CFR Part 771.117(b) states that any action that normally would be classified as a CE, but would involve unusual circumstances, will require further technical studies prior to determining if the CE classification is appropriate.

Unusual circumstances include:

a. Significant environmental impacts
b. Substantial controversy on environmental grounds
c. Significant impacts on properties protected by Section 4(f) of the DOT Act

d. Significant impacts on properties protected by Section 106 of the National Historic Preservation Act
e. Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action

Lists of actions meeting the criteria for a CE according to the 40 CFR 1508.4 and 23 CFR 771.117(a) are provided at 23 CFR 771.117(c), 23 CFR 771.117(d), and in Appendix A of the 326 MOU. For a quick reference, these lists have been incorporated at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

For projects that are not on the 'c' or 'd' list, or the Appendix A list, but for which a CE determination is appropriate under 23 CFR 771.117 'a' and 'b', Caltrans will assume CE responsibility under NEPA Assignment (23 U.S.C.327): https://dot.ca.gov/programs/environmental-analysis/nepa-assignment/assignment-under-the-23-usc-327-mou.

Environmental Assessment (EA)

An EA is an analysis of the impacts of a project and is used to determine if the project will have significant environmental impacts. When a project cannot be designated as a CE by Caltrans and yet does not clearly require preparation of an EIS, preparation of an EA will assist in determining whether an EIS is needed.

The requirement to prepare an EA may come about through one or more of the following situations:

a. Based on information gathered during PES, where it is clear that the proposed project will not qualify for a CE, or where it is likely to have unusual circumstances. The LPA identifies the potential for significance under Sections A and B of the PES Form and recommends the development of an EA (under Section E of the PES form). The DLAE and District SEP determine that an EA is the appropriate NEPA Class of Action by signing the PES Form, and the HQ EC will concur via e-mail to the District SEP.
b. During or upon completion of technical studies when it becomes apparent that the proposed project will not qualify for a CE, or that unusual circumstances exist, the decision to prepare an EA is made by the District SEP in collaboration with the DLAE and with the written concurrence by email of the HQ EC.

Depending upon the complexity of issues involved in the project, Caltrans may determine that the Draft EA be reviewed and processed as a "Complex EA." Complex EAs are projects that typically involved one or more of the following:

- multiple location alternatives
- debate related to purpose and need
- strong public controversy
- issues of logical termini or independent utility
- individual Section 4(f) determinations
- complex Endangered Species Act issues
- numerous cumulative impacts

- high mitigation costs

The DLAE and District SEP with concurrence of the HQ EC must determine if the EA should be processed as a complex EA.

The LPA is responsible for conducting all required technical studies and for preparing the technical reports and the Draft EA according to the guidance set forth in the SER. The EA is a summary of the findings and conclusions of technical reports and the results of regulatory and resource agency coordination, and should accurately reflect the outcome of both. LPAs are required to use one of the following Caltrans annotated outlines, which can be found at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates#aos.

- Initial Study/Environmental Assessment
- Environmental Impact Report/Environmental Assessment
- NEPA-Only Environmental Assessment

The LPA is also responsible for performing the initial Quality Control Review of their Draft EA and supporting technical studies and documenting their Quality Control Review on the External Readiness Certification form before submitting their Draft and Final EAs to Caltrans for review and approval. The form is provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

The District SEP (or designee) and district technical specialists are responsible for performing the Internal Quality Control Review of the Draft EA, supporting technical studies, and documenting their Quality Control Review on the Internal Quality Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

For additional information about the NEPA QC program, please refer to: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-38-nepa-assignment.

Approval of the Draft EA may be subject to revisions being made by the LPA prior to circulation. When district environmental staff determines that deficiencies exist, the DLAE notifies the LPA.

Technical reports and Draft EAs that do not comply with FHWA policies and guidance, requirements of all applicable federal laws, executive orders and regulations, are not internally consistent, or are not prepared using the applicable SER annotated outlines will be returned to the LPA by the DLAE or designee with guidance on revisions needed for a compliance and sufficiency determination.

Technical reports and Draft EAs that comply with FHWA policies and guidance and the requirements of all applicable federal laws, executive orders and regulations, and are found to be internally consistent and prepared using with the applicable SER annotated environmental document outlines are approved for public availability by the Caltrans District Director or Deputy District Director (Environmental) or the Environmental Office Chief, if designated by District Director.

NEPA encourages public participation; however, because there is no formal scoping requirement for an EA, the degree of public participation and the means of soliciting public input

are determined on a case-specific-basis, taking into consideration the level of public interest or controversy. The LPA initiates public circulation of the draft EA following approval by Caltrans and following public involvement, responds to comments as necessary, and prepares the Final EA. LPAs are responsible for performing the initial Quality Control Review on Final EAs. When an EA does not identify any significant impacts, and no significant impacts are identified during the period of public availability, the LPA submits the record of public comments, responses to those comments, and a request for a FONSI to the DLAE.

In accordance with the 327 MOU, Caltrans is responsible for making the official "finding" that a proposed project will not significantly impact the environment. The Caltrans District Director or Deputy District Director (Environmental) or Environmental Office Chief, if designated by District Director, signs the FONSI making this "finding."

The DLAE notifies the LPA immediately upon Caltrans approval of the FONSI so that they may commence with final design.

When an EA indicates that the project has the potential to result in a significant impact, an EIS must be prepared. An EA is not required when a decision has already been made to prepare an EIS. For details on preparing and processing an EA refer to the SER: Chapter 31.

Upon submitting a "Request for Authorization" for new phases of work, the LPA will enter the appropriate coding and the date Caltrans signed the FONSI on the LAPM 3-A: Project Authorization/Adjustment Request (refer to LAPM Chapter 3: Project Authorization).

The District SEP (or designee) completes appropriate environmental fields in LP2000 for tracking, reporting, and performance monitoring.

Environmental Impact Statement (EIS)

An EIS is a full disclosure document and is the highest level of analysis required by NEPA. The determination to prepare an EIS may result from one or more of the following situations:

- Based on information gathered during the PES, where it is clear that the proposed project will have significant impacts. The LPA indicates the potential for significance under Sections A and B of the PES Form, and the DLAE and District SEP (with written concurrence of HQ EC in email) determine that an EIS is the appropriate NEPA Class of Action, by signing the PES form.
- Based on the conclusions of the Draft EA where the potential for cumulative or significant adverse impacts are shown.

When it is determined that a proposed project may have a significant environmental impact, the LPA drafts the NOI to prepare an EIS in collaboration with the DLAE and District SEP (or designee) and arranges for the Early Scoping Meeting.

The LPA conducts the Early Coordination Meeting, undertakes all required technical studies, and prepares the required technical reports and the Draft EIS according to the guidance set forth in the SER.

An EIS is a summary of the findings and conclusions of technical reports, the results of regulatory and resource agency coordination and should accurately reflect the outcome of both. The LPA is required to use the NEPA only Environmental Impact Statement Annotated Outline

but may use the joint Environmental Impact Report/Environmental Impact Statement Annotated Outline which are both provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser.

The LPA is responsible for performing a quality control review of their EIS and supporting technical studies and completing the External Readiness Certification form.

Details on preparing and processing EISs are provided in Section 6.10: Step by Step Procedures – Environmental Impacts Statement (EIS) in this chapter. The District SEP (or designee) tracks the review and processing of the EIS and records relevant dates and information in LP2000. The DLAE provides notification to the LPA of environmental document status and approval.

Upon submitting a "Request for Authorization" for new phases of work, the LPA enters the appropriate coding and date of Caltrans district director signature on the ROD on the LAPM 3-A: Project Authorization/Adjustment Request (refer to the LAPM Chapter 3: Project Authorization).

Other Federal Environmentally-Related Processes

Every action that has federal involvement must comply with laws that protect particular elements of the environment. Although NEPA requirements have remained relatively unchanged over the years, environmentally-related processes have increased in number and importance.

Following is a summary of those federal environmentally-related laws processes most commonly required on local assistance transportation projects. LPAs are required to comply with the provisions of these laws prior to finalizing NEPA documentation.

- **Section 4(f) - (Protection of Publicly Owned Park, Recreation Area, Wildlife or Waterfowl Refuge, or Land from Historic Sites)** - The Section 4(f) process was established in the U.S. Department of Transportation Act of 1966 to give certain protections to publicly owned public parks, recreational areas, wildlife and waterfowl refuges, and land from historic sites of national, state, or local significance. Section 4(f) requires that the agency must show that there are no feasible or prudent alternatives to the use of these areas. If Section 4(f) land is required, a Section 4(f) avoidance alternative is required. If Section 4(f) land is still required, all possible planning must be taken to minimize the impact. Guidance on compliance with the provisions of Section 4(f) is provided in the SER: Chapter 20.
- **De Minimis Impacts to Section 4(f) Resources** - When it is determined that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, no further Section 4(f) evaluation is required. LPAs must work with the district/region SEP to complete the analysis. The Senior Environmental Planner is responsible for making the *de minimis* impact finding.
- **Section 106 - (Protection of Cultural Archaeological Resources & Historic Properties)** The National Historic Preservation Act of 1966 declares a national policy of historic preservation and encourages preservation. It established the Advisory Council on Historic Preservation (ACHP) and required that federal agencies take into account the effect of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. ACHP

promulgated procedures, codified in 36 CFR 800, et seq. that must be followed on any federal project or action. Caltrans and FHWA entered into a Programmatic Agreement (PA) on how to implement 36 CFR 800 for California's federal-aid highway program. Guidance for compliance with the provisions of 36 CFR 800 and the PA is provided in the SER: Chapter 28 and the Environmental Handbook, Volume II.

- **Section 7 of the Endangered Species Act - (Protection of Endangered Species)** – The federal Endangered Species Act (ESA) provides a means to conserve the ecosystems upon which federally-listed threatened and endangered species depend and provide a program for the conservation of those species.

The ESA requires federal agencies consult with the USFWS and NMFS to ensure that actions approved or funded by federal agencies such as FHWA are not likely to jeopardize the continued existence of threatened or endangered species, or result in the destruction or adverse modification of the critical habitat of such species. Compliance with Section 10 (Section 10 allows for permitting take of threatened or endangered species for scientific research, or purposes of propagation or survival of the species) of the ESA does not meet Section 7 requirements. Guidance on compliance with the provisions of Section 7 of the U.S. ESA is provided in the SER: Chapter 14.

- **Presidential Executive Order 11990 (E.O.11990) - Protection of Wetlands** – E.O. 11990 requires that when a construction project involves wetlands, a finding must be made: (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize impacts to wetlands resulting from such use. The FHWA division administrator or Caltrans, where assigned under 23 U.S.C.326 or 23 U.S.C.327 makes the finding required by E.O.11990. Guidance on compliance with the provisions of E.O.11990 is provided in the SER: Chapter 15.
- **Presidential Executive Order 11988 (E.O.11988) - Floodplain Management** – In response to E.O.11988, FHWA or Caltrans, where assigned under 23 U.S.C.326 or 23 U.S.C.327 requires a formal "Floodplain Finding" be made for federal actions involving significant encroachments in floodplains. The formal Floodplain Finding is based on information contained in the Location Hydraulic Report. The formal Floodplain Finding is included as part of the supporting documentation for the Final Environmental Impact Study (FEIS) and Final EA. Guidance on compliance with the provisions of E.O.11988 is provided in the SER: Chapter 17.
- **Presidential Executive Order 12898 (E.O.12898) – "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"** – This E.O., issued on February 11, 1994, emphasizes the intent of Title VI of the Civil Rights Act of 1964. The E.O. requires federal agencies to ensure that their programs, policies, and activities do not have the effects of: 1) excluding persons and populations from participation, 2) denying persons and populations the benefits of federal programs, or 3) subjecting persons and populations to discrimination because of race, color, or national origin. Consideration of environmental justice impacts must be addressed in all NEPA classes of action. When preparing an EIS and EA, LPAs must disclose disproportionate impacts on minority or low-income communities. Guidance on compliance with the provisions of E.O.12898 which directs each federal agency to develop a strategy to

address environmental justice concerns in programs, policies, and regulations. The intent of the order is to avoid disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment. Additional information on E.O.12898 is provided in the SER: Chapter 25.

- **Presidential Executive Order 13112 (E.O.13112) – Invasive Species, issued on February 3, 1999 (effective November 15, 1999)** – This E.O. prohibits the use of federal-aid for construction, re-vegetation, or landscaping activities that purposely include the use of known invasive plant species. Until an approved national list of invasive plants is defined by the National Invasive Species Council, "known invasive plants," must be consistent with the official noxious weed list of the State in which the activity occurs. FHWA recommends use of federal-aid for new and expanded invasive species control efforts under each state's Department of Transportation roadside vegetation management program**.** Where the potential exists for the introduction or spread of invasive species, the environmental document should include a discussion of the potential impact of these species and any anticipated prevention or control measures to be taken. Guidance on compliance with the provisions of E.O.13112 is available in the SER: Chapter 1.

- **Clean Air Act, as amended (42 U.S.C. 7401 et seq.)** – This Act requires that federally supported activities must conform to the State Implementation Plan (SIP), whose purpose is that of attaining and maintaining the National Ambient Air Quality Standards (NAAQS). Section 176(c) of the Clean Air Act as amended in 1990, established the criteria and procedures by which FHWA (Title 23 U.S.C.) and MPOs determine the conformity of federally-funded or approved highway and transit plans, programs, and projects to SIPs. The provisions of 40 CFR Part 51 and Part 93 (Final Rule effective November 24, 1993) shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan. For additional information refer to the SER: Chapter 11.

- **Clean Water Act of 1977 & 1987 (33 U.S.C. 1251-1359)** – This Act protects the chemical, physical, and biological integrity of the Nation's waters by regulating discharges of pollutants into waters of the U.S. Section 401 of the Clean Water Act (CWA) requires a water quality certification from the State or Regional Water Quality Control Board when a project requires a federal license or permit and will result in a discharge into waters of the U.S. Section 402 of the CWA establishes a permitting system for the discharge of any pollutant into waters of the U.S. A National Pollutant Discharge Elimination System (NPDES) permit is required for all point discharges of pollutants to surface waters. Section 404 of the CWA establishes a permit program administered by the USACE regulating the discharge of dredged or fill material into waters of the U.S. (including wetlands). For additional information refer to the SER, Volume 1 (Chapter 9).

General Procedures for Demonstrating Compliance with These Processes

The general procedures for demonstrating compliance with these Acts are provided below:

- For Non-Infrastructure Projects only, the LPA confirms the project is in the FSTIP; project does not involve right of way acquisition or physical construction; and all questions on the PES (NI) can be answered "No". If these criteria can be met, then the

District DLAE and SEP jointly sign the PES (NI) form concurring with the NEPA Class of Action, and that the project will involve no disturbance to the ground or natural environment. The DLAE and District SEP (or designee) jointly signs the PES(NI) form and the CE/CE Determination form. The last page of the PES (NI) form, Section B, would suffice for the Categorical Exclusion Checklist and the Transportation Air Quality Conformity Findings Checklist. A brief explanation stating that Section B of the PES (NI) meets the requirements for the Categorical Exclusion Checklist and Transportation Air Quality Conformity Findings Checklist would be the inserts to include for the PES (NI) project Uniform File. No other documentation is required.

- For all other projects, the LPA, after reviewing relevant databases, literature, and maps, completes the PES form and submits the PES form with all supporting documentation to the DLAE. The DLAE and District SEP (or designee) jointly concurs with the NEPA Class of Action (CE, EA, EIS) and the required technical studies by signing the PES form.

The district PQS determines applicability of Section 106 and the need for APE map. Prior to initiation of technical studies, the LPA prepares a draft APE map for Section 106 studies according to the guidance in the SER (and preferably with the assistance of the district PQS) and, if necessary, requests the DLAE to schedule a Coordination Meeting. The Coordination Meeting is the appropriate forum to meet the Caltrans district staff responsible for reviewing and determining the adequacy of the technical reports, obtain district PQS and DLAE signatures on the APE map, and discuss the format and content requirements for each technical report.

- LPA completes the required technical studies, prepares the technical reports, and submits the reports to the DLAE for review and processing. To ensure timely project delivery, LPA and consultants are responsible for ensuring that the format and content of required technical reports and environmental documents are consistent with guidance and annotated outlines set forth in the SER and have passed external quality control reviews.
- District SEP (or designee) reviews the reports, facilitates consultation under regulation or interagency agreement (or makes the appropriate finding or determination required by law, regulation or E.O.), and forwards the results of their action to the DLAE for transmittal to the LPA.
- District SEP (or designee) logs transmittal date in LP2000 and tracks Caltrans and resource and regulatory agency review time and various other milestones.
- LPA prepares the appropriate NEPA document based on the results of Caltrans consultation and provides the document to the DLAE for review and approval.

Interagency Agreements and Memorandums of Understanding

Several Agreements have been developed to expedite compliance with NEPA. These Agreements require full documentation and demonstration that the required conditions have been met.

First Amended Programmatic Agreement among the FHWA, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of

Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California (Section 106 PA), effective January 1, 2014. The Section 106 Programmatic Agreement (PA) implements Section 106 of the NEPA for the Federal-aid Highway Program in California, except when the undertaking is on Native American Tribal Trust Land, in which case the 36 CFR Part 800 procedures must be followed, unless an Indian tribe elects to become a party to the Section 106 PA. This Agreement allows Caltrans to consult directly with the SHPO for all steps of the Section 106 process on projects assigned under NEPA Assignment and for most steps on projects exempted from assignment. The Agreement exempts certain property types from evaluation and exempts certain types of projects from any 106 involvements. It re-emphasizes the use of Environmentally Sensitive Areas (ESAs) to avoid site excavations for evaluation, defines APE guidelines, and sets out qualifications for decision-making staff. Any project must be screened by the district PQS to determine applicability of Section 106. A copy of the Agreement and guidance on compliance with the terms of the Agreement are provided in the SER, Volume 2: Chapter 2.

Memorandum of Understanding Among the Federal Highway Administration, California Department of Transportation, U.S. EPA, U.S. USACE, USFWS and the NMFS. National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Federal Aid Surface Transportation Projects in California.

https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/mous-moas-agreements.

The Memorandum of Understanding (MOU) merges the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA) Section 404 processes. It applies to federal aid surface transportation projects that have five or more acres of permanent impacts to waters of the United States and that require a NEPA Environmental Impact Statement (EIS). The USACE, USFWS, FHWA, EPA, NMFS, and Caltrans agree on early and ongoing coordination for issues pertaining to waters of the U.S. and for projects that require an EIS. The MOU specifies written concurrences that must be obtained from the resource agencies.

If it is anticipated that the project will permanently impact more than 5 acres of other waters of the U.S. and is being processed with an EIS, the LPA, DLAE, and District SEP (or designee) must meet as early as possible to discuss MOU procedures and ensure conformity. A copy of the MOU and procedures for its use are provided in the SER at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/mous-moas-agreements.

FHWA Section 4(f) Nationwide Programmatic Evaluations

FHWA developed five programmatic evaluations below. Each of the five programmatic evaluations has its own applicability criteria, alternatives, findings, and coordination requirements. The advantage of using a programmatic evaluation is that there is no requirement to circulate the evaluation to the Department of the Interior, the Department of Agriculture, or the Department of Housing and Urban Development. There is also no need for legal sufficiency review. However, coordination with the official with jurisdiction over the Section 4(f) property is required.

- **Independent Bikeway and Walkway Construction Projects, May 23, 1977**
  For independent bikeway and pedestrian walkway projects that require the use of recreation and park areas.
  https://www.environment.fhwa.dot.gov/legislation/section4f/4fbikeways.aspx.
- **FHWA Projects that Necessitate the Use of Historic Bridges, July 5, 1983**
  For historic bridge replacement projects. Full historic evaluation to meet Section 106 requirements are still required.
  https://www.environment.fhwa.dot.gov/legislation/section4f/4f_bridges.aspx.
- **Federally-aided Highway Projects with Minor Involvements with Public Parks, Recreation lands and Wildlife and Waterfowl Refuges, December 23, 1986**
  This is for federal-aid projects that use minor amounts of land from publicly owned public parks, recreation areas, and wildlife and waterfowl refuges.
  https://www.environment.fhwa.dot.gov/legislation/section4f/4f_minor_parks.aspx.
- **Federally-aided Highway Projects with Minor Involvements with Historic Sites, December 23, 1986**
  This is for federal-aid projects which use minor amounts of land from historic sites, which are eligible for inclusion on the National Register of Historic Places. This only applies when the use of the land does not constitute an adverse effect to the historic property.
  https://www.environment.fhwa.dot.gov/legislation/section4f/4f_minor_hist.aspx.
- **Projects that have a Net Benefit to a Section 4(f) Property**
  For any project, regardless of NEPA Class of Action (CE, EA, or EIS), where a net benefit, or overall enhancement is achieved to the Section 4(f) property. A project does not achieve a net benefit if it will result in a substantial diminishment of the function or value that made the property eligible for Section 4(f) protection.
  https://www.environment.fhwa.dot.gov/legislation/section4f/4f_netbenefits.aspx.

- **De Minimis Impacts to Section 4(f) Resources**
  When it is determined that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a de minimis impact on that property, no further Section 4(f) evaluation is required. Although de minimis is not a programmatic evaluation, de minimis is often applied more often now than programmatics. LPAs must work with the district/region Senior Environmental Planner to complete the analysis. The Senior Environmental Planner is responsible for making the de minimis impact finding. Consultation with the HQ District Environmental Coordinator is strongly recommended. Additional guidance can be found in the Standard Environmental Reference website. SAFETEA-LU Section 6009(a) amended 49 U.S.C.303 and 23 U.S.C.138, modified Section 4(f) legislation to allow the U.S. DOT to determine that certain uses of Section 4(f) land will have no adverse effect on the protected resource. Under the NEPA assignment, Caltrans determines if a transportation use of Section 4(f) property results in a de minimis impact on that property: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-20-section-4f#deminimis.

Integrating CEQA and NEPA

While this chapter deals exclusively with federal environmental requirements, LPAs are responsible for ensuring full compliance with other state and local environmental laws, and to the fullest extent possible, integrating the NEPA process with the review processes established by these laws. Because state and federal requirements are similar, it is possible to perform only one environmental process that satisfies both state and federal requirements simultaneously when federal approval is required. The environmental document types for CEQA/NEPA (that is, CE/CE, IS/EA, EIR/EIS) do not necessarily need to match up with each other. An EA may be the appropriate document to prepare under NEPA when an EIR is appropriate under CEQA. Guidance on developing Joint CEQA/NEPA documents is available in the SER: Chapter 37.

Following are some of the basic similarities and differences between the NEPA and CEQA.

- **Categorical Exclusion (NEPA)/Categorical Exemption (CEQA) Determination**
  The list of projects exempt from the federal legislation is quite different from that of the State of California. NEPA requires that each federal agency identify its own list of CEs; therefore, the list of projects exempt from NEPA used for Caltrans purposes is specific to FHWA. CEQA guidelines list 33 standard categories for all state agencies to use. Thus, a careful reading of 23 CFR 771.117 and the FHWA/Caltrans MOUs prepared pursuant to 23 U.S.C.326 and 327 is necessary to determine which actions are CEs. Caltrans may use a CE for a project not listed if it meets the criteria for CE under 23 CFR 771.117 (a) and (b). Separate determinations must be made for the NEPA and CEQA. The “Categorical Exclusions” sections in this chapter describe this phase of the process.
- **Environmental Assessment/Initial Study**
  The required contents of an EA are similar to that of an Initial Study (IS). However, NEPA requires that an EA discuss at least one build alternative and the no-build alternative, whereas CEQA does not require a discussion of alternatives in an IS. Guidance on the development of Joint IS/EAs is available in the SER: Chapter 37.

- **Integrating Other Environmentally-Related Processes (NEPA/CEQA)**
  One of the more complex aspects of the EA or EIS preparation is the requirement for integrating NEPA with other federal environmental requirements. The LPA must identify and list in the EA or EIS all other federal environmental requirements that may be applicable to the proposed action and, to the fullest extent possible, integrate the NEPA process with the review processes established by these laws. See Section 6.2: An Overview of the Environmental Process for a brief overview of the other federal environmental requirements. This degree of integration of state and local environmental review is not required under CEQA.
- **Significant Impact (NEPA) vs. Significant Effect (CEQA)**
  NEPA requires the identification of any impacts and the avoidance and minimization of them, with compensation considered when reasonable. NEPA does not focus on assessment of whether each and every adverse impact is significant or not. Presence or absence of "**significant impacts**" as defined by NEPA is the determining factor for what type of environmental document is appropriate. NEPA's definition of a significant impact does not necessarily correlate with CEQA-identified "**significant effects**." Further, CEQA requires mitigation only when an impact is designated as "**significant**." This can result in measures to avoid or reduce impacts being identified under NEPA that would not be identified under CEQA.

Local Assistance projects are federal-aid highway projects that are located off the SHS. Because these projects are located off the SHS, the LPA serves as the CEQA lead for the project and is solely responsible for compliance with CEQA. In cases where the LPA project is processed with no federal involvement, the project will only require compliance with the CEQA. Caltrans is the NEPA lead agency for all local assistance projects. The LPA will prepare (or cause to have prepared) the NEPA documentation for approval by Caltrans. Local Assistance projects follow the procedures outlined in this Chapter of the LAPM and the SER.

Timing for Environmental Processes

Estimating the time required for preparing and processing technical studies and environmental documents is very important when establishing a project delivery schedule. The amount of time needed to demonstrate full compliance with the provisions of NEPA and other federal environmental requirements varies depending upon project scope and the presence of federally-protected environmental resources within and immediately adjacent to the project area (direct), indirect (secondary), and cumulative impacts.

Compliance with the environmental requirements may occur simultaneously with Preliminary Engineering. However, the LPA may not commence with final design prior to obtaining NEPA approval (a Caltrans signed (CE, FONSI, or ROD). It is incumbent upon the DLAE to notify the LPA as soon as NEPA approval is obtained and to forward a copy of the Caltrans signed CE, FONSI, or ROD.

The following time frames reflect best case scenarios and do not take into account the time involved in consultant selection, correction of inadequate studies, regulatory or advisory agency review and comment, projects involving large numbers of very complex, unusual environmental issues or controversy. The time frames also assume the various environmental studies and documents are performed and written simultaneously.

Below are some examples for estimating time frames:

- A project that meets the criteria for a CE with "no required technical studies" can be processed in one month, assuming the PES Form or PES (NI), if applicable, and supporting information are complete and sufficient.
- A CE "with required technical studies" may take from six months to two years depending upon the required technical studies that must be completed and the time of year the studies are initiated. It is important to identify and plan for critical survey periods when determining a project schedule. For example, surveys for certain plant species may have to be performed in spring or during their appropriate blooming/identifiable period.
- It is also important to factor in sufficient time for potentially lengthy processes such as Section 106 of the NHPA. Depending upon the nature of the undertaking and its effects to historic properties, the Section 106 process can take less than one week for screened undertakings to more than 20 months for very complex projects involving multiple resources or requiring archaeological excavation.
- An EA that results in a FONSI may take between two to three years. At a minimum, the Draft EA must consider the build alternative and the no build. Complex Draft EAs must undergo a separate review by Caltrans HQ environmental coordinator and Legal Office. The Complex Draft EAs go through a thirty (30) day public review period. The Routine Draft EAs also go through a 30 day review period. Processing an EA which results in a FONSI with an Historic Property Survey Report (HSPR), or any other environmentally-related process may require additional time because these environmentally-related processes require separate studies and separate regulatory reviews. For example, a preliminary Finding of Effect for cultural or archaeological resources must be completed before a draft EA or an EIS can be circulated for public review. Section 106 requirements and Section 7 or other technical requirements must be completed before the final EA or an EIS can be approved.
- An EIS may take between three to four years. Draft EISs require consideration of multiple alternatives and separate reviews by Caltrans HQ environmental coordinator and Legal Office.
- The LPA should begin "required technical studies" as soon as possible after the PES form is fully signed.

  Note: The LPA must not begin "required technical studies" before obtaining the DLAE and District SEP (or designee) signatures on the PES Form. Section 106 studies should not begin until the district PQS and the DLAE give verbal approval of the APE map. This will minimize the potential for investing in studies that may not be required.

6.3 Other Considerations

Permits

The LPA is responsible for obtaining all necessary permits, agreements, and approvals from resource and regulatory agencies (401/404, Encroachment, and Coast Guard Bridge Permit, etc.) before advertisement for construction. With the exception of Emergency Opening projects,

construction should not proceed before permits have been obtained and submitted to the DLAE. If work occurs prior to permits being obtained, the LPA is assuming the risk that elements of work may not be fully reimbursable. The LPA must transmit one copy of each permit (with conditions) to the DLAE for submittal to the District SEP (or designee) prior to the first invoice. The District SEP (or designee) must enter permit data (as required) into LP2000.

Mitigation Commitments and Plans, Specifications, and Estimate

The LPA is also responsible for developing a list of all mitigation as related to NEPA and providing it along with the technical reports and draft environmental document to the DLAE. The DLAE forwards list to District SEP (or designee) who in turn enters this mitigation data into the LP2000 database.

The LPA must certify that all required mitigation has been completed or is included in the Final Plans, Specifications and Estimate (PS&E) and that any required ongoing maintenance of mitigation is implemented (23 CFR 771.109(b)). The DLAE (in coordination with the District SEP) ensures that mitigation is a reasonable expenditure of federal funds. Caltrans assures that mitigation measures and any required ongoing maintenance of mitigation are implemented by conducting periodic process reviews (23 CFR 771.105(d)(2)).

Mitigation Commitments and Construction

The LPA is responsible for ensuring that all required mitigation is included in the construction contract. The LPA checks plan in the field and certifies that all mitigation commitments have been completed and documentation to this effect has been prepared for inclusion in the project's final record/voucher.

Scope Change

In advance of any mitigation commitment, the LPA must notify the DLAE of any changes in the project scope or project limits. Major changes may require a Transportation Improvement Program (TIP) amendment or air quality re-determination.

The DLAE notifies the District SEP (or designee) of the changes, and the District SEP (or designee) determines if additional environmental studies will be required. When the project scope changes after NEPA approval, and the permits, approval/agreements from resource and regulatory agencies require modifications, the DLAE notifies the District SEP of the change, and the District SEP conducts a reevaluation (23 CFR 771.129(c)). The DLAE will request the District SEP (or designee) initiate re-consultation/reevaluation immediately. Scope changes must be documented and appended to the PES form.

Reevaluation

There are three triggers that necessitate the initiation of the consultation or reevaluation process:

1. Project is proceeding to the next major federal approval
2. Project changes
3. Three year timeline for an EIS

Reevaluations may include a site visit and evaluation by a qualified environmental planner and any technical specialists deemed necessary. Assessments by technical specialists should be prepared for any topical areas affected by a change in the project, its surroundings, new information or requirements, or other factors that may cause the original evaluation to no longer be valid. Additional studies or coordination with other agencies should be conducted as appropriate.

The LPA is responsible for informing the DLAE of any changes in the project so that these changes can be evaluated, and the validity of the environmental document or CE Determination can be reevaluated.

The LPA, DLAE, and District SEP (or designee) will consult and depending on the circumstances, there will be one of three possible conclusions: (1) the original environmental document or CE remains valid, (2) the original environmental document or CE is in need of updating (in this case, additional documentation and/or public review might be required), or (3) the original document or CE is no longer valid and requires public review, supplemental documentation, or new document is needed. Documentation of the decision and supporting information as appropriate must be prepared and signed by the DLAE and the District SEP and placed in the project file.

A copy of the Caltrans NEPA/CEQA Revalidation form is available at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

The FHWA/Caltrans policy memo regarding Reevaluations is available at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/fhwa-ct-reevalguide-a11y.pdf.

Process Review

FHWA and Caltrans periodically conduct reviews to determine the adequacy of existing processes and monitor the process for compliance with applicable laws, regulations, and procedures. This includes, but is not limited to, monitoring compliance with the assurances stated in the NEPA Pilot Program application; stipulations of the FHWA/Caltrans 326 and 327 MOUs; monitoring the quality of NEPA documents and supporting technical reports; and monitoring PS&E and project construction to ensure mitigation commitments are included in PS&E, constructed, and (in the case of long-term commitments) monitored by the LPA.

Training

The DLAE and district training coordinator are responsible for notifying the LPA of available training and for assisting them with training registration. Training opportunities available through external agencies or other federal/state agencies are posted at: https://dot.ca.gov/programs/local-assistance/training.

Record Keeping

The District SEP (or designee) is responsible for establishing the environmental project file as soon as environmental studies begin and for converting existing environmental project files to the Uniform Environmental File System. Instructions for using the Uniform Environmental Filing

System are provided at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/index-uniform-filing-system-a11y.pdf.

The District SEP (or designee) is also responsible for updating the environmental fields in LP2000 as soon as an action occurs.

Consultant Contracts for Technical Studies

Locally-administered environmental consultant contracts for NEPA documents and technical studies must comply with the provisions of the Brooks Act (40 U.S.C.1101-1104), and the scope of services agreement negotiated between the LPA and its consultant must be based on information contained in the complete and fully signed PES form. Furthermore, the LPA should reference LAPM Chapter 10: Consultant Selection which provides more detail information on consultant contracting and selection procedures.

Environmental consultant's qualifications and the format and content of the environmental technical reports must be consistent with guidance set forth in the SER, and the processing of technical reports must be in accordance with procedures set forth in this chapter.

Quarterly Reporting Requirement

According to Stipulation IV.E.1 of the FHWA/Caltrans 326 MOU pertaining to performance monitoring and quality assurance, Caltrans must submit to FHWA a list of all CE determinations made each fiscal quarter. Quarterly reporting is required under both 326 and 327 MOUs. The DLA will provide the DEA with a Discoverer Report on quarterly Local Assistance CE determinations based on information contained in LP2000. The DLAE and District SEP (or designee), with assistance from the Local Assistance NEPA Assignment coordinators, are required to maintain all environmental fields in LP2000.

Record Retention

The District Local Assistance environmental office must maintain all NEPA documentation and supporting technical reports for a period of three (3) years following FHWA reimbursement for final project costs. When mitigation is required, environmental documentation must be maintained until all terms of required mitigation have been fully implemented. This includes any required monitoring period. Per the 327 MOU records retention requirements (8.3.2), records forwarded to FHWA will be stored at the Federal Records Center.

6.4 Step-by-Step Procedures – PES (NI) Form

Following are step-by-step procedures for completing the PES (NI) form: Exhibit 6-K: PES (NI) Form Instructions.

It is important that the LPA carefully follow and complete each step to avoid unexpected project costs or delays in project development and to ensure a "complete and sufficient" submittal. The LPA must not commence with Authorization to Proceed until the funds are appropriated in the Construction Phase. However, there is no formal physical construction. The PES (NI) projects do not involve physical construction. The LPA must not commence with Authorization to Proceed until after the PES(NI) Form has been fully signed by all signatories.

1. LPA confirms project is programmed in federally-approved FTIP/FSTIP.

2. LPA confirms project will not involve right of way (R/W) acquisition or the physical construction of any facilities.
3. LPA is ready to request federal Authorization to Proceed for the project.
4. LPA completes Section A of the PES (NI) form Exhibit 6-J: Preliminary Environmental Screening for Non-Infrastructure Project PSE (NI), indicating "Yes", "No", or "To Be Determined" as appropriate for questions 1-29.
5. LPA provides additional information on PES (NI) Continuation Sheet for all "TBD" responses.
6. LPA completes Section B of PES (NI) form, signs, and submits form to DLAE.
7. DLAE verifies project is in FSTIP and forwards PES (NI) form to District SEP.
8. District SEP (or designee) reviews PES (NI) form and additional information provided for 'TBD' responses and coordinates with LPA as needed.

Are all responses justifiably "NO"? If "Yes," GO TO STEP #10. If "No," GO TO STEP #9.

9. District SEP (for designee) informs LPA that PES is required.
10. District SEP (or designee) confirms project is type of action included in Exhibit 6-K, Attachment A (Undertakings Exempt from Further Review Memo), and Exhibit 6-K, Attachment B (Amendment Non-Infrastructure Project NES – No Effect Memo).

Is action included in Memos? If "Yes," GO TO STEP #12. If "No," GO TO STEP #11 first and then CONTINUE TO STEP #12.

11. If all responses to questions 1-29 on the PES(NI) are justifiably "NO," District SEP (or designee) informs HQ of action not included in Exhibit 6-K, Attachments A & B, in order for HQ to consider adding the action to the memos. Additional review by District PQS will be required if the undertaking involves any activities that are not listed, including those listed as screened activities in Attachment 2 of the PA.
12. District SEP signs the PES (NI) form and prepares and signs the CE form.
13. DLAE signs the PES (NI) form and the CE form.

6.5 Step-by-Step Procedures – PES Form

Following are step-by-step procedures for conducting a preliminary environmental investigation and completing the PES form. It is important that the LPA carefully follow and complete each step to avoid unexpected project costs or delays in project development and to ensure a "complete and sufficient" submittal. LPAs must not commence with any required technical study until after the PES form has been fully signed by all signatories.

The PES/Categorical Exclusion (CE) process is shown in Figure 6-1: PES Form and Categorical Exclusion (CE) Process Flowchart. The numbers on the flowchart correlate with the step-by-step procedures within this section through Section 6.7.

1. LPA develops complete project description and project maps.
2. LPA reviews relevant literature, maps, and inventories.
3. LPA requests technical information from resource and regulatory agencies.

4. LPA verifies research findings in the field (site visit).
5. LPA completes PES Form (Exhibit 6-A: Preliminary Environmental Study (PES) Form), according to Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES) Form. On the PES Continuation Sheet, the LPA provides: (1) additional information on project description, (2) a summary of how the requirements of federal laws have been satisfied for all "No" answers (such as, identify the steps that were taken to determine a "No" response), and (3) specific information for all "Yes" and "To Be Determined" answers (such as, if question #15 regarding Federally Listed Threatened and Endangered Species is checked "Yes," identify the specific plant or animal species observed or that could potentially occur within the project area).

   Upon completion of the PES Form, if questions 23-32 are marked "yes," or if the PES results in an Environmental Assessment or Environmental Impact Statement:

   a) Title VI implementation and outreach may be triggered. Any vital public communication must be translated and accessible when a significant number or percentage of the population is eligible to be served, or likely to be directly affected by the program/activity, needs, services or information in a language other than English to communicate effectively.

   b) The LPA must contact the District Senior Environmental Planner and the District Senior Right of Way Agent to inform them the agency may implement Title VI and outreach for this project.
6. LPA signs PES Form and submits to DLAE with all supporting documentation.
7. DLAE date stamps the PES form on day received and verifies that project is in the RTP and FSTIP, and that the scope of work described on the PES Form is consistent with the project description in the FSTIP.
8. DLAE reviews PES form and maps to ensure that the project description matches what is programmed and that the packet is complete and sufficient. If the packet is incomplete, the DLAE returns the packet to the LPA and if necessary, schedules a meeting or field review to assist the LPA with completion of the PES form. Note: Field reviews are required for LPA projects on the National Highway System and encouraged for all other federal-aid projects. If the field review is not performed, document on the field review form the reason why the field review was not performed, as a completed field review form is required for all federal-aid projects.

   DLAE invites the District SEP (or designee) and appropriate CT technical specialists to the meeting or field review. For complex projects, the DLAE may also want to invite the Local Assistance NEPA Assignment Coordinator and the HQ Environmental Coordinator.
9. District SEP identifies which district PQS, biologist, and other technical specialist(s) will assist with project review and circulates the PES form to assigned staff.
10. The district biologist reviews the PES form, maps and results of general reconnaissance surveys, and indicates the required technical study type in Sections B, and completes applicable Section C and D of the PES form. If appropriate, the district biologist prepares a "Finding of No Effect" memo for compliance with Section 7.

11. District PQS reviews the PES form, completes questions #35 & #36 in Section A; indicates the required technical study type in Section B, completes applicable Sections C, D; indicates results of preliminary review in Section G; signs the PES form and returns the signed PES form to the District SEP (or designee). If appropriate, the PQS prepares a Screened Undertaking memo for compliance with Section 106.
12. If the District SEP concurs with the recommended NEPA Class of Action and the required technical studies as proposed by the Caltrans specialists, the District SEP signs the PES form.

6.6 Step-by-Step Procedures – Categorical Exclusion with No Technical Studies

Are further technical studies required? If "Yes," "GO TO STEP # 18. If "No," GO TO STEP #13.

13. The District SEP (or designee) completes the Categorical Exemption/Categorical Exclusion Determination Form (CE/CE): https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

    For 23 U.S.C.326 CEs, the District SEP (or designee) makes the project–level air quality conformity determination following guidance provided in the SER: Chapter 38 by completing the Transportation Air Quality Conformity Findings Checklist: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-11-air-quality#Conformity.

    Note: Projects meeting the criteria for a 23 U.S.C.326 are processed using certain NEPA CE categories only, and the conformity determination is made along with NEPA approval by Caltrans.

Does project meet the criteria for a CE with No Technical Studies? If "Yes," "GO TO STEP # 14. If "No," GO TO STEP #18.

14. District SEP signs the CE form.
15. District SEP (or designee) forwards the signed PES form and signed CE form to the DLAE, and updates LP2000.
16. DLAE signs the PES form and the CE form. The DLAE retains the original PES form and the original CE form for the project files. The DLAE sends a copy of signed CE and a copy of the fully signed PES form to the LPA and informs the LPA that compliance with NEPA is complete.
17. LPA begins final design.

6.7 Step-by-Step Procedures – Categorical Exclusion with Technical Studies

18. When PES indicates that the project meets the criteria for a CE however further technical studies are required**,** District SEP (or designee) prepares transmittal letter or email to the LPA or documents telephone conversation or meeting with LPA (if applicable), outlining:
    - All technical studies/reports required.
    - A SER link for each of the technical studies.

- The LPA's responsibility for ensuring that all required technical reports are prepared according to the guidance set forth in the SER.
- The LPA's responsibility for ensuring that the conclusions of all technical reports are clearly stated and consistently summarized in the continuation of the CE form.
- How the project-level conformity determination will be made. (See Step #31.)
- The LPA's responsibility for preparing a summary/list of mitigation commitments (avoidance, minimization, and mitigation measures) identified in each required technical report and providing said list to DLAE along with each technical report.
- The LPA's responsibility to incorporate all of the mitigation commitments (avoidance, minimization, and mitigation measures) included on the list into their PS&E and be able to demonstrate that they have been incorporated into the project design.
- The LPA's responsibility to provide a copy of all permits, when available, to the DLAE.
- The preliminary NEPA CE determination.

The District SEP (or designee) forwards the signed PES form and the transmittal letter to the DLAE, and updates LP2000.

19. DLAE reviews project description, project maps, and PES form to determine if the project is technically sound (adequate and feasible) from an engineering perspective. DLAE and the District SEP (or designee) meet to discuss the following:

    - Is the project technically sound from an engineering perspective?
    - Can the city or county get the project done in the amount of time indicated on the PES Form (such as, have they missed any survey windows, or are the issues more complex than they anticipated)?
    - Will the funding need to be moved out to adjust for the schedule?
    - Do the technical studies/reports identified in the PES form indicate that the LPA may need to budget more money for NEPA compliance?
    - Is the LPA's preliminary design on track?
    - Do the project maps make sense? Are the maps correct? Is the project footprint map consistent with the project, as identified in the FSTIP? Are the engineering drawings consistent with the project, as identified in the FSTIP?
    - Is the project likely to include mitigation commitments or mitigation that would warrant environmental review of the PS&E and project during/after construction?

20. DLAE signs the PES form. DLAE or District SEP (or designee) sends a copy of the fully signed PES form and transmittal letter, hardcopy or electronically (if preferred) to the LPA, outlining the requirements of each required technical study and report.

    Note: If DLAE authorizes the District SEP (or designee) to perform this step, a copy of the letter or email must be provided to the DLAE.

21. LPA may request an Early Coordination Meeting with the DLAE, District SEP (or designee) and others as needed, to discuss the specific requirements of each required technical report, and so forth. The District SEP (or designee), district PQS, and applicable technical specialists should be invited to participate in the meeting as needed, based on the environmental issues and the complexity of the project, and so forth.

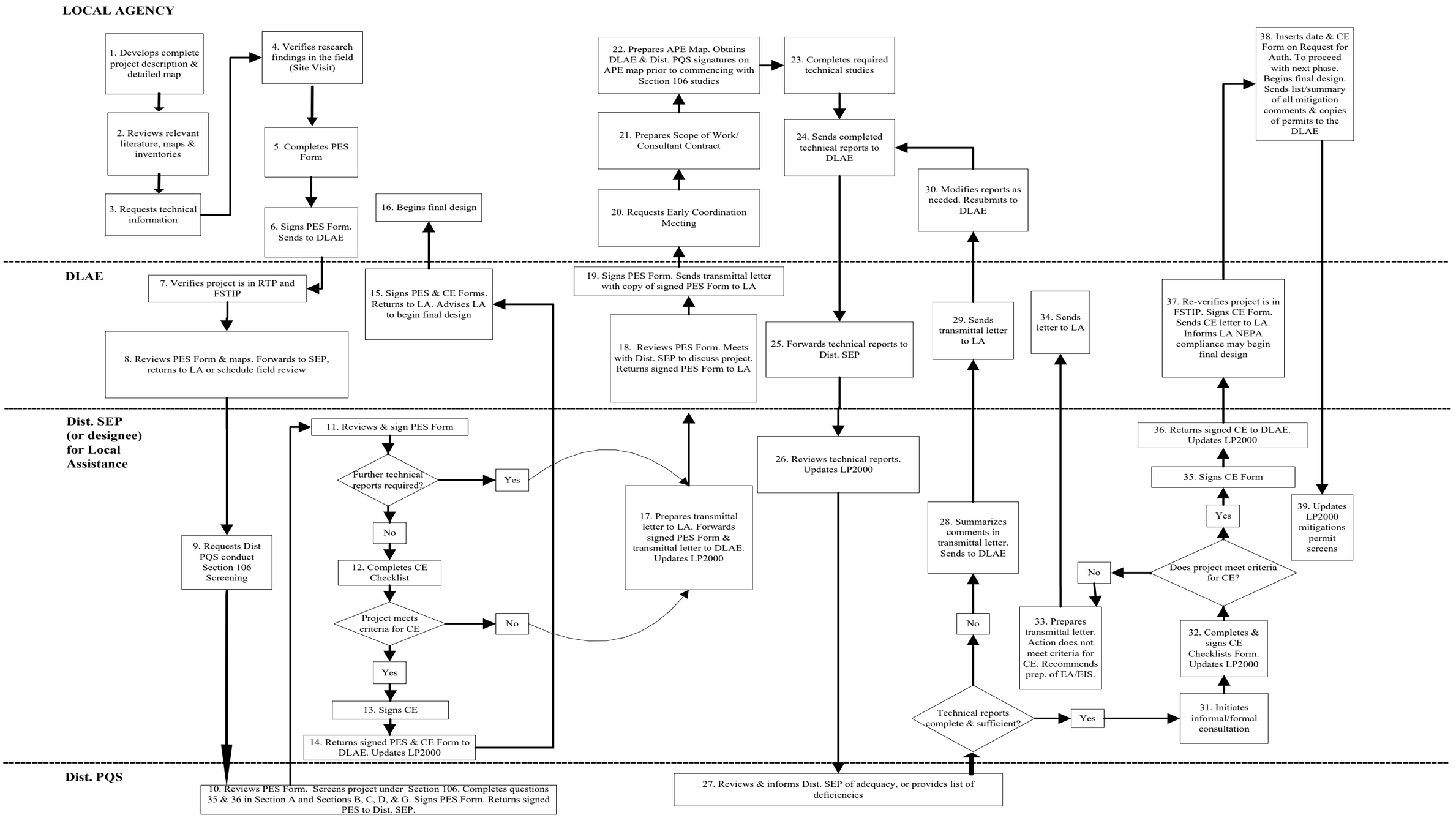


Figure 6-1: PES Form and Categorical Exclusion (CE) Process Flowchart

LPA prepares scope of work/consultant contract (if necessary) according to LAPM Chapter 10: Consultant Selection, and the requirements contained in the PES form and retains environmental consultant to undertake required technical studies (note: Environmental Consultant scope of work must reference the SER and the LAPM). The District SEP (or designee) is available to review the environmental scope of work to ensure that it accurately reflects Caltrans requirements.

22. LPA prepares a draft APE Map (if applicable) according to the guidance in the SER and preferably after consultation with district PQS and obtains DLAE and district PQS approval of the APE map prior to commencing with any Section 106 studies.
23. LPA/Consultant completes required technical studies according to the guidance in SER.

    Note: The LPA is responsible for performing a quality assurance and quality control review of all technical reports, before submittal to the DLAE, to ensure that the format and content of each technical report is consistent with guidance prescribed in the SER.
24. LPA sends the completed technical report(s) to the DLAE.
25. DLAE date stamps the report on the date received and forwards the technical report(s) to the District SEP (or designee).
26. District SEP (or designee) requests (in writing) appropriate district technical specialists review the technical report and determine whether the report is complete and sufficient according to the format and content requirements outlined in the SER. The District SEP (or designee) updates LP2000.
27. District technical specialists review technical reports and determine whether technical reports are complete and ready for resource/regulatory agency review (if applicable). (Note: This service does not relieve LPA's responsibility for quality assurance and quality control). If district technical specialists determine that the technical reports are not complete**,** they must document all noted deficiencies in writing and submit them to the District SEP (or designee). When district technical specialists determine that the technical reports are complete and ready for resource/regulatory review (if applicable), they inform the District SEP (or designee).

    Note #1: Under NEPA Assignment, this can no longer be an "informal" or verbal process. All deficiencies must be documented in writing and project files must contain a documented record of deficiencies and demonstrate that any and all deficiencies have been corrected.

    Note #2**:** When there are no district technical specialists available to review a particular technical report, or when other priorities delay the review of technical reports in support of local assistance projects, the District SEP (or designee) must inform the Environmental Branch Chief and request their assistance in resolving the issue.

District SEP (or designee) considers: Are technical reports complete and sufficient? If "No," GO TO STEP #28. If "Yes," GO TO STEP #31.

28. District SEP (or designee) prepares a transmittal letter, email, or documentation of meeting (if applicable) with LPA summarizing all comments received from district technical specialists and provides a copy to the DLAE.

29. DLAE sends transmittal letter, outlining any deficiencies to the LPA.
30. LPA modifies the technical reports according to the comments and resubmits the report(s) to the DLAE, beginning at Step #24.
31. Some technical studies require review by resource or regulatory agencies (e.g. USFWS, NMFS, SHPO, FHWA), or Caltrans divisions outside the district (e.g. HQ or Legal). If this is the case, when the applicable study is deemed complete and sufficient by the District SEP, the SEP will initiate the required consultation with the agency.

    Note: For 23 U.S.C.327 CEs, as soon as the Air Quality staff determine that the Air Quality Report is complete and sufficient, the District SEP (or designee) sends a request for Air Quality Conformity Determination to FHWA.

    District SEP (or designee) updates LP2000.
32. When other agency action is complete, the District SEP (or designee) updates LP2000. When all technical studies and consultations are deemed complete, the District SEP (or designee) completes the CE Checklist and determines whether conclusions of the technical studies and the results of consultation indicate that the action still qualifies for the CE.

Does project still meet criteria for the CE? If "No," continue with STEP #33. If "Yes," GO TO STEP #35.

33. When the CE Checklist indicates that the action does not meet the criteria for a CE, the District SEP (or designee) prepares a transmittal letter, email, or documentation of meeting (if applicable) with the LPA explaining why the action does not meet the criteria for a CE, and recommends preparation of an EA or an EIS, as appropriate. The District SEP forwards a copy of the letter, email, or documentation of telephone conversation with LPA to the DLAE and updates LP2000 accordingly.
34. District SEP (or designee) sends the letter, email, or documentation of telephone conversation to the LPA.
35. District SEP (or designee) verifies: (1) that there are no scope changes, or (2) that technical studies address areas where all project scope changes will occur. District SEP signs CE form.
36. District SEP (or designee) prepares a transmittal letter, email, or documentation of meeting (if applicable) informing the LPA that:
    - NEPA compliance is complete.
    - LPA may commence with final design.
    - LPA is responsible for incorporating all minimization, avoidance and mitigation measures, and the conditions of all permit agreements and approvals into final design.
    - LPA is responsible for fully implementing all minimization, avoidance and mitigation measures, and the conditions of all permits during project construction.
    - Documentation of mitigation commitments completion and a copy of all permits must be sent to the DLAE prior to advertisement for construction.

- LPA is responsible for notifying the DLAE of any changes in project scope.

The District SEP forwards the signed CE and transmittal (letter, email, or documentation of telephone conversation or meeting) to the DLAE and updates LP2000 for tracking compliance and annual reporting.

37. DLAE re-verifies that project is in the FSTIP, and that there are no changes in project scope description, footprint; signs the CE form; District SEP (or designee) sends the signed CE form and transmittal (letter, email, or documentation of telephone conversation or meeting) to the LPA informing them that the NEPA process is complete.
38. LPA inserts the date the DLAE signed the CE/CE Determination form in the LAPM 3-A when completing the Request for Authorization for the next phase of the project (see LAPM Chapter 3: Project Authorization). LPA begins final design. Prior to advertisement for construction, LPA sends the DLAE a copy of all permits (i.e., Coastal, 401, 404, 1602 Series, Sec 10, State or Federal Encroachment or Right of Entry) and documentation that the LPA has fulfilled all mitigation commitments.
39. Upon receipt of list of mitigation commitments and permits, the District SEP (or designee) updates LP2000.

6.8 Step-by-Step Procedures – Routine Environmental Assessment (EA)

The requirement to prepare an EA may come about through one or more of the following situations:

- Based on information gathered during PES, where it is clear that the proposed project will not qualify for a CE or where unusual circumstances are likely. The LPA identifies the potential for significance under Section A of the PES form and recommends the development of an EA (under Section E of the PES form). The DLAE and District SEP determine (with email concurrence from HQ EC) that an EA is the appropriate NEPA Class of Action by signing the PES form.
- During or upon completion of technical studies, when it becomes apparent that the proposed project will not qualify for a CE or that unusual circumstances exist. The decision to prepare an EA is made by the District SEP in collaboration with the DLAE (with email concurrence from HQ EC) and must be clearly documented for the project file.

The Routine Environmental Assessment (EA) process is shown in Figure 6-2: Routine Environmental Assessment (EA) Process Flowchart. The numbers on the flowchart correlate with the step-by-step procedures within this section.

1. LPA receives signed PES form recommending an EA as the NEPA Class of Action.
2. LPA coordinates with interested agencies and others to advise them of the scope of the project and potential social, economic, or environmental impacts identified in the PES form.
3. LPA identifies alternatives and measures which might mitigate adverse environmental impacts.
4. LPA (or consultant) completes technical studies and prepares technical reports and Administrative Draft EA according to appropriate Caltrans Annotated Outline. LPA (or consultant) completes the Environmental Document Review Checklist (ED Checklist),

cross-referencing items on the checklist with the corresponding page numbers found in the Draft EA.

5. LPA performs Quality Control Review of all technical reports and Draft EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and completes and signs the External Readiness Certification form prior to submitting the Draft EA and technical studies to DLAE. Forms available at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.
6. LPA submits 5 copies of technical reports (or other number agreed upon by SEP) and Draft EA, original ED Checklist, and signed External QC Reviews form to the DLAE.
7. DLAE date stamps the Draft EA on date received, re-verifies that project is in the RTP and FSTIP, and provides a review of packet to ensure that the original fully signed External QC Reviews form, and the appropriate number of copies of the Draft EA and technical reports have been provided. If the signed External QC Reviews form is not present, the DLAE should return packet to the LPA and request Quality Control Review. If signed External QC Reviews form is present, the DLAE forwards packet to the District SEP (or designee). The DLAE submits packet (or CD, if acceptable by district) to the district SEP (or designee) and requests review.
8. District SEP (or designee) completes appropriate fields in LP2000.
9. District SEP (or designee) initiates the 3 step Quality Control Review process found in the SER: Chapter 38.
10. Resource/Technical Specialists review technical report(s) in their specialty area and respective sections of Draft EA for technical accuracy and consistency between technical report and EA and sign the Internal Quality Certification form.

    Note: The purpose of the Resource/Technical Specialist Review is to ensure consistency between the conclusions of the specific technical study and the information summarized in the ED. A Resource/Technical Specialist Review will be completed for each resource topic discussed in the ED as necessary.

    The review will be conducted for those sections in each chapter that contain information about the individual resource or technical area under consideration (for example, Summary, Affected Environment, Environmental Consequences, and Avoidance, Minimization and/or Mitigation Measures, Cumulative Impacts), and will provide comments to ensure the following:

    - Accuracy of the information in the ED
    - Consistency between the technical study and the information as summarized in the ED
    - All avoidance, minimization or mitigation measures are appropriately characterized and are feasible to implement
    - All anticipated permit or approval actions have been accurately identified within the ED

The last district environmental technical specialist to review the Draft EA forwards the signed Internal Quality Certification form or list of deficiencies (if applicable) to the District SEP (or designee).

11. District SEP (or designee) checks to ensure that all of the Resource/Technical Specialists have signed the Internal QC Reviews form. SEP then forwards the Draft ED and technical studies to the NEPA Quality Control Reviewer.
12. NEPA Quality Control Reviewer reviews Draft EA for compliance with FHWA's NEPA standards, requirements, and policies, and signs the Internal QC Reviews form, or prepares list of deficiencies, then provides comments to the district Environmental Branch Chief/SEP (or designee). The purpose of the NEPA Quality Control Review is to ensure that the project complies with the Council on Environmental Quality NEPA regulations and FHWA regulations, policies and standards for the implementation of NEPA, and all other applicable federal environmental laws. The NEPA Quality Control Review will provide comments to ensure the following:
    - Adequacy of the project's purpose and need statement, logical termini, independent utility, and project description.
    - Completeness of the alternatives analysis, including information supporting the range of alternatives selected for study in the ED.
    - All proposed avoidance, minimization, and mitigation measures are properly identified, characterized, and are reasonable and practicable to implement.
    - Evidence of coordination with any federal, state, and LPAs necessary to comply with federal regulatory requirements.
    - Compliance with FHWA Environmental Impact and Related Procedures (23 CFR 771) and FHWA environmental policies and applicable guidance.
    - Compliance with other federal laws and regulations such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 404 of the Clean Water Act, E.O.11990-Protection of Wetlands, E.O. 11988-Floodplain Management, and Section 4(f) of the Department of Transportation Act.

    Note: The NEPA Quality Control reviewer must have the following qualifications:

    (1) At least 2 years of experience leading the development of, or performing consultant oversight for transportation environmental documents in California;

    (2) Demonstrated experience in preparing complex environmental documents or supervisory experience in a unit that reviews Environmental Impact Statements or Environmental Assessments, and

    (3) Certificate of Completion in the Caltrans NEPA Compliance Training.
13. The SEP reviews the environmental document to ensure that all NEPA QC Program standards are being met for the project, and that the document is technically accurate and consistent with the SER, the annotated outlines, and other applicable guidance. The SEP review must provide comments to ensure:

- The adequacy of the purpose and need statement, logical termini, independent utility, and project description.
- All project alternatives are adequately described to support anticipated project impacts and proposed avoidance, minimization, and mitigation measures.
- All applicable State and federal laws, regulations, and guidance documents have been adhered to relative to resource issues addressed in the ED.
- All resource discussions derived from technical studies and memoranda are accurately summarized in the ED.

The SEP must ensure that all required appropriate staff members have completed quality control reviews. If Individual Section 4(f) Evaluation is required, District SEP also requests HQ EC and Legal Office review the draft Individual Section 4(f) Evaluation, if applicable. Once reviewed and accepted by HQ EC, and Legal Office, the SEP recommends to DDD (Environmental) that title sheet is ready for signature.

Note: Under NEPA Assignment the DDD for Environmental is authorized to approve Individual Section 4(f) Evaluations. A stand-alone Individual Section 4(f) Evaluation and an Individual Section 4(f) Evaluation that is included with a Routine EA must be submitted to the appropriate HQ EC and Legal Office for review. No Individual Section 4(f) Evaluation may be approved until it has been reviewed and accepted by the HQ EC and a Legal review has been completed (for draft evaluation) or legal sufficiency determined (for final evaluation) by the appropriate Legal Office. Caltrans will coordinate with the FHWA prior to determining that any action constitutes a constructive use of land from a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site.

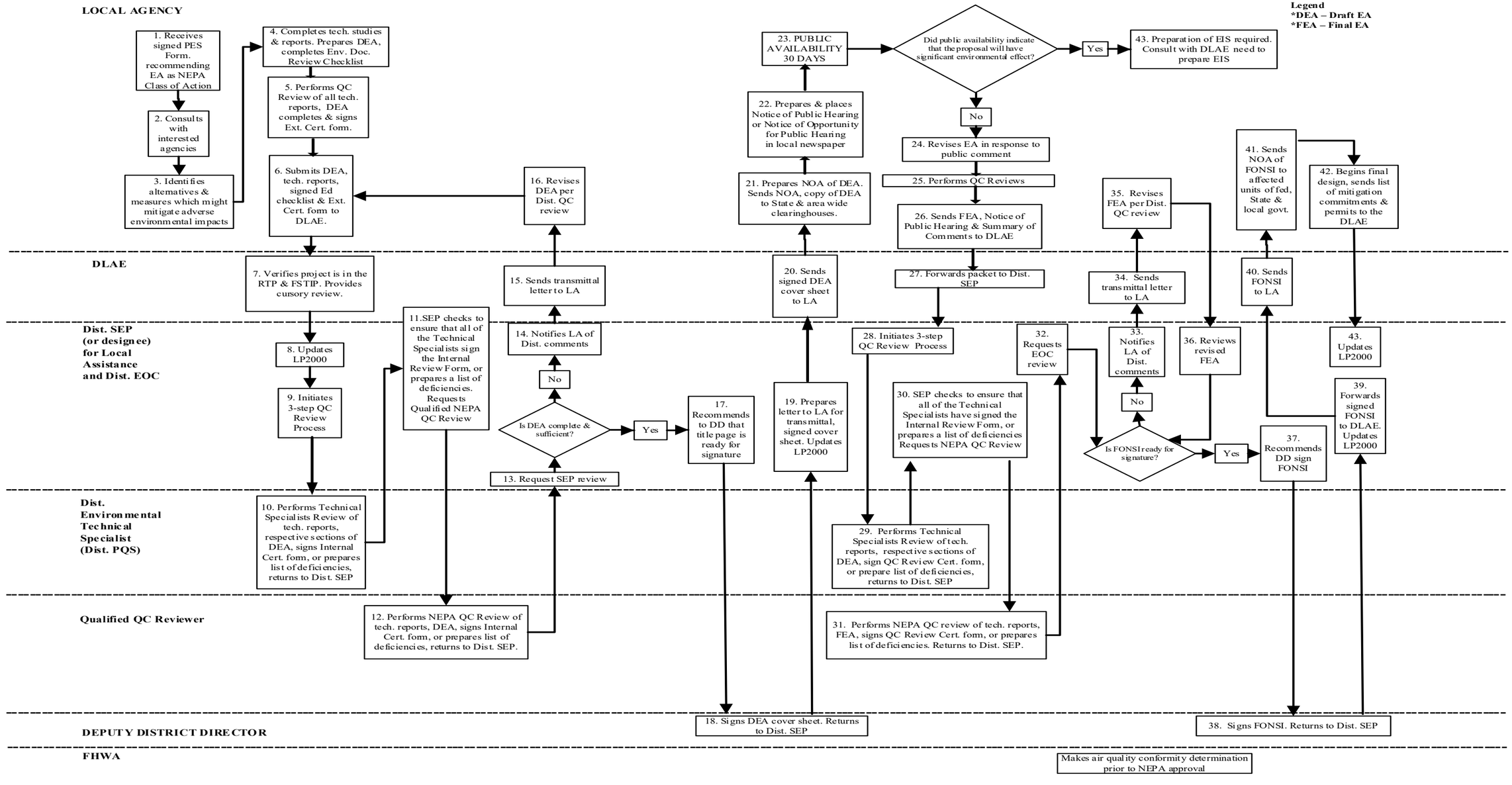


Figure 6-2: Routine Environmental Assessment (EA) Process Flowchart

Is Draft EA complete and sufficient? If "No," GO TO STEP #14. If "Yes," GO TO STEP #17.

14. District SEP (or designee) prepares transmittal letter or email to the LPA, or documents meeting (if applicable) with LPA, summarizing all comments received from district technical specialists.
15. District DLAE (or designee) sends transmittal letter or email outlining any deficiencies to the LPA; files copy of the letter, email or documented meeting with LPA in the project file and provides the SEP with a copy.
16. LPA modifies technical reports and/or Draft EA, according to Caltrans comments, and resubmits report(s) and Draft EA to the DLAE beginning at Step #6. The review and comment process (steps 6-16) are repeated until the district determines that the document is completed and sufficient (note: a revised External QC Reviews form is required for each iteration of the document).
17. District SEP signs and transmits letters to resource and regulatory agency initiating formal consultation and recommends to DD or designee, that title page is ready for signature.

    Note: Copies of the letters requesting formal consultation with resource and regulatory agencies and a copy of the letter requesting AQ Conformity Determination from FHWA must be retained by District SEP (or designee) in order to complete the required fields in LP2000. Copies of response letters from resource and regulatory agencies are also transmitted to the DLAE and the District SEP (or designee).
18. DD (or DDD-Environmental or EOC, if designated) signs Draft EA cover sheet and returns to District SEP (or designee).
19. District SEP (or designee) prepares transmittal letter or email to the LPA or documents meeting with LPA (if applicable) confirming availability of the signed Draft EA cover sheet.
20. District DLAE (or designee) sends transmittal letter or email to the LPA and files copy of the letter, email or documentation of meeting, if applicable, with the LPA regarding availability of the signed Draft EA in the project file. District SEP (or designee) completes appropriate fields in LP2000.
21. LPA prepares Notice of Availability (NOA) of EA, available at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates and sends NOA and a copy of the EA to the state and area clearinghouses. If Joint IS/EA, the submissions required by CEQA fulfill NEPA's requirement.
22. LPA prepares and places Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper.

    Note: 23 CFR 771.119(e) requires that the EA be available for minimum of 15 days in advance of the public hearing.
23. PUBLIC AVAILABILITY – 30 DAYS.

Did the EA or comments received from the public indicate that the proposed action will have a significant environmental effect? If "No," GO TO STEP #24. If "Yes," GO TO Section 6.10: Step by Step Procedures – Environmental Impact Statement, and discuss the need to prepare and EIS with the DLAE and District SEP STEP #43.

24. LPA prepares Final EA according to appropriate Caltrans Annotated Outline, provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates, and LPA completes the Environmental Document Review Checklist, cross-referencing items on the checklist with the corresponding page numbers found in the Draft EA as necessary to respond to public comments received.
25. LPA performs Quality Control review of the Final EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos and completed and signs the External Readiness Certification provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.
26. LPA sends Final EA, Environmental Document Review Checklist, Notice of Public Hearing or Notice of Opportunity for Public Hearing, and summary of comments received to the DLAE.
27. DLAE forwards packet to the District SEP (or designee).
28. District SEP sends a request for AQ Conformity Determination to FHWA: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/conformity-letter-a11y.docx and the District SEP (or designee) initiates 3-step Quality Control Review process by sending Final EA to appropriate district technical specialists and requesting a Quality Control Review. Per Chapter 38 of the SER, the Internal Peer review and the Technical Editor Review are not required as these steps are performed by the LPA or their consultants.

    Note**:** The conformity determination cannot be completed until there is a public comment period on the analysis. Most of the time the public circulation of the environmental document serves as the public circulation for the conformity analysis.
29. District Technical Resource Specialists review technical report(s) and respective sections of Final EA for technical accuracy and consistency between technical report and EA, sign the Internal QC Reviews form, and forward the signed form or (if applicable) list of deficiencies to the District SEP (or designee).

    Note: All consultations with resource/regulatory agencies must be complete and applicable documentation included in the ED prior to signing the Final EA. District SEP (or designee) updates LP2000.
30. District SEP (or designee) reviews the Final EA and technical report(s) to ensure that all Quality Control Program standards are being met for the project, that the document is technically accurate and consistent with the SER, the annotated outlines, and other applicable guidance.

    Note: For Local Assistance projects, only the Resource/Technical Specialist Review, NEPA Quality Control Review, and the Environmental Branch Chief/or SEP

Review are required. The NEPA Quality Control Review may occur concurrent with the SEP review.

31. NEPA Quality Control Reviewer reviews technical reports and Final EA for compliance with FHWA's NEPA standards, requirements, and policies; signs the Internal Quality Certification form or (if applicable) prepares list of deficiencies, and forwards to the District SEP (or designee).
32. District SEP drafts FONSI and requests EOC review of Final EA and FONSI.

Is Final EA complete and sufficient, and is FONSI ready for signature? If "No," GO TO STEP #33. If "Yes," GO TO STEP #37.

33. District SEP (or designee) prepares transmittal letter or email to the LPA, or documents meeting with LPA, if applicable, outlining deficiencies or reasons why a FONSI is not ready for approval, and forwards a copy to the DLAE.
34. District DLAE (or designee) sends transmittal letter or email outlining deficiencies to the LPA; files the letter, email or documents meeting with the LPA (if applicable) in the project file, and provides the SEP with a copy.
35. LPA revises Final EA accordingly and resubmits to the District SEP (or designee) via the DLAE, or if an EIS must be prepared, proceed to Section 6.10: Step by Step Procedures – Environmental Impacts Statement.
36. District SEP reviews the revised Final EA. If still deficient GO TO Step # 33. Steps 33 through 36 are repeated until the district determines that the document is complete and sufficient. Once sufficient, District SEP drafts the FONSI.
37. District SEP requests legal review if an Individual Section 4(f) Evaluation is required either stand-alone or part of ED. Once Legal Office has determined that the Individual Section 4(f) Evaluation is legally sufficient, the District SEP recommends to the DD (or DDD or EOC, if designated) that the Final EA and FONSI is ready for signature.
38. The DD (or DDD-Environmental or EOC, if designated) signs the Final EA cover sheet and FONSI and returns the signed FONSI to the District SEP (or designee).
39. District SEP (or designee) forwards signed Final EA cover sheet and FONSI to the DLAE and updates LP2000.
40. DLAE sends signed Final EA cover sheet and FONSI to the LPA and notifies LPA that they may begin final design.
41. LPA sends the NOA of the FONSI to the affected units of federal, state, and local government, and distributes Final ED to anyone that commented.
42. LPA begins final design and provides the DLAE with each of the following:
    - A list of all Mitigation Commitments
    - A copy of all environmental permits, agreements, or approvals (that is, Coastal, 401, 404, 1602 Series, Sec 10, State or Federal Encroachment and/or Right of Entry)
43. District SEP (or designee) updates LP2000.
44. After the FONSI has been signed, the SEP (or designee) may prepare a "Notice of Statute of Limitations on Claims" and submit to FHWA for publication in the Federal Register: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-

reference-ser/volume-1-guidance-for-compliance/ch-31-environmental-assessment-finding-of-no-significant-impact#statuteoflimitations.

An example of SOL notice can be found at https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/fhwa-sol-guidance-a11y.pdf.

6.9 Step-by-Step Procedures – Complex Environmental Assessment (EA)

Complex EAs are projects that involve one or more of the following:

- multiple location alternatives
- debate related to purpose and need
- strong public controversy
- issues of logical termini or independent utility
- individual Section 4(f) determinations
- complex Endangered Species Act issues
- numerous cumulative impacts
- high mitigation costs

The requirement to prepare an EA in general may come about through one or more of the following situations:

- Based on information gathered during the PES, where it is clear that the proposed project will not qualify for a CE or where unusual circumstances are likely. The LPA identifies the potential for significance under Section A of the PES form and recommends the development of an EA (under Section E of the PES form). The DLAE and District SEP determine that an EA is the appropriate NEPA Class of Action with email concurrence of the HQ EC and sign the PES form.
- During or upon completion of technical studies when it becomes apparent that the proposed project will not qualify for a CE or that unusual circumstances exist, the decision to prepare an EA is made by the District SEP in collaboration with the DLAE and with email concurrence of the HQ EC, and must be clearly documented for the project file. A meeting should be conducted with the LPA to discuss why the project is not a CE and to advise the LPA on the requirements for an EA. The decision to follow the Complex EA process will be made by the District SEP as soon as sufficient information is available.

The Complex Environmental Assessment (EA) process is shown in Figure 6-3: Complex Environmental Assessment (EA) Process Flowchart. The numbers on the flowchart correlate with the step-by-step procedures within this section.

1. LPA receives the signed PES form recommending a complex EA as the NEPA Class of Action.
2. LPA prepares the Scope of Work/Consultant Contract (if necessary) according to LAPM Chapter 10: Consultant Selection, and the requirements identified in the PES form and policy and guidance set forth in the SER.
3. LPA identifies alternatives and measures to minimize the potential for adverse environmental impacts.

4. LPA completes technical studies and reports, prepares the Administrative Draft EA according to the appropriate Caltrans Annotated Outline. LPA completes the Environmental Document Review Checklist cross-referencing items on the checklist with the corresponding page numbers found in the Administrative Draft EA.
5. LPA performs Quality Control Review of all technical reports and Administrative Draft EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and completes and signs External Readiness Certification form prior to submitting the Draft EA and technical studies to DLAE. External Readiness Certification form is provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.
6. LPA signs Administrative Draft EA title page and submits the following completed and original signed documents to the DLAE:
    - Environmental Document Review Checklist
    - External Readiness Certification form
    - Five hard copies of Administrative Draft EA (or an electronic copy, if requested)
    - Two hard copies of each technical report
    - Electronic copy of each technical report
7. DLAE date stamps the Administrative Draft EA on date received, re verifies that the project is in the FSTIP. Provides a cursory review of packet to ensure that the original fully signed Environmental Document Review Checklist, the completed fully signed External Readiness Certification form, and the appropriate numbers of copies of the Administrative Draft EA and technical reports have been provided. Submits packet (or CD, if requested) to District SEP (or designee).
8. District SEP (or designee) updates LP2000.
9. District SEP (or designee) initiates 5-step Quality Control Review process of the Administrative Draft EA and technical studies by distributing one copy of the applicable technical report and one copy of the Administrative Draft EA to each appropriate district technical specialist, and requesting that each reviewer perform district Quality Control Review of the technical report(s) and the Administrative Draft EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment.
10. Resource/Technical Specialists review technical report(s) in their specialty area and respective sections of Administrative Draft EA for technical accuracy and consistency between technical report and EA and sign Internal Quality Certification form.

    Note: The purpose of the district Resource/Technical Specialists review is to ensure consistency between the conclusion of the specific technical study with information summarized in the Environmental Document (ED). A Resource/Technical Specialist Review will be completed for each resource topic discussed in the ED. The review will be conducted for those sections in each chapter that contain information about the individual resource or technical area under consideration (for example, Summary, Affected Environment, Environmental Consequences, and Avoidance, Minimization, and/or Mitigation Measure, Cumulative Impacts) and will provide comments to ensure the following:

    - Accuracy of the information in the ED;

- Consistency between the technical study and the information as summarized in the ED;
- All avoidance, minimization, or mitigation measures are appropriately characterized and are feasible to implement; and
- All anticipated permit or approval actions have been accurately identified within the ED.

The last district environmental technical specialist to review the Draft EA forwards the signed Internal Quality Certification form or list of deficiencies (if applicable) to the District SEP (or designee).

11. District SEP (or designee) checks to ensures that all of the Resource/Technical Specialists have signed the Internal Quality Certification form. SEP then forwards the Draft environmental document and technical studies to the NEPA Quality Control Reviewer.
12. NEPA Quality Control Reviewer reviews the Administrative Draft EA for compliance with FHWA's NEPA standards, requirements, and policies.

    Note: The Caltrans NEPA Quality Control reviewer must have the following qualifications:

    (1) At least 2 years of experience leading the development of, or performing consultant oversight for transportation environmental documents in California;

    (2) Demonstrated experience in preparing complex environmental documents or supervisory experience in a unit that reviews Environmental Impact Statements or Environmental Assessments, and

    (3) Certificate of Completion in the Caltrans-Division of Environmental Analysis (DEA) NEPA Compliance Training.

The purpose of the NEPA Quality Control Review is to ensure that the project complies with the Council on Environmental Quality (CEQ) NEPA regulations and FHWA regulations, policies, and standards for the implementation of NEPA and all other applicable federal environmental laws. The NEPA Quality Control Review will provide comments to ensure the following:

- Adequacy of the project's purpose and need statement, logical termini, independent utility, and project description;
- Completeness of the alternatives analysis, including information supporting the range of alternatives selected for study in the document;
- All proposed avoidance, minimization, and mitigation measures are properly identified, characterized, and are reasonable and practicable to implement;
- Evidence of coordination with any federal, state, and LPAs necessary to comply with federal regulatory requirements;
- Compliance with FHWA Environmental Impact and Related Procedures (23 CFR 771) and FHWA environmental policies and applicable guidance; and
- Compliance with other federal laws and regulations, such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 404 of the Clean Water Act, Executive Order 11990-Protection of Wetlands, Executive Order 11988-Floodplain Management, and Section 4(f) of the Department of Transportation Act.

NEPA Quality Control Reviewer signs the Internal Quality Certification form, or prepares list of deficiencies (if applicable), then provides comments to the district Environmental Branch Chief/SEP (or designee).

13. The SEP performs district quality control review of Administrative Draft EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and considers whether the Administrative Draft EA is ready for HQ review.

Is Administrative Draft EA ready for HQ review? If "No," GO TO STEP #14. If "Yes," GO TO STEP #17.

14. When Administrative Draft or technical reports are deficient, District SEP (or designee) prepares transmittal letter or email to the LPA, or documents telephone conversation or meeting with the LPA (if applicable) outlining all deficiencies, and requests that the Administrative Draft EA be revised as necessary based on the district/NEPA Quality Control reviewer's comments. Comments received from all 3 levels of review will form the basis of revisions to the Administrative Draft EA.
15. District DLAE (or designee) sends transmittal letter or email to the LPA and files a copy of the letter, email, or documented meeting (if applicable) with the LPA in the project file, and provides a copy to the SEP.
16. LPA revises Administrative Draft EA per district and NEPA Quality Control reviewer's comments and resubmits at Step #6.
17. When Administrative Draft EA and technical reports are complete and sufficient, District SEP submits the following to the HQ EC and requests a Quality Assurance Review of the Administrative Draft EA:

    - Transmittal Memo signed by the district/region SEP requesting review
    - Five copies of the Administrative Draft EA or CD
    - One copy of each technical study (or on CD, if requested)
    - One copy of LPA completed Environmental Document Review Checklist
    - One copy of LPA completed and signed External Readiness Certification form
    - One copy of completed and signed Internal Quality Certification form

    The Legal Office will review EAs, as time is available, at the request of the district/ region. If an Individual Section 4(f) Evaluation is required, District SEP also requests HQ EC and Legal Office review the draft Individual Section 4(f) Evaluation. Once reviewed and accepted by HQ EC, Legal Office and the district EOC, recommends to DDD-Environmental that the title page is ready for signature.
18. HQ EC performs a QA Review of the environmental document to determine if the Administrative Draft EA is substantively complete and ready for interdisciplinary quality assurance review.

    In making this determination, the HQ EC will confirm that the administrative environmental document follows the annotated outline and includes the following:

    - Correct title page

- All chapters and necessary resource topics are present and complete
- All appendices are present and complete
- All required correspondence relative to procedural and regulatory requirements
- Complete, clear, legible, and logical exhibits and figures

Once the submittal is deemed complete, the review period is 22 business days.

HQ EC will lead an interdisciplinary team of HQ technical specialists to review the document. Technical specialists will review pertinent portions of the document for accuracy to ensure that regulatory requirements are appropriately addressed. The project technical studies will be used in support of the review.

The HQ EC will review the entire environmental document and perform a NEPA quality assurance review.

Did HQ EC find the Administrative Draft EA complete? If "No," GO TO STEP #19. If "Yes," GO TO STEP #22.

19. When the HQ EC finds the Administrative Draft EA incomplete, the HQ EC will consolidate and transmit comments on the Administrative Draft EA to the District SEP (or designee), who in turn drafts a transmittal memo to the LPA outlining HQ EC quality assurance comments and requesting the LPA make the necessary revisions to the Administrative Draft EA.
20. LPA revises Administrative Draft EA in response to HQ EC comments and resubmits revised Draft to District SEP (or designee).

    Note: District/Region and HQ EC staff are available to assist LPA with: (1) clarification regarding comments, (2) resolution of issues identified in the comments, and (3) in determining adequate response to comments, as needed. A meeting or workshop may be convened by the HQ EC or the district/region/DLAE to facilitate this process.
21. District SEP (or designee) reviews the revised Administrative Draft EA and submits revised Internal Quality Certification form to reflect that all comments have been appropriately addressed and submits the following materials to HQ EC for HQ Pre-Approval Review:
    - Transmittal Memo signed by the district/region SEP stating that the document has been revised pursuant to HQ EC comments and requesting pre-approval review.
    - One copy of the revised environmental document
    - One copy of revised environmental document with track changes
    - One copy of comments with a response key
    - One copy of the completed Environmental Document Review Checklist, as revised
    - One copy of the signed revised Internal Quality Certification form

22. HQ EC reviews the revised Administrative Draft EA to ensure that all comments have been adequately addressed and the Administrative Draft EA is ready for signature. The review period is 10 business days. HQ EC must concur that its comments have been addressed. At this point, the HQ EC will take one of the following actions:
    - Find that minor changes are needed and coordinate directly with the document preparer to make the changes. GO TO STEP #19.
    - Determine that substantive issues remain and inform the District SEP in writing of the deficiencies and instruct them to resubmit the document upon subsequent revision. GO TO STEP #19.
    - Conclude that the environmental document is adequate and ready for circulation. GO TO STEP #24.
23. HQ EC recommends in writing that the revised Administrative Draft EA is ready for signature.
24. District SEP and the HQ EC will recommend to the DD (or DDD- Environmental or EOC, if designated) that the title sheet is ready for signature.
25. DD (or DDD-Environmental or EOC, if designated) signs the Draft EA title sheet and returns the signed title sheet to the District SEP (or designee).

    Note: The DD may delegate signature authority to the DDD for Environmental or the EOC managing the environmental assessment unit that reviewed the document.
26. District SEP (or designee) prepares and sends a letter or email to the LPA, or contacts the LPA via telephone, to inform them that the Draft EA title sheet has been signed and that they may begin public circulation.
27. District SEP (or designee) provides a copy of the signed Draft EA title sheet to the DLAE and includes a copy of the signed Draft EA title sheet and transmittal in the project file.
28. LPA prepares the NOA of the EA and sends NOA and a copy of the Draft EA to the State and area wide clearinghouses. If Joint IS/EA, the submissions required by CEQA fulfills the NEPA requirement.
29. LPA prepares and places Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper.

    Note: 23 CFR 771.119(e) requires that the EA be available for minimum 15 days in advance of the public hearing.

30. PUBLIC AVAILABILITY – 30 DAYS

Did the EA or comments received from the public indicate that the proposal will have a significant environmental effect? If "No," GO TO STEP #31. If "Yes," discuss the need to prepare an EIS with DLAE and District SEP.

31. LPA prepares Administrative Final EA according to appropriate Caltrans Annotated Outline and LPA completes the Environmental Document Review Checklist cross-referencing items on the checklist with the corresponding page numbers found in the Draft EA as necessary to respond to public comments received.

Completes and signs the External Readiness Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

32. LPA drafts FONSI recommendation.
33. LPA sends the Administrative Final EA, Notice of Public Hearing, Summary of Comments received, and original signed External Readiness Certification form to the DLAE.

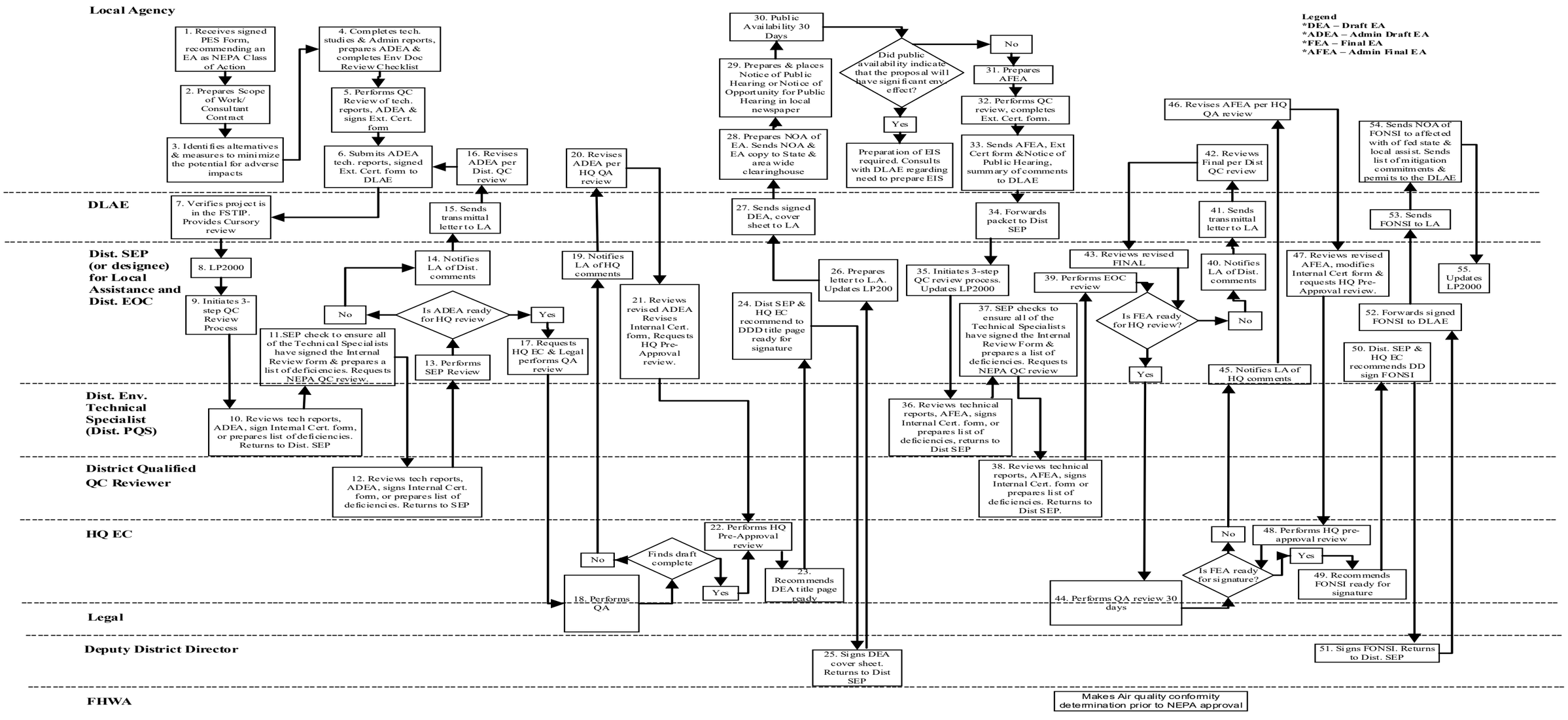


Figure 6-3: Complex Environmental Assessment (EA) Process Flowchart

34. DLAE date stamps and forwards Administrative Final EA packet to the District SEP (or designee). District SEP sends request for AQ Conformity Determination to FHWA. FHWA makes Air Quality conformity determination prior to NEPA approval.
35. District SEP (or designee) initiates 3-step Quality Control Review (Resource/Technical Specialist Review, NEPA Quality Control Review, and Environmental Branch Chief Review/SEP) by sending one copy of the technical report and one copy of the Final EA to all applicable Resource/Technical Specialists and requesting that each specialist perform district Quality Control Review of the technical report(s) and the Administrative Final EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.
36. Resource/Technical Specialists review technical report(s) in their specialty area and respective sections of Administrative Final EA for technical accuracy and consistency between technical report and EA and sign Internal Quality Certification form.

    The last district environmental technical specialist to review the Draft EA forwards the signed Internal Quality Certification form or list of deficiencies (if applicable) to the District SEP (or designee).
37. District SEP (or designee) checks to ensures that all the Resource/Technical Specialists have signed the Internal Quality Certification form. SEP then forwards the Draft environmental document and technical studies to the NEPA Quality Control Reviewer.
38. NEPA Quality Control Reviewer reviews the Administrative Final EA for compliance with FHWA's NEPA standards, requirements, and policies.

    Note: The Caltrans NEPA Quality Control reviewer must have the following qualifications:

    (1) At least 2 years of experience leading the development of, or performing consultant oversight for transportation environmental documents in California,

    (2) Demonstrated experience in preparing complex environmental documents or supervisory experience in a unit that reviews Environmental Impact Statements or Environmental Assessments, and

    (3) Certificate of Completion in the Caltrans-Division of Environmental Analysis (DEA) NEPA Compliance Training.

    The purpose of the NEPA Quality Control Review is to ensure that the project complies with the Council on Environmental Quality (CEQ) NEPA regulations and FHWA regulations, policies, and standards for the implementation of NEPA and all other applicable federal environmental laws. The NEPA Quality Control Review will provide comments to ensure the following:

    - Adequacy of the project's purpose and need statement, logical termini, independent utility, and project description;
    - Completeness of the alternatives analysis, including information supporting the range of alternatives selected for study in the document;
    - All proposed avoidance, minimization, and mitigation measures are properly identified, characterized, and are reasonable and practicable to implement;

- Evidence of coordination with any federal, state, and LPAs necessary to comply with federal regulatory requirements;
- Compliance with FHWA Environmental Impact and Related Procedures (23 CFR 771) and FHWA environmental policies and applicable guidance; and
- Compliance with other federal laws and regulations, such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 404 of the Clean Water Act, Executive Order 11990-Protection of Wetlands, Executive Order 11988-Floodplain Management, and Section 4(f) of the Department of Transportation Act.

NEPA Quality Control Reviewer signs the Internal Quality Certification form, or prepares list of deficiencies (if applicable), then provides comments to the district Environmental Branch Chief/SEP (or designee).

39. The SEP performs district quality control review of Administrative Final EA according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and considers whether the Administrative Final EA is ready for HQ review.

Is Administrative Final EA ready for HQ review? If "No," GO TO STEP #40. If "Yes," GO TO STEP #44.

40. District SEP (or designee) prepares a letter to the LPA, or notifies the LPA via email, or meeting regarding deficiencies in the Administrative Final EA.
41. District DLAE (or designee) sends transmittal letter or email to the LPA and files a copy of the letter, email, or documented telephone conversation or meeting (if applicable) with the LPA in the project file, and provides a copy to the SEP.
42. LPA revises Administrative Final EA accordingly and resubmits to District SEP (or designee) at Step #43.
43. District SEP reviews the revised Administrative Final EA and determines whether the revised Administrative Final EA is ready for HQ review. If "Yes," District SEP forwards the revised Administrative Final EA to HQ EC and requests Quality Assurance Review. If "No," District SEP (or designee) notifies LPA of deficiencies. Steps #40, #41, #42 and #43 are repeated until environmental document is ready for review. When Administrative Final EA is complete and sufficient, District SEP submits the following to the HQ EC and requests a Quality Assurance Review of the Administrative Final EA:
    - Transmittal Memo signed by the District/Region SEP stating that the document has been revised pursuant to the legal review or legal sufficiency review and requesting pre-approval review
    - One copy of the revised ED or 4(f)
    - One copy of revised ED or 4(f) with track changes (not read-only) showing additions and deletions
    - One copy of comments with a response key
    - One copy of LPA completed Environmental Document Review Checklist
    - One copy of LPA completed and signed External Readiness Certification form
    - One copy of completed and signed Internal Quality Certification form

The Legal Office will review EAs, as time is available, at the request of the district/ region. If an Individual Section 4(f) Evaluation is required, District SEP also requests HQ EC and Legal Office review the draft Individual Section 4(f) Evaluation. Once reviewed and accepted by HQ EC, Legal Office and the District SEP, recommends to DDD-Environmental that the title page is ready for signature.

44. HQ EC performs a QA Review of the environmental document to determine if the Administrative Final EA is substantively complete and ready for interdisciplinary quality assurance review.

    In making this determination, the HQ EC will confirm that the administrative environmental document follows the annotated outline and includes the following:

    - Correct title page
    - All chapters and necessary resource topics are present and complete
    - All appendices are present and complete
    - All required correspondence relative to procedural and regulatory requirements
    - Complete, clear, legible, and logical exhibits and figures

    Once the submittal is deemed complete, the review period is 30 days.

    HQ EC will lead an interdisciplinary team of HQ technical specialists to review the document. Technical specialists will review pertinent portions of the document for accuracy to ensure that regulatory requirements are appropriately addressed. The project technical studies will be used in support of the review.

    HQ EC will review the entire environmental document and perform a NEPA quality assurance review.

Is Administrative Final EA ready for signature? If "No," notify District SEP (or designee) and GO TO STEP #45. If "Yes," GO TO STEP #49.

45. HQ EC (or designee) notifies the LPA of deficiencies.
46. LPA revises Administrative Final EA per HQ Quality Assurance Review and resubmits revised Administrative Final EA to the District SEP (or designee).
47. District SEP (or designee) reviews revised Administrative Final EA, modifies Internal Quality Certification form, as needed, and requests HQ pre-approval review.
48. HQ EC performs HQ pre-approval review.

Is Administrative Final EA ready for signature? If "No," GO TO STEP #45. If "Yes," GO TO STEP #49.

49. HQ EC recommends FONSI ready for signature.
50. District SEP recommends DD sign FONSI.
51. DD (or designee) signs FONSI and returns signed FONSI to District SEP.
52. District SEP forwards signed FONSI to DLAE and updates LP2000.
53. DLAE sends signed FONSI to the LPA and notifies them that they may begin final design.

54. LPA sends the NOA of the FONSI to the affected units of federal, state, and local government, begins final design, and provides the DLAE with each of the following:
    - A list of all Mitigation Commitments
    - A copy of all Environmental Permits (such as Coastal, 401, 404, Sec 10, Encroachment or Right of Entry)
55. District SEP updates LP2000.

    After the FONSI has been signed, the SEP (or designee) may prepare a "Notice of Statute of Limitations on Claims" and submit to FHWA for publication in the Federal Register. An example of SOL notice can be found at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/fhwa-sol-guidance-a11y.pdf.

6.10 Step-by-Step Procedures – Environmental Impact Statement (EIS)

The requirement to prepare an EIS may come about through one or more of the following situations:

- Based on information gathered during PES, it becomes clear that the proposed project will have a significant impact, or
- Technical studies or EA conclude that the project will cause a significant impact.

The Environmental Impact Statement process is shown in Figure 6-4: Environmental Impact Statement Process Flowchart. The numbers on the flowchart correlate with the step-by-step procedures within this section.

1. LPA receives signed PES Form recommending EIS.
2. LPA requests a meeting with DLAE, District SEP, and HQ EC (if available) to discuss the EIS process, EIS document requirements, and identify potential cooperating and participating agencies.
3. LPA prepares letters to cooperating and participating agencies inviting them to participate in the development of the environmental document. Some of the agencies that may have an interest in the project are listed under Section C of the PES Form. State agencies are considered Responsible and Trustee agencies (CDFW, State Lands, Department of Parks and Recreation) under CEQA. Federal agencies are considered Cooperating Agencies. FHWA's Revised Guidance on Cooperating Agencies provides examples of letters inviting agencies to participate in the environmental process. LPA also drafts NOI (https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/noi-sample-text-a11y.docx). Typically, federal agencies have accepted their role (as Cooperating Agencies) prior to publication of the NOI and are listed in the NOI (note: a coordination plan must now be established no later than 90 days after the date of publication of an NOI and a schedule is now REQUIRED as part of the coordination plan).
4. LPA transmits NOI and invitation letters to the DLAE.
5. DLAE forwards letters and draft NOI to the District SEP (or designee).
6. District SEP sends the invitation letters to federal agencies.
7. District SEP forwards draft NOI to FHWA for publication in the FR.

8. FHWA publishes the NOI in the FR.
9. LPA arranges and conducts the scoping meeting to determine the scope of issues to be addressed, and identify significant issues related to the proposed actions.
10. LPA undertakes technical studies and prepares technical reports (as required) according to the guidance set forth in the SER.
11. LPA prepares Administrative Draft EIS consistent with Caltrans Annotated Outline in the SER provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates#aos.
12. LPA completes the Environmental Document Review Checklist, provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates#formsnepa.
13. LPA performs Quality Control Review of all technical reports and Administrative Draft EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and completes and signs the External Readiness Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.
14. LPA submits the following completed and original signed documents to DLAE:
    - Environmental Document Review Checklist
    - External QC Reviews form
    - Five hard copies of Administrative Draft EIS
    - Electronic copy of Administrative Draft EIS
    - Two hard copies of each Technical Report
    - Electronic copy of each Technical Report
15. DLAE: (1) date stamps Administrative Draft EIS on date received, (2) verifies again that project is in the FSTIP, (3) provides cursory review of packet to ensure that the original fully signed External QC Reviews form and the appropriate number of copies of the Administrative Draft EIS and technical reports have been provided, and (4) submits packet (or CD, if requested) to District SEP (or designee).
16. District SEP (or designee) updates the LP2000.
17. District SEP initiates and coordinates the Quality Control Review process according to Caltrans Environmental Document Quality Control Program under NEPA Assignment. Note: The LPA is responsible for Peer Review and Technical Editor Review of the environmental documents submitted to Caltrans. The District SEP initiates the review process of Administrative Draft EIS and technical studies by distributing one copy of the applicable technical report and one copy of the Administrative Draft EIS to each appropriate district technical specialist, and request that each reviewer perform district quality control review of the technical report(s) and the Administrative Draft EIS.
18. District technical specialists conduct quality control review of technical report(s) and respective sections of the Administrative Draft EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at:

https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.

The purpose of the Resource Technical Specialist Review is to ensure the accuracy and internal consistency of specific resource studies and technical information summarized in the Administrative Draft EIS. A Resource Technical Specialist Review will be completed for each resource topic discussed in the ED. The review will be conducted for those sections in each chapter that contain information about the individual resource or technical area under consideration (for example, Summary, Affected Environment, Environmental Consequences, and Avoidance, Minimization, or Mitigation Measures, Cumulative Impacts) and will provide comments to ensure the following:

- Accuracy of the information in the ED;
- Consistency between the technical study and the information as summarized in the ED;
- All avoidance, minimization, or mitigation measures are appropriately characterized and are feasible to implement; and
- All anticipated permit and/or approval actions have been accurately identified within the ED.

After reviewing the technical report and the Administrative Draft EIS, the district technical specialists sign the Internal Quality Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates, and provides District SEP with either a list of deficiencies, or the signed Internal QC Review form.

19. District SEP performs review of Administrative Draft EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.

    The District SEP (or designee) checks to ensure all the Technical Specialists have signed the Internal Quality Certification form and requests NEPA Quality Control Review of Administrative Draft EIS and technical studies.

20. District NEPA Quality Control Reviewer reviews the Administrative Draft EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.

    The NEPA QC Reviewer signs the Internal Quality Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates or (if applicable) prepares list of deficiencies and forwards signed form or list of deficiencies to the District SEP.

    Note: The Caltrans NEPA Quality Control Reviewers must have the following qualifications: (1) at least two years of experience leading the development of, or performing consultant oversight for transportation environmental documents in California; (2) demonstrated experience in preparing complex environmental documents or supervisory experience in a unit that reviews Environmental Impact

Statements (EISs) or Environmental Assessments; and (3) Certificate of Completion in Caltrans-Division of Environmental Analysis (DEA) NEPA Compliance Training.

The purpose of the NEPA Quality Control Review is to ensure that the project complies with the Council of Environmental Quality (CEQ) NEPA regulations and FHWA regulations, policies, and standards for the implementation of NEPA, and all other applicable federal environmental laws. The NEPA Quality Control Review will provide comments to ensure the following:

- Adequacy of the project's purpose and need statement, logical termini, independent utility, and project description;
- Completeness of the alternatives analysis, including information supporting the range of alternatives selected for study in the environmental document (ED);
- All proposed avoidance, minimization, and mitigation measures are properly identified, characterized, and are reasonable and practicable to implement;
- Evidence of coordination with any federal, state, and LPAs necessary to comply with federal regulatory requirements;
- Compliance with FHWA Environmental Impact and Related Procedures (23 CFR 771) and FHWA environmental policies and applicable guidance; and
- Compliance with other federal laws and regulations, such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 404 of the Clean Water Act, Executive Order 11990-Protection of Wetlands, Executive Order 11988-Floodplain Management, and Section 4(f) of the Department of Transportation Act.

21. District SEP requests EOC review Administrative Draft EIS.
22. District SEP performs district quality control review according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos

    SEP signs the Internal Quality Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates or prepares list of deficiencies (if applicable).

    The SEP review ensures that NEPA QC Program standards are being met for the project, and that the document is technically accurate and consistent with the SER, the annotated outlines, and other applicable guidance. The SEP review must provide comments to ensure:

    - The adequacy of the purpose and need statement, logical termini, independent utility, and project description;
    - All project alternatives are adequately described to support anticipated project impacts and proposed avoidance, minimization, and mitigation measures;

- All applicable State and federal laws, regulations, and guidance documents have been adhered to relative to resource issues addressed in the ED;
- All resource discussions derived from technical studies and memoranda are accurately summarized in the ED.

The SEP must ensure that all the required appropriate staff members have completed quality control reviews.

23. District SEP reviews the Internal QC Reviews form and considers all comments received during district quality control review.

Is Administrative Draft EIS complete and sufficient from the district's perspective? If "No," GO TO STEP #24. If "Yes," GO TO STEP #26.

24. When Administrative Draft EIS or technical reports are deficient, the District SEP (or designee) prepares a transmittal letter or email to the LPA, or contacts the LPA via telephone, to inform them of all deficiencies and requests that the Administrative Draft EIS be revised as necessary, based on the district quality control review. Comments received from all reviewers will form the letter or e-mail requesting revisions to the administrative environmental document. The District SEP sends the letter or email to the LPA, provides a copy to the DLAE, and updates appropriate fields in LP2000.
25. The LPA revises the Administrative Draft EIS according to the comments received and resubmits the draft (see STEPs #14 through 23).
26. When the Administrative Draft EIS and technical reports are complete and sufficient, the District SEP notifies HQ EC and the Legal Office that an Administrative Draft EIS will be submitted for their review in one week. To initiate HQ EC review, District SEP submits the following to the HQ EC and requests a Quality Assurance Review of Administrative Draft EIS (DLAE must be copied on all correspondence between the district, HQ EC, and legal):

    - Transmittal Memo signed by the District SEP, requesting review of Administrative ED
    - Five paper copies of the Administrative ED
    - Five electronic copies of the Administrative Draft EIS
    - One paper copy of each technical study
    - One electronic copy of each technical study
    - One copy of LPA completed Environmental Document Review Checklist
    - One copy of LPA completed and signed External Readiness Certification form
    - One copy of completed and signed Internal Quality Certification form

    To initiate Legal Division review, the District SEP submits the following to HQ Legal and requests a legal review on the Administrative Draft EIS.

    - Transmittal Memo signed by the District SEP, requesting legal review of draft EIS
    - One paper copy of the Administrative Draft EIS
    - One electronic copy of the Administrative Draft EIS

- One electronic copy of each technical study
- One copy of the LPA completed Environmental Document Review Checklist
- One copy of the completed and signed Internal Quality Certification form
- One copy of the LPA completed and signed External Readiness Certification form

27. HQ EC performs a quality assurance review of the Administrative Draft EIS to determine if the Administrative Draft EIS is substantively complete and ready for interdisciplinary quality assurance review. In making this determination, the HQ EC will confirm that the administrative environmental document follows the annotated outline and includes the following:

    - Correct title page
    - All chapters and necessary resource topics are present and complete
    - All appendices are present and complete
    - All required correspondence relative to procedural and regulatory requirements
    - Complete, clear, legible, and logical exhibits and figures

    Once the submittal is deemed complete, the review period is 22 business days. HQ EC will then lead an interdisciplinary team of HQ technical specialists to review the Administrative Draft EIS. HQ technical specialists will review pertinent portions of the Administrative Draft EIS for accuracy to ensure that regulatory requirements are appropriately addressed. The project technical studies will be used in support of the review. HQ EC will review the entire Administrative Draft EIS, perform the NEPA Quality Assurance Review according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.

    The responsible Legal Office performs a legal review of the Administrative Draft EIS, concurrently and independently of HQ review, to determine if significant environmental issues are being appropriately addressed. The Legal Office will provide its legal review comments to the District SEP with a copy to HQ EC. Comments from the Legal Office are independent from HQ EC comments.

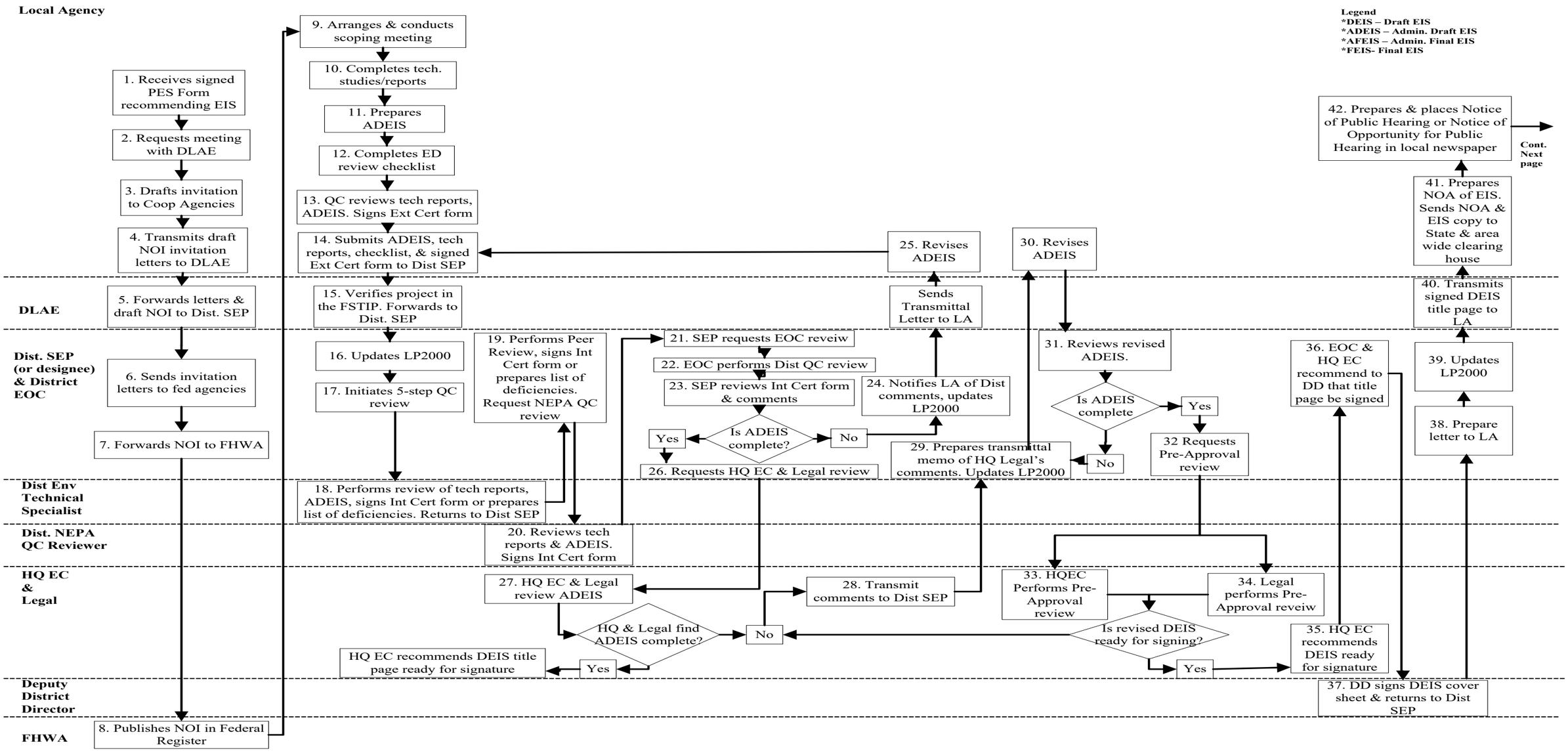


Figure 6-4: Environmental Impact Statement (EIS) Process Flowchart

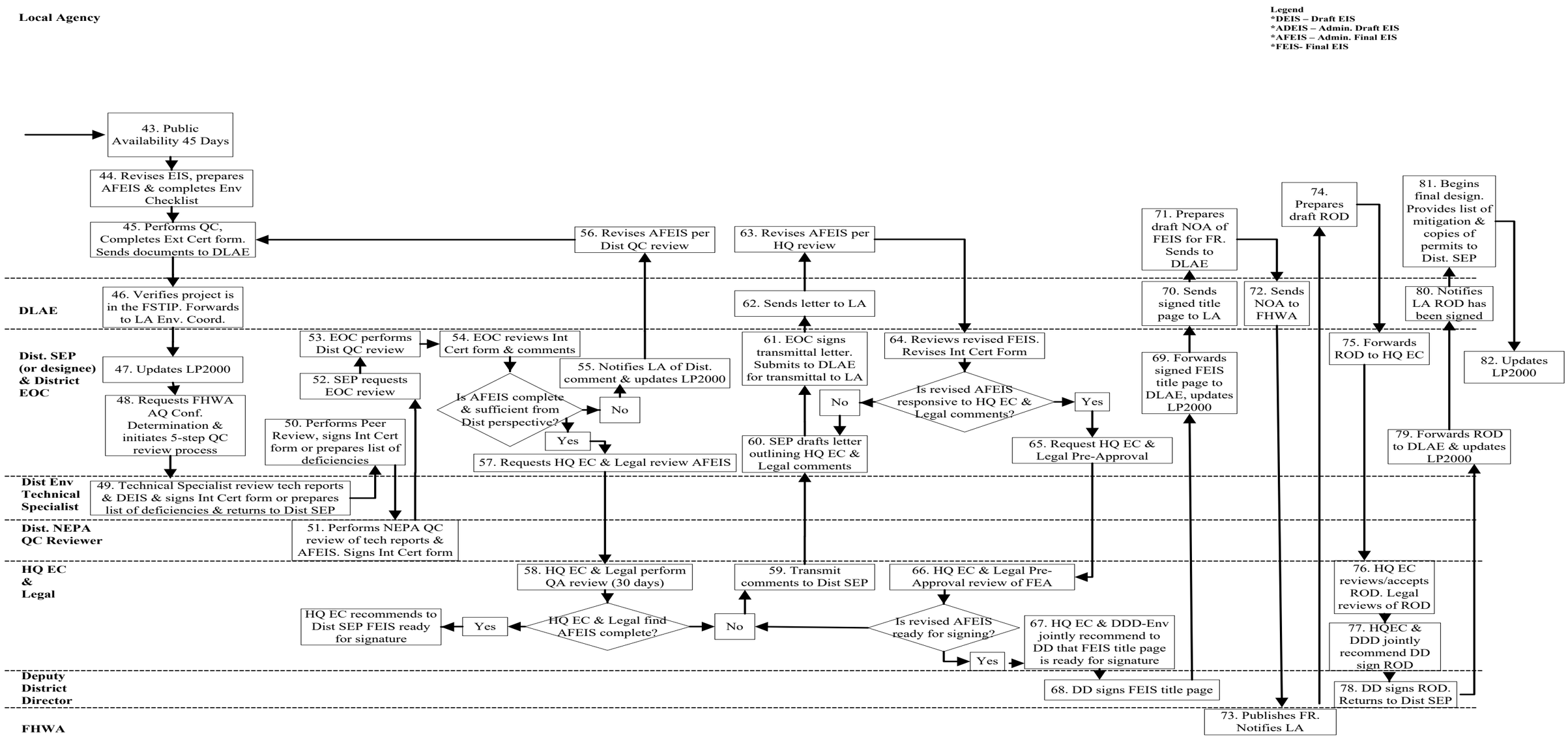


Figure 6-4: Environmental Impact Statement (EIS) Process Flowchart- continued

Did HQ EC and Legal find the Administrative Draft EIS complete? If "Yes," HQ EC will recommend to the District SEP that the Administrative Draft EIS title page is ready for signature. GO TO STEP #35. If "No," GO TO STEP #28.

28. When HQ EC or HQ Legal find Administrative Draft EIS incomplete, HQ EC will consolidate all comments received from the interdisciplinary team and transmit comments on Administrative Draft EIS to the District SEP. A copy of HQ EC comments will be provided to the responsible Legal Office.

    The Legal Office will also transmit its comments to the District SEP for local assistance with a copy to HQ EC. Comments from Legal Office are independent from HQ EC comments.

29. District SEP (or designee) prepares a letter or email to the LPA, or contacts the LPA via telephone, to inform them of HQ EC and HQ Legal comments, and requests LPA make the necessary revisions to the Administrative Draft EIS. District SEP (or designee) provides the DLAE with a copy of the letter or email, and updates LP2000.

    Note: HQ Legal comments remain internal to Caltrans. Only a summary of HQ Legal comments must be provided to the LPA. District and HQ EC staff should assist the LPA with: (1) clarification regarding comments, (2) resolution of issues identified in the comments, and (3) in determining adequate response to comments, as needed. A meeting or workshop may be convened by the HQ EC or the district/region/DLAE to facilitate this process.

30. LPA revises Administrative Draft EIS in response to all comments received and resubmits revised Administrative Draft EIS to the DLAE/District SEP.

31. District SEP (or designee) reviews revised Administrative Draft EIS and revises Internal Quality Certification form, as appropriate, to reflect that all comments have been appropriately addressed.

Is revised Administrative Draft EIS responsive to HQ comments and ready for HQ EC pre-approval review? If "No," GO TO STEP #29. Steps #29 through #31 are repeated until all comments are adequately addressed. If "Yes," GO TO STEP #32.

32. District SEP submits the following materials to the HQ EC and requests HQ Pre-Approval Review:

    - Transmittal Memo signed by the District SEP stating that the Administrative Draft EIS has been revised pursuant to HQ EC comments and requesting pre-approval review
    - One copy of the revised ED
    - One copy of revised ED with track changes
    - One copy of comments with a response key
    - One copy of the completed Environmental Document Review Checklist, as revised
    - One copy of the completed and signed Internal Quality Certification form, as revised

District SEP also submits the following materials to the Legal Office:

- Transmittal memo signed by the District SEP stating that the document has been revised pursuant to the legal review and requested Pre-Approval Review
- One copy of the revised ED
- One copy of the revised ED with track changes
- One copy of the comments with a response key
- One copy of the completed Environmental Document Checklist, as revised
- One copy of the signed Internal Quality Certification form, as revised

33. HQ EC performs Pre-Approval Review of revised Administrative Draft EIS to ensure that all comments have been adequately addressed and that Administrative Draft EIS is ready for signature. Review period is 10 business days (note: ten working day review period is a goal; actual review time may vary depending upon complexity of issues and current workload).

34. HQ Legal performs Pre-Approval Review of the revised Administrative Draft EIS concurrently and independently of HQ EC, to ensure all comments have been adequately addressed and that Administrative Draft EIS is ready for signature. Review period is 10 working days (note: ten business days review period is a goal; actual review time may vary depending upon complexity of issues and current workload).

    Both HQ EC and Legal Office must concur that their comments have been addressed. At this point, HQ EC will take one of the following actions:

    - Find that minor changes are needed and coordinate directly with the document preparer to make the changes.
    - Determine that substantive issues remain and inform the district in writing of the deficiencies and instruct them to resubmit the document upon subsequent revision.
    - Conclude that the ED is adequate and ready for circulation.

    No approval action may be taken until both HQ EC quality assurance and legal review are satisfied.

Did HQ EC and Legal find revised Administrative Draft EIS complete and ready for signature? If "No," HQ EC prepares a memorandum for the district detailing deficiencies requiring correction. GO TO STEP #28. Steps #28 through #34 will be repeated until document is ready for signature. If "Yes," Go to Step #35.

35. HQ EC recommends in writing to the District SEP that Administrative Draft EIS is ready for signature. An Administrative Draft EIS may not be signed until the HQ EC provides the ready for signature recommendation to the district.

36. When HQ EC recommends that revised Administrative Draft EIS is ready for signature, the district DDD and HQ EC jointly recommend to the DD that title page should be signed.

37. DD signs Draft EIS title page and returns the signed Title Sheet to the District SEP.

38. District SEP (or designee) prepares a letter or email to the LPA transmitting the signed Draft EIS title page and informing the LPA that they may begin public circulation.

39. District SEP updates LP2000.

40. District DLAE (or designee) transmits the letter or email, with signed Draft EIS title page, to the LPA and provides a copy to the DLAE.

    Note: In accordance with NEPA regulation 40 CFR 1506.9, the Department is required to submit all EISs, together with comments and responses, to the U.S. Environmental Protection Agency (U.S. EPA) in Washington D.C. U.S. EPA will prepare a Notice of Availability (NOA) for publication in the Federal Register. All submissions will be made electronically via U.S. EPA's e-mail NEPA system. In addition to the e-NEPA submission, two hard copies of the DEIS must be sent to the appropriate U.S. EPA Regional Office.

41. Following receipt of the signed Draft EIS title page and notification to begin public circulation, the LPA prepares the NOA of Draft EIS and sends the NOA and a copy of the Administrative Draft EIS to the state and area wide clearinghouses. If Joint EIS/EIR, the submissions required by CEQA fulfill the NEPA requirement.

42. LPA prepares and places the Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper.

    Note: 23 CFR 771.123(h) requires that the draft EIS be available for a minimum of 15 days prior to the public hearing.

43. PUBLIC AVAILABILITY – 45 DAYS.

44. LPA responds to public comments, revises the EIS (as needed), prepares the Administrative Final EIS consistent with Caltrans Annotated Outline in the SER at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates, and completes the Environmental Document Review Checklist.

45. LPA performs Quality Control review of all technical reports and Administrative Final EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.

    LPA completes and signs the External Readiness Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates.

    LPA submits the following completed and original signed documents to the DLAE:

    - One hardcopy and CD of the Administrative Final EIS
    - Notice of Public Hearing
    - Summary of comments received
    - Original signed External Readiness Certification form

46. DLAE re-verifies that project is in the FSTIP and forwards packet to the District SEP (or designee).

47. District SEP updates LP2000.

    Note: EIS must be available for a minimum of 15 days in advance of the public hearing.

48. District SEP sends a request for Air Quality Conformity Determination to the FHWA and the District SEP initiates and coordinates the 5-step Quality Control Review process of the Administrative Final EIS according to the Caltrans Environmental Document Quality

Control Program under NEPA Assignment provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos. This policy memorandum describes procedures that Caltrans would implement for environmental documents to ensure compliance with NEPA and other federal laws. For Local Assistance projects, only the Resource/Technical Specialists Review, NEPA Quality Control Review, and the Environmental Branch Chief Review or SEP Review are required. The NEPA Quality Control Review may occur concurrent with the SEP review. This local assistance 5-step Quality Control Review is consistent with the SER: Chapter 38.

Note: The conformity determination cannot be finalized until there is a public comment period on the analysis. Most of the time the public circulation of the environmental document serves as the public circulation for the conformity analysis.

49. District technical specialists conduct Quality Control Review of technical report(s) and respective sections of the Administrative Final EIS according to the Caltrans Environmental Document Quality Control Program under NEPA Assignment and sign the Internal Quality Certification form and forward the signed form or list of deficiencies to the District SEP (if applicable).

50. District SEP performs review of Administrative Final EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and signs the Internal Quality Certification form, prepares list of deficiencies, and requests NEPA Quality Control Review of Administrative Final EIS and technical studies.

51. NEPA Quality Control Reviewer reviews Administrative Final EIS according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and signs the Internal Quality Certification form or (if applicable) prepares list of deficiencies and forwards signed form or list of deficiencies to the District SEP (or designee).

52. District SEP requests the district EOC to perform the District Quality Control Review of Administrative Final EIS.

53. Environmental Office Chief performs District Quality Control Review according to Caltrans Environmental Document Quality Control Program under NEPA Assignment and signs the Internal Quality Certification form or (if applicable) prepares list of deficiencies and forwards signed form or list of deficiencies to the District SEP (or designee).

54. District Environmental Office Chief reviews Internal Quality Certification form and considers all comments received during District Quality Control Review.

Is Administrative Final EIS complete and sufficient from the district's perspective? If "No," GO TO STEP #55. If "Yes," GO TO STEP #57.

55. When Administrative Final EIS or technical reports are deficient, the District SEP prepares a letter to the LPA informing them of all deficiencies and requests that the Administrative Final EIS be revised, as necessary, based on the District Quality Control Review. Comments received from all reviewers will form letter requesting revisions to the Administrative Final EIS document.

56. LPA revises the Administrative Final EIS and resubmits document from Step #45.

57. District SEP notifies the HQ EC and Legal Office that the Administrative Final EIS will be submitted for their review and determination of legal sufficiency, respectively, in one week. To initiate HQ review, District SEP submits the following to the HQ EC and requests a Quality Assurance Review of the Administrative Final EIS: (DLAE must be copied on all correspondence between the district, HQ EC and Legal).

    - Transmittal Memo signed by the District SEP requesting review of Final EIS
    - Five hardcopies of the Final EIS and one CD
    - One hardcopy of revised technical reports and one CD
    - One copy of LPA completed Environmental Document Review Checklist (for Final)
    - One copy of LPA completed and signed External Readiness Certification form
    - One copy of completed and signed Internal Quality Certification form

    District SEP will also request the Legal Office to conduct a Legal Sufficiency Review of the Administrative Final EIS. The HQ EC Review and the Legal Sufficiency Review typically occur in parallel.

    To initiate Legal Sufficiency Review, District SEP submits the following to the Legal Office and requests determination of legal sufficiency:

    - Transmittal Memo signed by the District SEP, requesting review
    - One copy of the Administrative Draft EIS
    - One electronic copy of the Administrative Draft EIS
    - One electronic copy of each technical study
    - One copy of the LPA completed Environmental Document Review Checklist
    - One copy of the completed and signed Internal Quality Certification form
    - One copy of the LPA completed and signed External Readiness Certification form

58. HQ EC performs a Quality Assurance Review of the Administrative Final EIS to determine if the document is substantively complete and ready for interdisciplinary quality assurance review.

    The review period is 30 days. In making this determination, the HQ EC will confirm that the Final EIS follows the annotated outline and includes the following:

    - Correct title page
    - All chapters and necessary resource topics are present and complete
    - All appendices are present and complete
    - All required correspondence relative to procedural and regulatory requirements
    - Complete, clear, legible, and logical exhibits and figures

    HQ EC will then lead an interdisciplinary team of HQ technical specialists to review the Administrative Final EIS. HQ technical specialists will review pertinent portions of the Administrative Final EIS for accuracy and to ensure that regulatory requirements are appropriately addressed. The project technical studies will be used in support of the review. The HQ EC will review the entire Administrative Final EIS, performing the NEPA Quality Assurance Review according to Caltrans Environmental Document Quality Control Program under NEPA Assignment provided at:

https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos.

HQ EC signs the Internal Quality Certification form provided at: https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/forms-templates or (if applicable) prepares list of deficiencies.

The Legal Office performs a Legal Sufficiency Review of the revised Administrative EIS. The Legal Office will provide its Legal Sufficiency Review comments to the District SEP with a copy to the HQ EC. Comments from the Legal Sufficiency Review are independent from HQ EC comments.

Did HQ EC and Legal find the Administrative Final EIS complete? If "Yes," HQ EC will recommend to the District SEP that the Final EIS title page is ready for signature. The title page may not be signed until the ready-for-signature recommendation is received by the district/region. GO TO STEP #67. If "No," GO TO STEP #59.

59. If HQ EC or Legal Office find Administrative Final EIS incomplete, the HQ EC will transmit comments on the environmental document to the District SEP with a copy to the DLAE and to the responsible Legal Office. Legal Office will transmit its Legal Sufficiency Review comments to the District SEP and DLAE if applicable, with a copy to the HQ EC.

Is revised Administrative Final EIS responsive to HQ EC and Legal comments? If "No," GO TO STEP #60. Steps #60 through #64 must be repeated until document is adequate. If "Yes," GO TO STEP #65.

60. District SEP (or designee) prepares memo summarizing HQ EC and Legal Office comments and requests LPA make the necessary revisions to the Administrative Final EIS.

    Note: The district staff and HQ EC should assist LPA with: (1) clarification regarding comments, (2) resolution of issues identified in the comments, and (3) in determining adequate response to comments, as needed. A meeting or workshop may be convened by the HQ EC or the district/region/DLAE to facilitate this process.

61. District EOC signs the letter.

62. District SEP (or designee) sends the letter to the LPA, provides a copy to the DLAE includes a copy in the project file, and updates appropriate fields in LP2000.

63. LPA revises Administrative Final EIS in response to all HQ comments and resubmits revised Administrative Final EIS to the District SEP (or designee).

64. District SEP (or designee) reviews the revised Administrative Final EIS and revises the Internal Quality Certification form, as appropriate, to reflect that all comments have been appropriately addressed.

Is revised Administrative Final EIS responsive to HQ EC and Legal comments? If "No," GO TO STEP #60. Steps #60 through #64 must be repeated until document is adequate. If "Yes," GO TO STEP #65.

65. To initiate HQ EC Pre-Approval Review, the District SEP submits the following materials to HQ EC and requests HQ Pre-Approval Review.

- Transmittal Memo signed by the District SEP stating that the Administrative Final EIS has been revised pursuant to HQ EC comments and requested pre-approval review
- One copy of the revised Administrative Final EIS
- One copy of revised Administrative Final EIS with track changes
- One copy of the comments with a response key
- One copy of the completed Environmental Document Checklist, as revised
- One copy of the signed Internal Quality Certification form

To initiate Pre-Approval Legal Sufficiency Review, the District SEP submits the following materials to the Legal Office:

- Transmittal memo signed by the District SEP stating that the document has been revised pursuant to the legal review and requested pre-approval review
- One copy of the revised environmental document
- One copy of the revised environmental with track changes
- One copy of the comments with a response key
- One copy of the completed Environmental Document Checklist, as revised
- One copy of the signed Internal Quality Certification form, as revised

66. HQ EC and Legal Office review revised Administrative Final EIS to ensure that all comments have been adequately addressed and that Administrative Final EIS is ready for signature. Review period is 10 business days. Both HQ EC and Legal Office must concur that their comments have been addressed. At this point, the HQ EC will take one of the following actions:

    - Find that minor changes are needed and coordinate directly with the document preparer to make the changes.
    - Determine that substantive issues remain and inform the district in writing of the deficiencies and instruct them to resubmit the document upon subsequent revision.
    - Conclude that the environmental document is adequate and ready for circulation.

    No approval action may be taken until both HQ EC quality assurance and Legal Office review or legal sufficiency is satisfied.

    The Legal Office will provide Pre-Approval Legal Sufficiency comments to the District SEP with a copy to the HQ EC.

Is the revised Administrative Final EIS ready for signature? If "No," GO TO STEP #59. Steps #59 through #66 are repeated until HQ determines document is ready for signature. If "Yes," GO TO STEP #67.

67. HQ EC recommends to District SEP that FEIS is ready for signature. HQ EC and Legal Office find revised Administrative Final EIS complete, the HQ EC and DDD (Environmental) jointly recommend (in writing) to the DD that the Final EIS title page is ready for signature.

68. DD signs the Final EIS title page and returns the signed Final EIS title sheet to the District SEP.

69. District SEP (or designee) forwards the signed Final EIS title page to the DLAE, and updates LP2000.
70. DLAE sends the signed Final EIS title page to the LPA.
71. LPA prepares NOA of the Final EIS to affected units of federal, state, and local government and sends to the DLAE.
72. DLAE sends NOA to the FHWA.
73. FHWA publishes NOA in the FR., and LPA publishes the NOA in local newspaper.
74. LPA prepares draft ROD and sends to the District SEP (or designee).
75. District SEP forwards draft ROD to the HQ EC for review and acceptance.
76. HQ EC and Legal Office review ROD (note: the ROD must be reviewed and accepted by the HQ EC before it is approved by the district; while Legal Office review of the ROD is not required by regulation, it is recommended).
77. When HQ EC determines that the ROD is ready for signature, the HQ EC and DDD (environmental) jointly recommend to the DD that ROD is ready for signature.
78. DD signs ROD and returns to the District SEP (note: this signature may not be delegated).
79. District SEP forwards signed ROD to the DLAE, ensures environmental files are in Uniform Environmental File System, and updates LP2000.

    Note: Date of ROD should be no sooner than 30 days after publication of the Final EIS notice in the FR or 90 days after publication of a notice for the Draft EIS, whichever is later. CEQ encourages the publication of the ROD and FHWA is the entity that publishes the Federal Register notice.

80. DLAE notifies the LPA that ROD has been signed and that they may begin final design.
81. LPA begins final design and provides the DLAE with each of the following:
    - A list of all Mitigation Commitments
    - A copy of all environmental permits, agreements, or approvals (i.e., Coastal, 401, 404, 1602 Series, Sec 10, State or Federal Encroachment and/or Right of Entry)
82. District SEP updates LP2000.
83. After the ROD has been signed, the SEP (or designee) may prepare a “Notice of Statute of Limitations on Claims” and submit to FHWA for publication in the Federal Register. An example of SOL notice can be found at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/fhwa-sol-guidance-a11y.pdf.

6.11 References

23 CFR 771
https://www.gpo.gov/fdsys/granule/CFR-2016-title23-vol1/CFR-2016-title23-vol1-part771

Air Resources Laws and Regulations
http://www.arb.ca.gov/html/lawsregs.htm

Council of Environmental Quality (CEQ), 40 CFR Part 1500
https://www.fedcenter.gov/Bookmarks/index.cfm?id=786

National Environmental Policy Act of 1969, as amended (42 U.S.C., 4321-4347)
https://www.fsa.usda.gov/Internet/FSA_File/nepa_statute.pdf

US. DOT Order 5610.1C
https://www.transportation.gov/sites/dot.gov/files/docs/DOT%20Order%205610.1D%20Procedures%20for%20Considering%20Environmental%20Impacts_0.pdf

Chapter 7 **Field Review**

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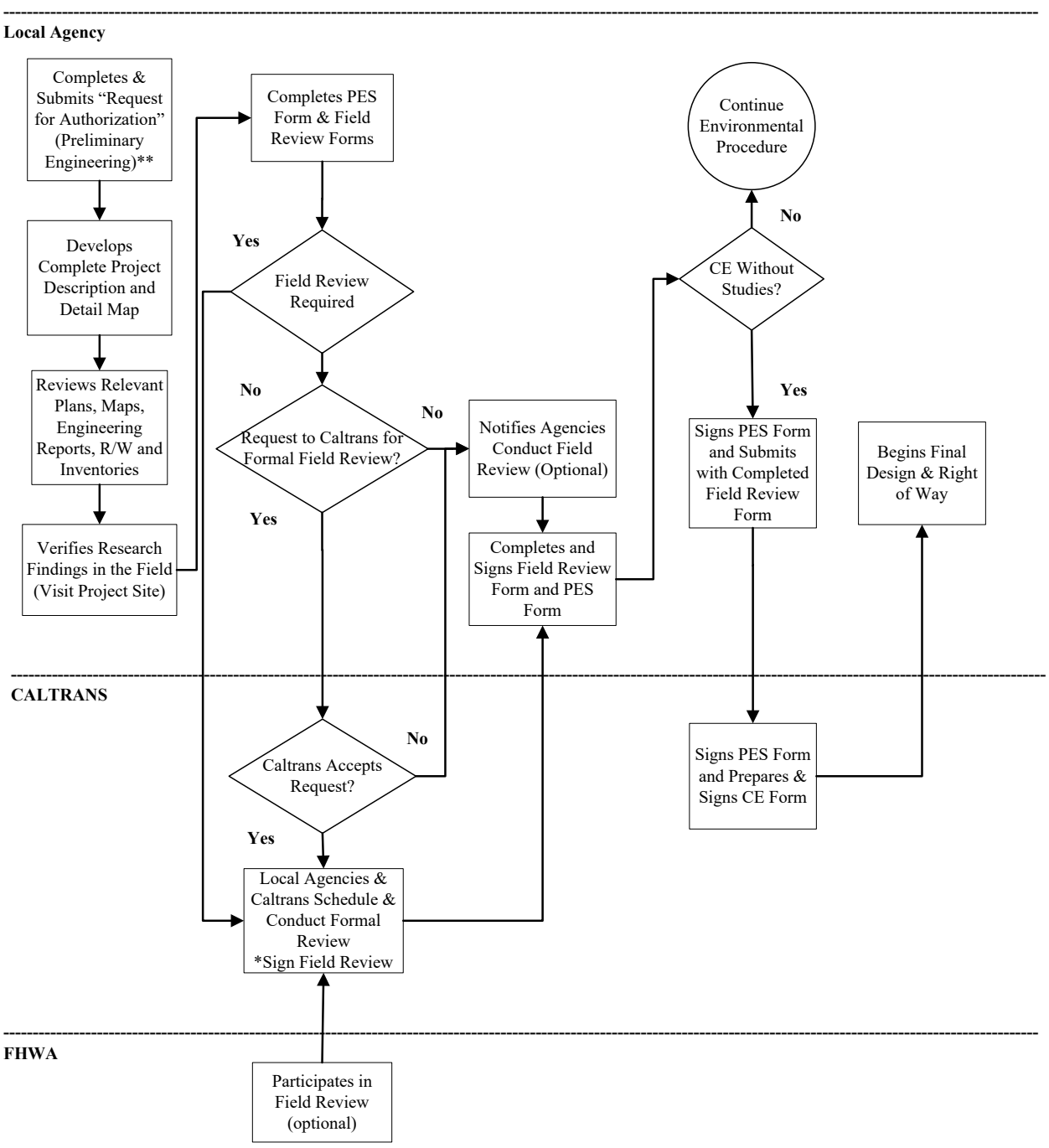
Figures

Figure 7-1: Field Review Procedures for Developing Local Federal-aid Projects iii

Exhibits

Exhibit 7-A: Instructions for Field Review Form
Exhibit 7-B: Field Review Form
Exhibit 7-C: Roadway Data
Exhibit 7-D: Major Structural Data
Exhibit 7-E: Railroad Grade Crossing Data
Exhibit 7-F: Airport Data
Exhibit 7-G: Field Review Attendance Roster
Exhibit 7-I: Systems Engineering Review Form (SERF)

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms



***For all state highway projects, consult the Caltrans *Project Development Procedures Manual*, the DLAE and project manager to fully coordinate development responsibilities. Projects on or impacting the Interstate require FHWA project-by-project review.**

**** Authorization(s) must precede any federally reimbursable work. Agency may self-fund field review and delay Authorization for later activities.**

Figure 7-1: Field Review Procedures for Developing Local Federal-aid Projects

Chapter 7 **Field Review**

7.1 Introduction

In conjunction with the preliminary environmental investigation, an important early action in developing a local transportation project financed with Federal-aid funds is the methodical and systematic collection of initial engineering and related project data and information. For this manual, this data gathering project-scoping step is called the Field Review.

The Local Public Agency (LPA) should establish a process for clearly defining the location, scope, cost, and the other parameters considered when developing a project. This step is very important in guiding the project development team to the successful production of the Plans, Specifications and Estimate (PS&E).

The field review for LPA transportation projects off the State Highway System (SHS) serves the same purpose as the Project Study Report (PSR) serves for state highway projects. It is intended to bring together all interested parties and come to an agreement on the project requirements necessary to comply with federal and state laws and regulations.

For LPA projects on the SHS, consult the Caltrans Project Development Procedures Manual, the District Local Assistance Engineer (DLAE), and the project manager to coordinate development responsibilities.

The field review process considers and documents the following actions:

- Assigns an LPA project manager to oversee the project studies, PS&E development, and/or construction.
- Brings together representatives from various involved or interested agencies, including, but not limited to, the LPA, Caltrans, other regional and LPAs, transit districts, other state or federal permitting agencies, public utilities, and railroads. FHWA may also be represented.
- Affords an opportunity for discussions of alternative proposals.
- Secures agreement on general design features and exceptions to American Association of State Highway and Transportation Officials (AASHTO) standards, or 3R, or local standards selected for the project.
- Identifies pedestrian facilities within the project area that will or may need to be brought up to current federal, state, and/or local standards to be Americans with Disabilities Act (ADA) compliant.
- Determines if the project is a Federal-aid Intelligent Transportation Systems (ITS) project. If so, determines if it is a High-Risk (formerly Major), Low-Risk (formerly Minor), or Exempt ITS project.
- Determines timing and costs associated with preparing and processing required technical studies and the NEPA document (see LAPM Chapter 6: Environmental Procedures and Caltrans Standard Environmental Reference (SER)).
- Determines Right of Way (R/W) and relocation assistance requirements.
- Discusses and evaluates proposed funding, eligibility requirements, and federal or state participation.

- Determines who advertises, awards, administers (AAA), and maintains the proposed project.
- Defines the project schedule and target advertising date.
- Discusses value engineering analysis; for more information, refer to LAPM Chapter 12: Plans, Specifications & Estimate (Section 12.5: Value Engineering Analysis).

Note: Certain programs administered by the Division of Local Assistance have program-specific requirements for fields reviews not covered in this chapter; refer to program-specific guidelines for details.

7.2 Type and Requirement for Field Review

The type of field review chosen for a project depends on many factors including highway system, project type, project complexity, total cost, and type of funds. The two types of field reviews are formal and informal.

Formal Field Review

A formal field review can be accomplished by:

- A site (field) inspection, or
- An office meeting or both

All parties involved in the project development decisions should be invited to a formal field review. The DLAE should take the lead in the field reviews, take minutes, and circulate the notes to all affected parties afterward.

Informal Field Review

Informal field reviews can be accomplished by:

- Small group meetings
- Interagency correspondence
- Phone discussions
- Individual research and data gathering

Exception: Emergency Relief (ER) projects use the FHWA Damage Assessment Form (DAF) in lieu of any other field review form. An on-site field assessment is required for all these projects.

Required Review

Caltrans will determine if a field review is required for all projects on the National Highway System (NHS). Generally, a field review will only be required for significant NHS projects. A project will be considered significant if:

- The total cost is over $10 million, or
- It involves an unusual structure; see LAPM Chapter 2: Roles and Responsibilities (Section 2.4 Delegated Projects), or
- It involves multiple projects on a corridor involving more than one agency, or

- Any other complicating factors require a field review.

All required reviews would be formal. In consultation with the LPA, the Caltrans DLAE determines how the formal field review will be accomplished.

Exceptions to the above are as follows:

- A site visit, or early coordination meeting may be required, on the grounds of environmental sensitivity for protected resources, controversy, or consequences (impacts) of the proposed action (see LAPM Chapter 6: Environmental Procedures). This meeting may be part of the formal or informal field review discussed in this chapter or held separately.
- For Highway Bridge Program (HBP) projects, a field review is mandatory as described in LAPG Chapter 6: Highway Bridge Program.

When Caltrans requires a field review for significant NHS projects, PS&E and construction administration procedures (standards, agencies involved, use of consultants, project management, value engineering analysis, specifications, materials testing, etc.) will be discussed. The PS&E procedures will be put in writing for Caltrans and FHWA approval before the LPA starts final design (see LAPM Chapter 12: Plans, Specifications & Estimate).

The construction administration procedures will also be put in writing. The procedures must be approved by Caltrans and FHWA before construction will be authorized (see LAPM Chapter 15: Advertise and Award Project).

NHS projects that are not considered significant will not require these approvals.

Optional Review

A field review is optional for all projects off the NHS (non-NHS) except for HBP projects. The field review is also optional for all NHS projects determined by Caltrans to be minor in nature. It is a suggested practice for all projects.

7.3 Notification

The LPA contacts the DLAE to discuss when and how they wish to proceed with project implementation if this was not already done as part of the initial project authorization process.

Required Reviews

For required field reviews, the DLAE determines the type of field review required and coordinates, as appropriate, with the LPA on scheduling. The DLAE notifies Caltrans and FHWA attendees. The LPA is responsible for making other review preparations and notifying other interested parties. Each attendee should receive a copy of the draft Field Review Form before the actual field review. In addition to the District Local Assistance representative, Caltrans attendees, when applicable, should include an environmental reviewer, a R/W reviewer, and a representative from the Office of Structures Local Assistance. To optimize their value to the LPAs, these Caltrans specialists should become familiar with the project prior to attending the field reviews. Others may attend as appropriate. If the project involves a state highway, a representative from the appropriate District Project Development or Traffic Branch must be contacted to determine their involvement in the project development, and the need for a Project Report and encroachment permit.

Optional Field Reviews

For projects that Caltrans has determined a field review is not required, the LPA is responsible for deciding whether to perform a field review (formal or informal) and for notifying all potentially affected agencies, utility companies, etc. and making arrangements for any on-site or office meetings. In deciding whether and how to conduct a review, the LPA should consider the following factors: functional classification, project type, project complexity, total cost, interested, and affected parties, and type of funds.

If the LPA wishes Caltrans (or FHWA) staff to participate in the field review process, a request must be made to the DLAE. Caltrans participation is based on the following factors:

- Availability of Caltrans staff and time requirements
- Experience of LPA staff
- Complexity of project, type of structures
- Funding program
- R/W and design issues

For railroad crossing projects, the California Public Utilities Commission participates in the review process.

Discussions with the DLAE should also indicate whether Caltrans participation in any subsequent phases of the project is expected. This is especially important if PS&E reviews are needed for structures. Caltrans and the LPA should reach a clear agreement early in the process on the extent of Caltrans staff participation in any phase of project development.

7.4 Tentative Plans

The LPA should have a tentative plan as well as horizontal and vertical alignment sketches available for review by participants, either prior to, or at the field review. On projects that involve bridges, the LPA should also provide preliminary hydrologic and hydraulic data. This information need not be in great detail, but sufficient to make an engineering review of the proposal.

7.5 Preparation of Field Review Form

The LPA must prepare and complete Exhibit 7-B: Field Review Form for all Federal-aid projects, even if a Field Review was not required. For ER projects, the DAF is used in lieu of the Exhibit 7-B (see LAPG Chapter 11: Emergency Relief). The Field Review Form documents the results and decisions of the field review and other initial project research. It also includes data helpful in the preparation of the Request for Authorization and the Program Supplement Agreement.

The field review process and documents should be completed as early as possible. The field review document must be completed and submitted prior to, or concurrently with, the initial submittal of the PES form (completed and with supporting information attached) for Caltrans review and approval (see LAPM Chapter 6: Environmental Procedures).

Field Reviews Attended by Caltrans and the FHWA

For projects on the NHS, early review and discussions should be held with the DLAE and the FHWA engineer.

If a field review is required, Caltrans and the FHWA will attend. Caltrans and the FHWA may also attend optional field reviews, if requested. The LPA must fill out Exhibit 7-B as completely

as possible prior to the field review and send a copy with a location map to each of the interested parties attending the field review. This allows the participants to come to the meeting prepared to discuss the specific issues and methodologies, which can lead to successful project implementation. The earliest date for the field review should be two weeks after the receipt of the drafted Exhibit 7-B by the district. Copies for FHWA, DLA, and Office of Structures Local Assistance must be submitted to the district for further transmittal.

Caltrans has delegated design exception approval authority for projects off the SHS to the City/County Public Works Director (see LAPM Chapter 11: Design Guidance). However, proposed design exceptions should be identified and discussed at the field review.

The Field Review Form should be updated and signed by the LPA, district, and FHWA representatives, as appropriate, at the field review even if some of the questions remain unanswered. Information determined after the field review is to be provided by the LPA as a supplement to the Field Review Form and may require FHWA concurrence.

Optional Field Reviews Not Attended by Caltrans or FHWA

If the field review is optional and Caltrans and FHWA will not be attending, the LPA may complete Exhibit 7-B without a formal or informal review or meeting. An on-site visit by the project engineer and project manager is recommended as good practice to verify the data and information used to complete the forms.

7.6 Field Review Data

Scope

The project must be defined in sufficient detail to accurately specify where it is, why it is necessary and what will be done. This process of project definition began with the planning and programming process. Now, further details are needed to clarify the limited FSTIP information with the specific project location, system, and conditions as they currently exist and as they will be upon project completion. If the scope changes significantly from the approved FSTIP description, now or at any time during project development, a FSTIP amendment may be necessary. Items 1 to 4 on Exhibit 7-B and Exhibit 7-C: Roadway Data, Exhibit 7-D: Major Structure Data, Exhibit 7-E: Railroad Grade Crossing Data, vicinity maps, typical section(s), alternative sketches, signal warrants, and collision diagrams, as appropriate, provide data related to the general scope of the project. For non-roadway projects, Exhibit 7-B and attachments would be modified as appropriate for the project activity and scope, e.g., site plans, work plans, and building sketches.

Environmental Process

All Federal-aid projects must follow the federal environmental process (NEPA) described in LAPM Chapter 6: Environmental Procedures. NEPA approval, Caltrans-signed Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) must be obtained prior to commencing with final design, Right of Way acquisition or construction. The PES Form documents the requirements for technical studies and the NEPA Class of Action (CE, EA, EIS) and is equally as important as the environmental approval. Environmental requirements and procedures for processing required technical studies and the NEPA document are discussed in LAPM Chapter 6. Specific information regarding the format and content of required technical studies and NEPA documents (CE, EA, EIS) is contained in the SER.

Exhibit 6-A: Preliminary Environmental Study (PES) is designed to identify:

- The scope of the project
- The existing condition of the project area
- The potential existence of sensitive environmental resources within the project area
- Required technical studies
- The responsible or regulatory agencies where early coordination or consultation is necessary or where approvals and permits are needed
- NEPA Class of Action

Right of Way

The need to acquire R/W or relocate utilities can significantly affect project development, especially costs and scheduling. Activity within Caltrans R/W requires coordination and an encroachment permit. Federal laws and regulations must be followed if there is FHWA participation in any project phase, whether in the R/W phase or only in the construction phase**.** The acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (42 U.S.C. 4801, et. seq.). Item 6 of Exhibit 7-B highlights the possible R/W activities with a cost estimate breakdown. The need for utility relocation should be identified.

Project Cost

Good initial estimates are needed to define whether there are sufficient funds available to implement the project. Item 6 of Exhibit 7-B provides for an overview by phase and anticipated federal participation. Item 7 can be used to further break this down by federal fund type and state funding. State or local funds are normally required to match the federal funds. To the greatest extent possible, FHWA-funded projects should be funded at the full federal participating ratio; see LAPM Chapter 3: Project Authorization (Section 3.6: Underfunded Projects).

Project Administration

The LPA submitting the request is normally responsible for administering all phases of the project. If another arrangement is expected, this should be noted. If the LPA plans to hire a consultant to assist with any phase, this should be noted. This allows the LPA to work sufficient time into their schedule for consultant selection (see LAPM Chapter 10: Consultant Selection). If the State is expected to administer any phase or to review the PS&E, hold early discussions with the appropriate Caltrans district to ensure that the required staff is available when needed. A cooperative agreement is needed to define work and cost-sharing responsibilities.

Project Schedule

A federal project is normally scheduled for a specific year in the FHWA-approved FSTIP document. While the funds are usually carried forward into new FTIP and FSTIP adoptions, this is at the discretion of the MPO. For state-funded projects, the specific program guidelines define the year or years the program funds are available. The delivery schedule for advertising should be reviewed to see if the project could be developed in a timely manner. The items discussed above define some of the critical steps in this effort. For federally-funded projects, if there will be significant delays, the agency should work with the MPO to reschedule the work through a current FSTIP amendment or into the next FSTIP. State program guidelines define the

appropriate actions for the state-funded projects. In non-MPO areas, contact the Caltrans District FSTIP coordinator for necessary amendments.

7.7 Submittal of Field Review Form

As soon as formal or informal discussions and review are complete, the LPA prepares and submits the final Exhibit 7-B and attachments to the district. If a field review is required for NHS projects, all appropriate forms and attachments must be completed. If the field review is optional, the first two pages of Exhibit 7-B summary must be completed, as a minimum. See the bracket ([ ]) notations under Item 10 of Exhibit 7-B: Field Review Form for additional attachments.

The district forwards Exhibit 7-B with the required attachments to the Division of Local Assistance. The LPA may wish to provide copies to their MPO and other interested parties.

The project engineer and project manager should periodically review Exhibit 7-B and data to ensure that the project development is proceeding as initially proposed or that significant changes have been approved.

The field review document must be completely filled out and submitted prior to or concurrently with the initial submittal of the PES (completed and with supporting information attached) for Caltrans review and approval (see LAPM Chapter 6: Environmental Procedures).

Chapter 8 **Public Hearings**

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Exhibits

Exhibit 8-A: Sample Notice of Public Hearing
Exhibit 8-B: Sample Notice of Opportunity for Public Hearing

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 8 **Public Hearings**

8.1 Introduction

Community involvement is essential to developing local transportation projects that fully consider social, economic, environmental, and other impacts while minimizing the effects on the community and environment. All affected interests must be aware of the project's impact. Community involvement must be an integral part of the overall project development process.

Generally, the most productive interaction with the public and other agencies takes place through informal meetings, conferences, and direct correspondence rather than through formal public hearings. The number and extent of these informal meetings will vary depending on the proposal, impacts, location, etc. A basic strategy for securing community involvement should be determined early in the project development process. Who to contact, size of groups, area of interest, details of presentation, how to contact, etc. must be decided on a project-by-project basis. Individuals, businesses, neighborhood associations, and other officials and institutions may be affected by the project and interested in participating in the development process.

As a culmination of the project and environmental information gathering and development, a public hearing is required for certain Federal-aid projects. This public hearing process may be satisfied through either a formal or an open forum public hearing.

Formal Public Hearing

The formal public hearing process provides a structured forum in which to test the conclusions reached during the preliminary stages of project development, specifically needed for the project, project alternatives and major design features, social, economic, environmental, and other impacts, and consistency with local, regional, and state planning goals and objectives.

The formal public hearing is conducted as a structured meeting between the project authorities and the public audience. A presiding officer has the project team of experts explain the project to the audience and then the audience, one at a time, responds with comments and questions. All these activities are formally recorded and entered into a hearing record. The record is held open after the formal meeting for 10 to 30 days for additional written comments.

The formal hearing or opportunity for a hearing occurs during circulation of the draft environmental document prior to making any commitment to a specific design alternative or location.

Open Forum Public Hearing

The open forum hearing is conducted in an open meeting format similar to a map showing or project briefing. Individuals may arrive at various times, be given a brief orientation and then directed to project team members for one-on-one explanations and discussions about their specific concerns and questions. The opportunity is provided to have their comments and questions recorded verbally or in writing for the hearing record. The less formal atmosphere of this type of hearing can contribute to a better understanding of the project features, provide for a more direct response to specific individual questions or concerns, and move toward the solution of problems. The open forum hearing also occurs during circulation of the draft environmental document prior to making any commitment to a specific design alternative or location. The public notices of the hearing and a hearing record are required as in the formal hearing process. The Caltrans Project Development Procedures Manual (PDPM) Chapter 11: Public Hearing

outlines the general concept and features for the two types of hearings. A review of these sections may assist the Local Public Agency (LPA) in deciding which type is most appropriate for its project.

8.2 Necessity for a Public Hearing

Federal Regulations

The LPA must hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency (40 CFR 1506.6(c)). The criteria must include whether there is:

- Substantial environmental controversy concerning the proposed action,
- Substantial interest in holding the hearing, or
- A request for a hearing by another agency with jurisdiction over the action, supported by reasons why a hearing will be helpful.

Categorical Exclusion

Projects processed with a Categorical Exclusion (CE) are actions which will not have any significant social, economic, or environmental effects, and therefore do not require a public hearing. However, joint Categorical Exemptions/Categorical Exclusions (CE/CE) are often posted at the County Clerk's Office for public review.

Environmental Assessment

Projects processed with an Environmental Assessment (EA) must involve environmental agencies, applicants, and the public to the extent practicable (40 CFR 1501.4(b)). 23 CFR 771.111(h) requires that one or more public hearings or opportunities for hearings be provided for any Federal-aid project which:

- Requires significant amounts of right of way,
- Substantially changes the layout or functions of connecting roadways or the facility being improved,
- Has a substantial adverse impact on abutting property,
- Otherwise has a significant social, economic, environmental or other effect, or
- For those projects that Caltrans (under National Environmental Policy Act (NEPA) Assignment) determines a public hearing is in the public interest.

Environmental Impact Statement

A public hearing is required during the circulation period of all Draft Environmental Impact Statements (EIS) when it is determined to be in the public interest. PDPM Chapter 11: Public Hearing sets forth Department policy and procedures regarding public hearings. The manual provides explicit information and instructions regarding when public hearings are necessary, how to conduct a public hearing, Title VI compliance documentation, open forum versus formal hearing, coordination with draft environmental document availability, public notices and publicity, map showings, hearing room arrangements, presiding officers, briefings, presentations, handouts, exhibits and interpreters, and hearings for local projects. Refer to the guidelines and samples for public hearing notices in PDPM Appendix HH.

Exception to the Public Hearing Process

Compliance with the public hearing process is not required for emergency opening work on disaster assistance projects (see LAPG Chapter 11: Emergency Relief).

8.3 Opportunity for Hearing and Withdrawal of Request for Hearing

If there is reason to believe that the project is noncontroversial and that it is unlikely that a hearing would be requested, either by the public or any agency, a Notice of Opportunity for a Public Hearing may be utilized rather than directly scheduling a hearing.

When only a small number of requests for a hearing are received, it is permissible to meet with the parties at a convenient time and location, explain the project, and answer any questions. These meetings must be very carefully documented and made a part of the project record. If satisfied, the requesting party may withdraw the request for a hearing in writing. If the requesting party does not wish to withdraw the request, a hearing must be held.

8.4 Public Notification

Public notices are published to inform the public of various proposals and to invite public participation. Methods of public notification include:

- Paid public notice in a local newspaper
- Supplemental news releases and special paid notices
- Flyers or bulk rate circulars distributed to residents
- Notices on bulletin boards in public places such as city halls, libraries, supermarkets
- Posters, brochures, flyers, and Frequently Asked Questions related to Title VI public rights distributed to residents
- Television and radio
- Distribution of notices through schools and service clubs
- Indication in the draft environmental document that a hearing will be held or a notice of opportunity for a hearing will be published
- Electronic media such as websites, email, blogs, etc.

40 CFR 1506.6(b) requires that a public notice of NEPA related hearings, public meetings, and the availability of environmental documents be provided to inform those persons and agencies who may be interested or affected. This includes groups, agencies, or individuals who:

- Have requested notification, or
- By nature of their function, interest, or responsibility may be interested in or affected by the proposal

Note: It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered Limited English Proficient (LEP) Individuals eligible to be served or likely to be affected by the program or activity.

In the case of an action with effects primarily of local concern, notification may include:

- Notice to state and area-wide clearinghouses
- Notice to Indian tribes when effects occur on reservations
- Publication in local newspapers (in papers of general circulation rather than legal papers)
- Notice through other local media
- Notice to potentially interested community organizations including small business associations
- Publication in newsletters that may be expected to reach potentially interested persons
- Direct mailing to owners and occupants of nearby affected property
- Posting of notice on and off site in the area where the action is located

Content of the Notice

Both the Notice of Public Hearing and the Notice of Opportunity for Public Hearing must include:

- Sufficient detail of the surrounding area to enable the reader to readily identify the proposal location
- An appropriate schematic map depicting the proposal limits. Alternative design features are to be either displayed by schematic inserts or described in the notice. Indicate if any alternatives would be located in wetlands.
- A statement to the effect that project maps, drawings, the environmental assessment or draft environmental impact statement, and other pertinent information received and/or developed by the LPA will be available for inspection and copying at the LPA's office or other convenient location in the vicinity of the proposal. In addition to the required information, any other data that will make the notice more informative should be included.
- A specific note that an open forum format will be used when this is the case. To ensure widespread and comprehensive project notification, the LPA must establish and maintain a list upon which any federal agency, local official, public advisory group or agency, civic association, community group, or individual may enroll to receive notices of proposals in the area specified.

Notice of Public Hearing

The Notice must be published at least twice in a newspaper having a general circulation in the vicinity of the proposal and in any newspaper having a substantial circulation in the area concerned such as foreign language and community newspapers. The first Notice must be published at least 30 days prior to the scheduled hearing. The second Notice should be published approximately one week before the hearing. The timing of additional publication is optional.

If a Draft EIS is to be considered at a public hearing the agency must make the statement available to the public at least 15 days in advance of the hearing (unless the purpose of the hearing is to provide information for the draft EIS (40 CFR 1506.6(c)(2)).

In addition to the items noted in the above Content of the Notice, each Notice of Public Hearing must specify:

- The date, time, and place of the hearing.
- That tentative schedules for right of way and construction will be discussed.
- That relocation assistance programs will be discussed.
- That written statements and exhibits may be submitted up to a specified date at least ten (10) days after the hearing with the procedure for submissions.

On projects of particular local interest or great complexity, the LPA may wish to consider the use of bulk-rate type circulars in addition to the published notices. In addition, the LPA may use other forms of communication such as electronic mail and websites.

The LPA must furnish the District Local Assistance Engineer (DLAE) with a clipping or legible copy (identify newspaper and date published) of the Notice of Public Hearing at the time of first publication. Copies of all notices must be incorporated into the hearing record.

A sample public hearing notice is shown in Exhibit 8-A: Sample Notice of Public Hearing.

Notice of Opportunity for Public Hearing

The Notice of Opportunity for Public Hearing must explain the procedure and specify the deadline for requesting a public hearing. The deadline for requesting a public hearing must not be less than 21 days after the date of publication of the first Notice, or less than 14 days after the date of publication of the second Notice.

The LPA must furnish the DLAE with a clipping or legible copy (identify newspaper and date published) of the Notice of Opportunity for Public Hearing at the time of first publication.

A sample Notice of Opportunity is shown in Exhibit 8-B: Sample Notice of Opportunity for Public Hearing.

8.5 Joint Public Hearings

The LPA must fully cooperate with state and other local agencies to reduce duplication between NEPA, state and local requirements unless the agencies are specifically barred from doing so by some other law (40 CFR 1506.2). This procedure provides for concurrent compliance with the public review requirements, including joint public hearings of both NEPA and CEQA. If a joint NEPA and CEQA environmental document is being prepared for an LPA project, and it has been determined that the criteria for deciding whether to hold a hearing has been met (40 CFR 1506.6(c)), a combined public hearing should be considered.

8.6 Scheduling

40 CFR 1502.6(c)(2) states that if a Draft EIS is to be considered at a public hearing, the LPA must make the Draft EIS available to the public at least 15 days in advance (unless the purpose of the hearings is to provide information for preparing the Draft EIS).

Formal or open forum public hearings are held after the EA or Draft EIS has been approved for circulation by the Caltrans District Director and prior to commitment to any of the alternatives to be presented at the hearing.

8.7 Hearing Procedures

Public hearings are held at a place and time convenient for persons affected by the proposal. Whether a hearing is conducted by representatives of the LPA or of a cooperating agency, the LPA arranges to have suitable personnel available to respond to questions which may arise. The LPA is responsible for successful completion of all hearing requirements.

A presiding officer must be identified for the hearing. If the hearing covers controversial issues, the LPA should consider selecting a neutral person, who has no interest in the project, to act as presiding officer.

At each public hearing, it must be announced that:

- The hearing is being held to present studies to date on the location and/or design features of the proposal, and to provide a forum for public discussion of the major features, including social, economic, and environmental effects of the proposal.
- The hearing is being held prior to making any commitment to the various alternatives being presented at the hearings that no studies or plans will be finalized until the complete public record has been analyzed including data gathered at the public hearing and received in response to the draft environmental document.
- The final deadline for submitting written statements and exhibits will be no later than 10 days after the hearing or for more complex or controversial proposals, a longer and clearly specified period. Written material should be submitted to the LPA at the address given in the handout.
- Subsequent to the hearing and prior to requesting approval, all data gathered at the hearing or submitted for the record will be available for inspection and copying at the LPA's office or other location.

The items to be covered in the presentation and/or hearing handouts are:

- A discussion of the local, state, and federal roles for developing the proposal.
- A summary of coordination and interaction to date.
- The major features of the proposal and alternatives thereto.
- The location of any wetlands crossed by a project must be identified.
- A discussion on the feasibility of providing a means of public access to any navigable river over which a new bridge is to be constructed.
- A discussion on the requirements for California Transportation Commission approval of any proposed new connections to freeways, where applicable.
- A discussion on tentative right of way requirements, the schedule of acquisition, the estimated number of families, business and other concerns to be relocated, housing availability, and the relocation assistance program.
- A discussion on the tentative time schedule for construction noting any significant items that may affect the schedule.
- A discussion of any other items that may be informative because of the particular conditions of the proposal.

8.8 Record of Public Hearing

Whenever a formal or open forum public hearing is held, a Record of Public Hearing is prepared to provide documentation of the proceeding. The Record of Public Hearing includes a title page, table of contents, resume of the hearing, index of speakers, a verbatim transcript, reproductions of displays, documents submitted for the record, reproductions of publicity items (including public hearing notices), and a list of invitations. The open forum hearing record must also include a synopsis of the comments, concerns, and questions discussed with the public but not entered into the formal verbatim transcript.

Copies of the Record of Public Hearing must be forwarded to the DLAE. Additional copies may be requested by the DLAE. Requests for additional copies normally are made at the time of the hearing.

8.9 Rehearing

The findings and conclusions of the public hearing are valid only if the conditions surrounding the original hearing remain constant.

40 CFR 1502.9(c) requires that the LPA prepares supplements to either the draft or final environmental impact statement if:

- The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (e.g., substantial unanticipated development in the area affected by the proposal).

A new public hearing or opportunity for a public hearing is required under either of the above scenarios. The LPA is responsible for reassessing changes in project location and design features and changes in the surrounding area and must prepare, circulate, and file a supplement to an environmental impact statement in the same fashion (exclusive of scoping) as a draft and final statement, and schedule rehearing as necessary.

8.10 Location and Design Approval

Caltrans District Director’s approval of the final environmental document constitutes location and design approval for projects on the State Highway System.

Chapter 9 **Civil Rights & Disadvantaged Business Enterprise**

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LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation
LAPM 9-K: Disadvantaged Business Enterprise Joint Check Agreement Request
Exhibit 9-P: Prompt Payment Certification

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 9 **Civil Rights & Disadvantaged Business Enterprise**

9.1 Introduction

As subrecipients of United States Department of Transportation (USDOT) funding, Local Public Agencies (LPAs) are required to comply with and enforce certain nondiscrimination requirements in the award and administration of USDOT assisted contracts and procurements. The information contained in this chapter has been extracted from other documents and should not be considered as a replacement or substitute for the laws, rules and regulations, agreements, circulars, or other guidance available. Extensive reference is made to the United States Code (U.S.C.) and Code of Federal Regulations (CFR).

Caltrans Division of Local Assistance (DLA) is responsible for developing policies and procedures to help LPAs implement a Title VI, ADA, and DBE Program. DLA has included checks and balances throughout its processes including legal review of major agreements and documents. Some of the following implemented processes are taken from various federal regulations for compliance with Title VI, ADA, and DBE.

Failure to comply with various federal regulations or requirements may lead to the following:

- Deemed noncompliant and be placed on a corrective action plan
- Imposed sanctions, including suspension or termination of or refusal to grant or to continue federal financial assistance
- Declined approval of projects, grants, or contracts
- Withheld reimbursements to LPAs or payments to contractors
- Referred to Federal Highway Administration (FHWA), USDOT, or the United States Department of Justice (USDOJ) for appropriate legal action
- Other actions deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the LPA or contractor

9.2 Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements (FHWA)

Before the passage of the Civil Rights Act of 1964, there was no law preventing discrimination and segregation in the United States among people of different colors, races, ethnicities, national origins, and people who speak different languages. Title VI of the Civil Rights Act of 1964 (Title VI) states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” per 42 USC 2000d. Simply put, members of the public must not be discriminated against when trying to access LPA programs, services, or activities based on their race, color, or national origin (including Limited English Proficiency (LEP)).

In addition to Title VI, other nondiscrimination statutes afford legal protection; these statutes include the following:

- Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C.324) (sex)

- Age Discrimination Act of 1975 (age)
- Section 504 of the Rehabilitation Act of 1973 (disability); see Section 9.3
- Americans with Disabilities Act of 1990 (disability); see Section 9.3

As a condition of receiving federal funds from FHWA through Caltrans, LPAs are required to sign the Master Agreement – Administering Agency-State Agreement for Federal-aid Projects (see Exhibit 4-C) with Caltrans, agreeing to comply with Title VI and other regulations imposed by the USDOT or the FHWA, as it relates to Title VI and additional nondiscrimination requirements.

9.2.1 Legal Authorities

LPAs must comply with the following list of authorities for Title VI and additional nondiscrimination compliance.

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) (Title VI) – Prohibits discrimination on the basis of race, color, or national origin (including LEP) in programs and activities receiving federal financial assistance.
- Civil Rights Restoration Act of 1987 (amended Title VI) – Expanded the coverage of Title VI to apply to all operations of LPAs receiving federal financial assistance, not just programs or activities that are federally funded.
- Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. Section 324) (sex) – Prohibits discrimination on the basis of sex.
- Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107) (age) – Prohibits discrimination on the basis of age.
- USDOJ Title VI Requirements – 28 CFR 42 Subpart F: Coordination of Enforcement of Non-discrimination in Federally Assisted Programs – USDOJ's regulations for enforcing Title VI and mandating each state agency administering a continuing program that receives federal financial assistance to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it.
- USDOT Title VI Requirements; 49 CFR Part 21 – USDOT's regulations for enforcing Title VI, including procedures for effecting compliance.
- USDOT Order Title VI Order 1000.12C – USDOT's order provides policy direction, practices, and standards to Operating Administrations (OAs) for establishing and maintaining an enforcement program that ensures Title VI compliance.
- FHWA Title VI Requirements, 23 CFR Part 200 – FHWA's regulations for implementing the FHWA Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations.

Taken together, these requirements define an overarching Title VI nondiscrimination program. Title VI and the additional nondiscrimination requirements are applicable to all programs and activities administered by a recipient and subrecipient, in addition to programs receiving federal financial assistance, due to the Civil Rights Restoration Act of 1987. Nondiscrimination provisions apply to all programs and activities of Federal-aid recipients, subrecipients, and contractors, regardless of tier (49 CFR 21).

9.2.2 Title VI Program Roles and Responsibilities

FHWA Roles and Responsibilities

The FHWA CA Division Office (CADO) ensures that Caltrans has an approved Title VI Plan and submits the annual Title VI Accomplishments and Goals Report. Additionally, CADO ensures that Caltrans implements an effective monitoring program of their subrecipients' (LPAs') efforts to implement Title VI effectively.

CADO processes Title VI complaints (complaints received from members of the public against Caltrans or LPAs) received from Caltrans. CADO Civil Rights Manager and Civil Rights Specialist guide Caltrans as needed.

Caltrans Roles and Responsibilities

Office of Civil Rights (OCR)

- Administer the Caltrans Title VI Program.
- Oversee DLA's efforts in monitoring LPA Title VI programs and provide technical assistance to DLA.
- Process and forward Title VI complaints received from LPAs to FHWA for investigation.

Division of Local Assistance (DLA)

- Provide technical assistance to the districts and LPAs.
- Monitor LPA compliance with Title VI program requirements by conducting mandated program assessments. The district is invited to participate in LPA program assessment onsite visits.
- Provide training for district and LPA staff.
- Process and forward Title VI complaints received from LPAs to OCR.

District Local Assistance Engineer (DLAE)

- Appoint a DLA Title VI Coordinator for the district to be the point of contact for LPAs. The DLA Title VI Coordinator assists DLA in its oversight responsibilities.
- Monitor LPA compliance with Title VI program requirements by participating in Title VI program assessments and meetings with LPAs.
- Ensure that LPAs with Federal-aid contracts sign the most current Master Agreement Administering (see Exhibit 4-C) with the most current Title VI assurances (Exhibit B) that include an Appendix E to Exhibit B.
- Ensure that LPAs with Federal-aid contracts submit their Title VI Implementation Plans to DLA biennially (by June 30 every odd year or when requested) for review through the Title VI Program Assessment Online Form.
- Serve as the focal point for advice and assistance to the LPAs on Title VI matters.
- Provide Title VI oversight of LPAs pursuant to the LAPM.

- Report all Title VI accomplishments for the current Federal Fiscal Year (FFY) and goals for the upcoming FFY to the District Title VI Liaison to be included in the Caltrans Title VI Accomplishments and Goals Report reported to the FHWA annually.

Local Public Agency Roles and Responsibilities

- Develop the LPA's Title VI program as specified in Section 9.2.3: FHWA Title VI Program Requirements.
- Participate in Title VI program assessments conducted by DLA.
- Submit technical assistance requests to the DLAE.
- Designate a Title VI Coordinator, accountable to the Chief Executive Officer of the LPA, to administer the LPA's Title VI Program in accordance with federal laws and regulations relating to Title VI.
- Develop a Title VI Implementation Plan (Title VI Plan), a written plan for enforcement that sets out its priorities and procedures for Title VI. The plan must address all the items listed under the Title VI Requirements section below, be approved by the LPA's approving body or official, and be submitted to DLA through the Title VI Program Assessment Online Form.
- Develop a Title VI complaint form and a log for Title VI complaints received. In addition, LPAs must develop procedures for prompt processing (including logging Title VI complaints, determining jurisdiction, and determining if the complaint is a Title VI complaint) and disposition of Title VI complaints received directly by the LPA. Visit DLA's Filing a Title VI Complaint website for more information.

  Note: Per the FHWA Guidance Memorandum, Processing of Title VI Complaints, dated June 13, 2018, all Title VI complaints received by LPAs are to be forwarded to Caltrans to be submitted to the FHWA Division Office. Title VI complaints must be sent within one business day of receipt via email to Title.VI@dot.ca.gov.
- Implement and monitor the LPA's Title VI program following the LPA's Title VI Plan and FHWA's Title VI program requirements.
- Complete the Title VI Program Assessment Online Form biennially by June 30 every odd year or when requested.

9.2.3 FHWA Title VI Program Requirements

LPAs that receive FHWA funds through Caltrans are required to establish a Title VI program that is subject to assessment by Caltrans pursuant to 23 CFR 200.9(b)(7). The purpose of the program is to prohibit discrimination and ensure non-discrimination by establishing policies and procedures.

Caltrans Division of Local Assistance, Office of Local Civil Compliance (LCC) monitors LPAs for Title VI compliance. The following is a list of items that are required as part of an LPA's Title VI program. For examples of documents and resources, visit DLA's FHWA Title VI Local Agency Requirements website.

1. Title VI Implementation Plan (28 CFR 42.415 and 23 CFR 200.9(b)(11))

   The LPA must develop a written plan that sets priorities and procedures for Title VI compliance which covers race, color, and national origin (including LEP). This plan must be available to the public (for example, posted on the website) and address all the items listed in this section. The LPA must implement and enforce the Title VI Plan to ensure compliance with FHWA's Title VI requirements. This plan must be updated annually or as needed when changes occur.

2. Designation of a Title VI Coordinator (23 CFR 200.9(b)(1))

   The LPA must designate a Title VI Coordinator who has a responsible position in the organization and easy access to the head of the agency. Identification of the Title VI Coordinator must be disseminated to the public via such methods as posting in public areas or on the LPA's website.

3. Title VI/Nondiscrimination Policy Statement (49 CFR 21.7(b))

   The LPA must develop a Title VI policy statement for signature by the head of the agency and be made available to the public. The statement must give a reasonable guarantee that the programs administered by the LPA are conducted in compliance with all Title VI nondiscrimination requirements which covers race, color, and national origin (including LEP). The policy statement must be updated annually.

4. Limited English Proficiency (LEP) Assessment (Four Factor Analysis) / Language Access Plan (LAP) (Title VI)

   Publications or public notices must be made available in languages understood by the affected population and in other languages determined by the LEP Assessment or by request. Interpreters must be made available for LEP persons at public meetings (see LAPM Chapter 8: Public Hearings).

   Language barriers may prohibit LEP persons from:

   - Obtaining services and information related to transportation services, programs, and projects.
   - Taking advantage of the transit system, which could affect their jobs and social opportunities.
   - Understanding the benefits to which they are entitled when their home or business property is acquired through eminent domain.

   More information on LEP can be found at: www.lep.gov.

   LEP Assessment

   The LPA is required to ensure programs and activities normally provided in English are accessible to LEP persons. Each LPA must perform an annual assessment (also referred to as a Four Factor Analysis) to determine if modifications are needed to their programs and activities to ensure meaningful access by LEP persons by providing language interpretation (verbal) or translation (written) services. If there are no changes to the factors from the previous LEP Assessment, the LPA can use the prior year's LEP Assessment. The LPA must document that the LPA reviewed the previous LEP Assessment and found no changes.

The LPA's assessment must be based on the following factors:

- The number or proportion of LEP persons eligible to be served or likely to be encountered.
- The frequency of LEP contacts.
- The nature and importance of the programs, services, or activities provided.
- The resources available for LEP persons.

Visit FHWA's U.S. – Limited English Proficiency Data Collection Walkthrough website for more information.

Language Access Plan (LAP)

The LAP must comprise the following six elements that are vital to developing and taking reasonable steps to provide meaningful access to LPA-conducted programs, services, and activities:

- Understanding how persons with LEP interact with the LPA
- Identifying and assessing communities with LEP
- Providing notice of language assistance services
- Providing language assistance services
- Training staff on policies and procedures
- Monitoring, evaluating, and updating the language access policy directives, plans, and procedures.

The LAP must be updated with the results of the LEP Assessment or as needed when changes occur. Visit the USDOJ's Language Access Planning or the USDOT's Language Access Plan websites for more guidance.

5. Dissemination of Title VI Information (23 CFR 200.9(b)(12))

   The LPA must develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English (determined by the LEP Assessment). The purpose of the information is to communicate information about the public's rights under Title VI

6. Title VI Training for LPA Staff (23 CFR 200.9(b)(9))

   The LPA must provide Title VI training for all LPA employees every two years. Title VI training must cover what is Title VI, how the LPA implements its Title VI program to meet federal requirements, and what steps to take for handling Title VI complaints, as well as language interpretation (verbal) or translation (written) requests.

7. Title VI Assurances in Contract Documents and Agreements (23 CFR 200.9(a)(1) and 49 CFR 21.7)

   The LPA must include required Title VI Assurances (specifically, Appendices A and E of the Title VI Assurances) in all sub-contracts and sub-agreements with federal funds, where applicable. The LPA signed the Title VI Assurances as part of Exhibit 4-C: MASTER AGREEMENT - ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS.

For construction contracts, specific Title VI contract provision language is included in Form FHWA-1273 that is physically inserted in the Federal-aid construction contract (see LAPM Chapter 12: Plans, Specifications, and Estimate).

For consultant contracts, Appendices A and E of the Title VI Assurances must be included in each consultant contract (see LAPM Chapter 10: Consultant Selection). The consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract. Refer to Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXII Title VI Assurances.

8. Title VI Complaint Procedures (23 CFR 200.9(b)(3))

   The LPA must develop a Title VI complaint form and a log for Title VI complaints received. In addition, the LPA must develop procedures for prompt processing (including logging Title VI complaints, determining jurisdiction, and determining if the complaint is a Title VI complaint) and disposition of Title VI complaints received directly by the LPA.

   Note: Per the FHWA Guidance Memorandum, Processing of Title VI Complaints, dated June 13, 2018, all Title VI complaints received by LPAs are to be forwarded to Caltrans to be submitted to the FHWA Division Office. Title VI complaints must be sent within one business day of receipt via email to Title.VI@dot.ca.gov.

9. Title VI Data Collection (23 CFR 200.9(b)(4))

   The LPA must develop procedures for the collection of statistical data (race, color, and national origin) of participants in, and beneficiaries of, federally funded roadway projects, e.g., citizens impacted by relocation and participants that attended the public hearing during an environmental review. For example, the LPA can collect Title VI data of participants at public meetings.

   In addition, the LPA must analyze the data collected to determine the effectiveness of outreach methods to ensure that no group is excluded during the decision-making process or is not given an opportunity to voice their opinions or concerns. For example, in analyzing the data collected in the example above, the LPA would determine if the LPA needed to conduct additional outreach to the group(s) who did not attend the public meeting, as these groups make up a good portion of the population.

10. Internal/External Title VI Reviews (23 CFR 200.9(a)(4), 23 CFR 200.9(b)(5), 23 CFR 200.9(b)(6), and 23 CFR 200.9(b)(7))

    The LPA must develop a program to conduct internal Title VI reviews of program areas and to conduct external Title VI reviews of sub-awardees. This effort ensures both the LPA and its sub-awardees comply with FHWA's Title VI requirements.

11. Title VI Accomplishments and Goals Report (Title VI Annual Work Plan) (23 CFR 200.9(b)(10))

    The LPA must develop an annual Title VI Accomplishments and Goals Report which consists of accomplishments for the past year, and goals for the next year. This report must be made available to the public and when requested by Caltrans.

9.2.4 LPA Title VI Implementation

Environmental Analysis (Exhibit 6-A Preliminary Environmental Study (PES))

See Exhibit 6-A: Preliminary Environmental Study (PES), LAPM Chapter 6: Environmental Procedures, or refer to the Local Assistance Environmental website.

Upon completion of the Exhibit 6-A: PES Form, if questions 23-32 are marked yes, or if the PES results in an Environmental Assessment or Environmental Impact Statement:

a. Title VI implementation and outreach may be triggered. Any vital public communication must be translated and accessible when a significant number or percentage of the population is eligible to be served (5% or 1,000 individuals, whichever is less of the population to be served), likely to be directly affected by the program/activity, or needs services or information in a language other than English to communicate effectively.
b. The LPA must contact the District Senior Environmental Planner and the District Senior Right of Way Agent to inform them the agency may implement Title VI and outreach for this project.

Public Hearings, Public Involvement Meetings, and Community Meetings

The attendance and concerns of LEP persons, persons with disabilities, minority populations, and low-income populations at public involvement meetings and hearings must be carefully documented to comply with Title VI, including statistics of participants by race and gender. Public hearing announcements must be made available in languages understood by the affected population. Public hearings must be held at locations that are both geographically and structurally accessible.

Right of Way

On Federal-aid projects, all Right of Way (R/W) activities are conducted in accordance with LAPM Chapter 13: Right of Way. The LAPM requires that the public be provided with Title VI information and complaint procedures within each of the following R/W functions: appraisals, acquisitions, relocation assistance program, and property management. Both the DLAE and Caltrans District R/W staff monitor R/W activities on local projects to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Construction

Federal-aid construction contracts must include provisions, which require compliance with Title VI. The specific contract provision language is included in Form FHWA-1273 that is physically inserted in the Federal-aid construction contract (see LAPM Chapter 12: Plans, Specifications, and Estimate). To further comply with Title VI, LPAs must notify residents (in English and in other languages as needed) prior to construction that they may be impacted by construction zones (e.g. detours, noise, parking, pollution, etc.).

Title VI Monitoring

The LPA must actively monitor its programs, services, and activities to ensure compliance with Title VI requirements. For example, efforts should be made to communicate regularly with management and employees to address Title VI questions and provide technical assistance and training. Policies and procedures must be evaluated periodically for Title VI compliance and incorporate Title VI requirements, where applicable.

Demographic data must be collected and analyzed an on ongoing basis to better understand the populations being served by the LPA, as well as inform the delivery of services. Public meeting notices and other communications must be reviewed for LEP purposes.

Title VI Program Assessments

Caltrans DLA conducts program assessments of LPAs receiving federal funds to ensure compliance with Title VI requirements pursuant to 23 CFR 200.9(b)(7). Assessments can occur at any time, and at Caltrans' discretion. Assessments consist of a desk assessment and/or on-site visit. The assessors summarize observations and findings in a formal program assessment report that is provided to the LPA, the DLAE, and FHWA. Corrective action may be required, where applicable.

9.2.5 Additional Resources for Title VI Implementation

Additional information on implementing Title VI (including potential issues, self-monitoring, good practices, and mitigation measures) is available at:

- Office of Civil Rights: Title VI Branch
- FHWA: Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements
    - Title VI Toolkit
- DLA: DLA's FHWA Title VI Local Agency Requirements
    - Title VI Compliance Guide for LPAs
    - DLA FHWA Title VI Program Checklist
    - Filing a Title VI Complaint
    - Local Agency FHWA Title VI Training

9.2.6 Required Documents and Reports

Document / Report	Summary	Due Date
Title VI Assurances (USDOT Order 1050.2A)	LPA's assurances for complying with Title VI and non-discrimination provisions. This is part of Exhibit 4-C: Master Agreement Administering Agency-State Agreement for Federal-aid Projects.	Signed when applying for federal financial assistance and updated as needed
Title VI Implementation Plan (28 CFR 42.415 and 23 CFR 200.9(b)(11)	A written plan that sets priorities and procedures for Title VI compliance and lays out how the LPA implements its Title VI program.	Updated annually by October 1 or as needed when changes occur
Title VI/Non-Discrimination Policy Statement (49 CFR 21.7(b))	A reasonable guarantee that the programs administered by the LPA are conducted in compliance with all Title VI nondiscrimination requirements.	Updated annually

Limited English Proficiency (LEP) Assessment (Four Factor Analysis) (Title VI)	An annual assessment (also referred to as a Four Factor Analysis) to determine if modifications are needed to their programs and activities to ensure meaningful access by LEP persons.	Updated annually or as needed when changes occur
Language Access Plan (LAP) (Title VI)	A written plan that includes the LEP Assessment results and procedures and resources available to provide language assistance to LEP individuals.	Updated as needed when changes occur
Title VI Accomplishments and Goals Report (Title VI Annual Work Plan) (23 CFR 200.9(b)(11)	An annual Title VI Accomplishments and Goals Report which consists of accomplishments for the past year, and goals for the next year.	Updated annually
Title VI Program Assessment Online Form	A biennial assessment used to conduct LPA Title VI Program Assessments to ensure LPAs comply with FHWA Title VI requirements.	Reported biennially by June 30 every odd year or when requested

9.3 Americans with Disabilities Act and Section 504 of the Rehabilitation Act

As part of FHWA's regulatory requirements under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), Caltrans ensures that LPAs receiving federal funds do not discriminate on the basis of disability in any highway transportation program, activity, service, or benefit they provide to the general public. LPAs must ensure that people with disabilities have equitable opportunities to use the public right-of-way system.

Per Section 504 (codified as 29 U.S.C.791 et seq.), LPAs must ensure that persons with disabilities are not discriminated against in any and all aspects of employment or be denied access to the goods or services that LPAs provide.

The intent of ADA (Public Law 101-336, codified as 42 U.S.C.12101 et seq.) is to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. This law extended the protections offered for persons with disabilities.

9.3.1 Legal Authorities

28 CFR 35 requires that facilities constructed on behalf of, or for the use of, a public entity shall be designed and constructed so that the facility is accessible to and usable by persons with disabilities.

49 CFR 27 requires nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. The State of California has also adopted regulations in Section 54 of the California Civil Code that specifies all buildings, structures, sidewalks, curbs, and related facilities constructed in California by the use of state, county or municipal funds, or the funds of any political subdivision of the state, must be accessible to and usable by persons with disabilities.

LPAs sign ADA assurances as part of their Master Agreement with Caltrans (see Exhibit 4-C: Master Agreement). The Program Supplement Agreement (PSA) for each project includes the LPA's reaffirmation of the nondiscrimination assurances contained in the Master Agreement.

9.3.2 ADA / Section 504 Program Roles and Responsibilities

FHWA

- Ensure public entities, recipients, and LPAs are informed of their responsibilities to provide accessibility in their transportation programs, activities, and facilities.
- Ensure public entities, recipients, and LPAs are applying accessibility standards to all transportation facilities.

Caltrans

Office of Civil Rights (OCR)

- Process and forward local grievance complaints to the LPA's ADA Coordinator and DLA.

Division of Local Assistance (DLA)

- Provide technical assistance and training to LPAs.
- Monitor LPA compliance with ADA/Section 504 program requirements by mandated program assessments.
- Monitor and track grievance complaints received from OCR, and ensure LPAs are following up with the complaints/complainants.

District Local Assistance Engineer (DLAE)

- Ensure LPAs who are currently receiving and requesting federal funds must provide a completed Exhibit 9-C: Local Agency ADA Annual Certification Form by June 30 of each year for the following federal fiscal year (October 1 to September 30). The form must be received prior to submitting a Request for Authorization to proceed with a Federal-aid project.
- Monitor LPA compliance with ADA program requirements by participating in ADA program assessments and meeting with LPAs.

9.3.3 ADA / Section 504 Program Requirements

1. Designation of an ADA Coordinator

   LPAs that employ 50 or more persons are required to designate an ADA Coordinator who is responsible for coordinating the efforts of the LPA to comply with ADA requirements, including investigation of complaints. The LPA must make available to the public the name and contact information (mailing address, telephone number, e-mail address, etc.) of its designated ADA Coordinator 28 CFR 35.107(a).

2. Adoption of Grievance Procedures

   LPAs that employ 50 or more persons are required to adopt and publish procedures for resolving grievances arising under Title II of the ADA (28 CFR 35.107). Pursuant to 28 CFR 35.170, any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may file a complaint

within 180 days of the date of the alleged discrimination, unless the time for filing is extended by an LPA for good cause. The LPA must designate at least one person to coordinate its efforts to comply with the adoption of complaint procedures per 49 CFR 27.13.

The LPA must adopt complaint procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 37, 38, and 39. The procedures must meet the following requirements:

- The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under paragraph (a) of this section, must be sufficiently advertised to the public, such as on the LPA's website;
- The procedures must be accessible to and usable by individuals with disabilities;
- The LPA must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant by a means that will result in documentation of the response.

3. Notice of ADA Nondiscrimination Policy

LPAs must make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the LPA, and make such information available to them in such manner as the head of the LPA finds necessary to apprise such persons of the protections against discrimination assured them by ADA and 28 CFR 35.106.

Methods that LPAs can use include:

- Putting the notice on the LPA’s website
- Posting the notice at facilities
- Publishing the notice in local newspapers

The information must be provided in “alternative” formats so that it is accessible to people with hearing and vision disabilities. Examples of alternative formats include:

- Captioned public service announcements on television
- Large print
- Braille
- HTML format on an accessible website
- Audio recording

4. Self-Evaluation

LPAs are required to ensure accessibility for individuals with disabilities through the self-evaluation pursuant to 28 CFR 35.105, 49 CFR 27.11(c)(2), and Section 504. In the interest of transparency, keep a copy of the self-evaluation available in the files for public review. As a public entity, it is the LPA’s responsibility to ensure that individuals with disabilities can participates in all aspect of their civic, social, and personal life within the community. Consider the completed self-evaluation a “living” document, to be revisited and updated

regularly. This will ensure the LPA's communities, programs, services, and activities remain accessible.

Critical areas to evaluate as part of a self-evaluation must accomplish the following, but are not limited to:

- Identify all programs (including public right-of-way facilities), activities, and services and their locations.
- Determine whether employees and officials are familiar with the public entity's ADA obligations, including the requirement to make reasonable modifications to policies, practices, and procedures.
- Determine whether employees and officials know how to arrange for auxiliary aids and services, such as sign language interpreters, material in Braille, and assistive listening systems; to ensure that communication with people with disabilities is as effective as others.
- Review service, activity and program's policies and procedures to determine whether they ensure an equal opportunity for people with disabilities to participate and benefit.
- Survey facilities and determine whether there are physical barriers to access programs. If non-structural changes, such as moving programs, should be made, include them in the self-evaluation. If structural changes are needed, include them in the transition plan.

5. Transition Plan

   Following completion of a self-evaluation, LPAs with 50 or more employees are required to develop a transition plan to prioritize removal of structural barriers for accessibility purposes pursuant to 28 CFR 35.150(d). Although LPAs with fewer than 50 employees are not required to develop a transition plan, it may be useful in setting priorities when structural changes are required to bring the organization into compliance.

   The transition plan must accomplish the following, but is not limited to:

   - Identify physical obstacles in the LPA's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
   - Describe in detail the methods that will be used to make the facilities accessible;
   - Specify the schedule for taking steps necessary to upgrade pedestrian access to meet Section 504 and/or ADA requirements in each year following the transition plan; and
   - Indicate the official responsible for implementation of the plan (28 CFR 35.150(d)(3).

   Note: LPAs must implement a system for periodically reviewing and updating self-evaluations and, if applicable, transition plans per 49 CFR 27.11(c)(2)(v).

6. Caltrans DLA ADA Section 504 Program Assessment

   The LPA ADA Section 504 Program Assessment is to be submitted electronically.

Caltrans monitors LPA compliance with ADA program requirements by conducting mandated program assessments. The district is invited to participate in LPA program assessment onsite visits. A biennial assessment is used to conduct LPA ADA Program Assessments to ensure LPAs comply with FHWA ADA requirements.

LPAs must be prepared to submit all information in one sitting, which covers this sample assessment: Sample Questions of the ADA Section 504 Program Assessment (PDF).

Use this form link to submit an ADA Section 504 Program Assessment. LPAs are required to complete the DLA ADA Section 504 Program Assessment Online Form biennially (by June 30 every odd year when requested). Updates can be made after submittal by requesting an update link to dla.ada@dot.ca.gov.

Note: The Caltrans DLA ADA Section 504 Program Assessment does not replace the Exhibit 9-C: Local Agency ADA Annual Certification Form.

7. Design

   State and local governments, regardless of whether they receive federal financial assistance, are required to comply with federal 2010 ADA Standards, Title 24 of the California Code of Regulations (which contains California building regulations), or local code, whichever provides the greatest access. Private-funded improvements within the public Right of Way are also required to comply with the federal 2010 ADA Standards or with Title 24, whichever code offers the greatest access or protection to individuals with disabilities. All new and altered pedestrian facilities such as, but not limited to, highway rest area facilities, sidewalks, crosswalks, pedestrian overpasses, underpasses, and ramps must be made accessible to persons with disabilities in accordance with federal and state accessibility standards on all LPA Federal-aid projects. Facility maintenance does not constitute an alteration (see LAPM Chapter 11: Design Guidance for what constitutes an alteration triggering accessibility requirements).

   LPAs certify compliance with federal, state, and local ADA regulations, laws, and codes in the Exhibit 12-D: PS&E Checklist.

8. ADA Certification

   LPAs currently receiving and requesting federal funds must provide the Caltrans DLAE with a completed Exhibit 9-C: Local Agency ADA Annual Certification Form by June 30 of each year for the following federal fiscal year (October 1 to September 30). The form must be received prior to submitting a Request for Authorization to proceed with a Federal-aid project.

   Exhibit 9-C includes:

   a. Designated ADA Coordinator information (name, address, phone number, and e-mail address).

   b. Certification that the LPA has an updated self-evaluation and transition plan, if applicable. If the LPA does not have an updated self-evaluation and transition plan, then the LPA provides an estimated date that they will have one, and may be subject to a desk or on-site program review.

c. Certification of the adoption of a grievance procedure. If the LPA does not have a grievance procedure, then the LPA provides an estimated date that they will have one.

9. ADA Monitoring

   During the field review, an agreement is reached among all interested parties (LPA, DLAE, FHWA) on the general design features and exceptions for the project. ADA deficiencies are discussed and agreed upon at this time (see LAPM Chapter 7: Field Review).

10. Plans, Specifications & Estimate

    LPAs certify that their project's Plans, Specifications & Estimate (PS&E) complies with all applicable federal and state regulations and codes (see LAPM 3-A: Project Authorization/Adjustment Request and Exhibit 12-D: PS&E Checklist, and LAPM Chapter 12: Plans, Specifications & Estimate).

11. Final Inspection

    The LPA conducts the final inspection and certifies on the Exhibit 17-C: Final Inspection Form that the project was constructed in accordance with the scope and description of the project authorization document and that all federal and state requirements have been met. If the DLAE reviews the job site and cannot verify completion of required ADA accessible components (as certified in Exhibit 17-C), the agency may be subject to sanctions as identified in LAPM Chapter 20: Audits & Corrective Actions.

9.4 Equal Employment Opportunity (EEO) Contractor Compliance

The current Federal Transportation Act, 23 U.S.C.140(a), and implementing regulations of 23 CFR 230 require that LPAs receiving federal financial assistance assure that employment in connection with federal highway construction projects is provided without regard to race, color, religion, sex, national origin, age, or disability.

The LPA is also required to include notification of a Federal-aid contractor's EEO responsibilities in the advertised contract specifications. The LPA must maintain and make available apprenticeship, skill improvement or other upgrading programs, which provide equal opportunity for training and employment without regard to race, color, religion, sex, national origin, age, or disability.

23 CFR 635.107 sets forth FHWA policy relating to Federal-aid highway contract-letting, and requires equal opportunity for DBE participation. Other sections of the CFR include nondiscriminatory bidding procedures, subcontractor and contractor responsibilities, labor, employment and Native American Indian preference provisions, payroll and statements of wages paid, and contract termination procedures.

Form FHWA-1273, Required Contract Provisions for Federal-Aid Construction Contracts is a standard federal form containing required contract provisions and proposal notices and is required to be physically inserted into each Federal-aid highway construction contract and subcontracts (at any tier). When a contractor signs a Federal-aid contract of $10,000 or more, the nondiscrimination provisions in the Form FHWA-1273 constitutes the contractor's Equal Employment Opportunity/Affirmative Action Program standards for that contract.

9.4.1 EEO Implementation

Assurances

LPAs sign assurances as part of their Master Agreement with Caltrans. Appendix A to Exhibit B of the Master Agreement includes nondiscrimination in the selection and retention of sub-applicants and the prohibition of discrimination in employment practices.

Required Federal Contract Provisions

LPAs must physically insert the Form FHWA-1273 into the contract document. LPAs are aware that contractor's noncompliance with the EEO specifications in the Form FHWA-1273 may be considered a breach of contract for which payment may be withheld, or the contract terminated (see LAPM Chapter 12: Plans, Specifications & Estimate).

Construction

Federal-aid prime contractors and subcontractor's employment practices in the areas of recruitment and selection decisions (hiring, promotions, terminations, training) are to be conducted without regard to race, color, religion, sex, national origin, age, or disability.

The LPA's resident engineer should be cognizant of the contractual requirement and monitor the contractor for compliance. Specifically, the resident engineer should be concerned whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees (see LAPM Chapter 16: Administer Construction Contracts, Section 16.9: Equal Employment Opportunity).

9.4.2 EEO Monitoring

The following three checklists serve to assist LPAs in implementing EEO and are monitoring tools for DLAEs to ensure that EEO requirements are met.

- Plans, Specifications & Estimate Checklist

  Exhibit 12-D: PS&E Checklist confirms the implementation of the mandatory requirements of FHWA Form-1273 such as Equal Employment Opportunity (EEO) certification, Disadvantaged Business Enterprise (DBE) provisions, and applicable wage rates. The LPA submits Exhibit 12-D to the DLAE along with the request for authorization to proceed with construction for Federal-aid construction contracts.

- Construction Contract Administration Checklist

  Exhibit 15-A: Local Agency Construction Contract Administration Checklist confirms that DBE and labor/EEO compliance requirements are performed and documented in the project files. Exhibit 15-A documents that the LPA will meet all of the requirements prior to the award of the construction contract (see LAPM Chapter 15: Advertise and Award Project).

- Resident Engineer's Construction Contract Administration Checklist

  Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist is completed by the LPA Resident Engineer. The purpose of this checklist is to assist the LPAs in administering Federal-aid highway construction projects. It also provides a record that the EEO/Wage Rate/False Statements posters are being posted at specific locations, that employee interviews will be conducted in accordance with the Labor

Compliance/EEO interview form, and that DBE requirements are met; see LAPM Chapter 15 for specific submittal requirements.

In addition, DLA performs periodic EEO process reviews that include reviews of the DLAE, LPA, and contractor. Caltrans OCR includes LPA contracts in their compliance reviews of Federal-aid contractors.

9.4.3 EEO Reporting

During the last full pay period in July, the prime contractor must complete Form FHWA-1391 for all Federal-aid construction contracts that are active.

Note: The person who should be signing Form FHWA-1391 would either be the LPA Resident Engineer or the Project Manager. The person signing the forms is responsible for verifying all the information provided is correct and will be the contact person if there are any discrepancies.

9.5. Disadvantaged Business Enterprise (DBE)

9.5.1 Background

Caltrans is required under 49 CFR 26 to administer a Disadvantaged Business Enterprise (DBE) Program. The DBE Program is intended to ensure a level playing field and foster equal opportunity in Federal-aid contracts. As a result, Caltrans periodically conducts studies that examine the availability, disparity, and discrimination of disadvantaged businesses in the transportation construction and engineering industry in California. Past studies have determined that discrimination continues to exist in the transportation contracting industry. When establishing the overall DBE goal, Caltrans must include the level of DBE participation that LPAs could contribute. This will include an assessment of the subcontracting opportunities for specific items of work and the DBE availability for specific items of work. In other words, that level of subcontracting opportunities that DBEs could reasonably be expected to compete for on a contract.

9.5.2 DBE Definitions

Additional definitions for the DBE Program not listed below can be found in 49 CFR 26.5.

Calendar Days - Unless stated otherwise, days in this chapter refers to calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where the LPA's offices are closed for all or part of the last day, the period extends to the next day on which the LPA is open.

Race-Conscious Measure or Program - One that is focused specifically on assisting only DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program.

Race-Neutral Measure or Program - A race-neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses, not just DBEs. For purposes here, race-neutral includes gender neutrality.

Recipient - In this section the recipient of federal funds refers to Caltrans.

Small Business Concern - Small Business Concern means with respect to firms seeking to participate as DBEs in Federal-aid contracts, a Small Business Concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

Statewide Overall DBE Goal - As required by 49 CFR 26, Caltrans has established a statewide overall DBE goal. This is the average level of participation that Caltrans would expect DBEs to achieve in California. To ascertain whether the statewide overall DBE goal is achieved, Caltrans will track DBE participation on all Federal-aid contracts.

Subrecipient - In this section subrecipient refers to the LPA receiving federal funds.

9.5.3 DBE Program Responsibilities

FHWA Responsibilities

FHWA administers the payment of Federal-aid highway funds to recipients: states, counties, cities, and other agencies for transportation-related projects. FHWA is responsible for monitoring these agencies for compliance with Title VI and other aspects of the Civil Rights Acts of 1964, 1968, and 1973 concerning nondiscrimination in administration of federal funds.

Caltrans Responsibilities

Office of Civil Rights (OCR)

- Administer (Caltrans DBE Program Plan).
- Maintain a directory of certified DBE contractors.
- Establish statewide overall DBE goal and race-neutral and race-conscious component projections.

Division of Local Assistance (DLA)

- Provide technical assistance to the districts.
- Monitor LPA compliance with DBE program requirements by conducting process reviews. FHWA and the District are invited to participate in these process reviews.
- Assemble statewide LPA DBE commitment, final utilization, and other information for reports to OCR.
- Provide training for district and LPA staff.

District Local Assistance Engineer (DLAE)

- Monitor LPA compliance with DBE program requirements by participating in process reviews.
- Ensure that LPAs with Federal-aid contracts submit an Exhibit 9-A: DBE Implementation Agreement for Local Agencies form.
- Review and approve the LAPM 9-B: Local Public Agency DBE Annual Submittal Form for LPAs that award Federal-aid contracts during the Federal Fiscal Year (FFY).
- Serve as the focal point for advice and assistance to the LPAs on DBE matters.

- Ensure that Exhibit 10-O2: Consultant Contract DBE Commitment and Exhibit 15-G: Construction Contract DBE Commitment are reported to the DLA in a timely manner.
- Ensure that the Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) and First-Tier Subcontractors is reported to the DLA in a timely manner.
- Provide DBE oversight of LPAs pursuant to the LAPM.
- Review at least one complete PS&E package (including DBE requirements) per agency, per year. If deficiencies are discovered, more frequent reviews should be conducted and a corrective action plan is to be submitted by the LPA for the DLAE's approval.
- Maintain a file with an index of all LPA's Exhibit 9-A: DBE Implementation Agreement for Local Agencies and LAPM 9-B: Local Public Agency DBE Annual Submittal Form; information from these forms is entered into LP2000.

Local Public Agency Responsibilities

LPA responsibilities are detailed in Section 9.6: Local Agency Responsibilities Under Caltrans DBE Program Plan of this chapter, and the responsibilities include:

- Submit Exhibit 9-A and amendments to the DLAE.
- Designate a DBE Liaison Officer, accountable to the Chief Executive Officer of the LPA, to administer the Caltrans DBE Program as it pertains to LPAs.
- Ensure prompt and full payment to the prime consultant/contractor and subconsultants/subcontractors in compliance with the prompt payment clauses of the contract.
- Ensure Exhibit 10-O2: Consultant Contract DBE Commitment and Exhibit 15-G: Construction Contract DBE Commitment are reported to the DLAE within 30 days of contract execution.
- Ensure that Exhibit 17-F: Final Report-Utilization of DBE and First-Tier Subcontractors is reported by the prime contractor or consultant upon completion of the contract.

9.6 Local Public Agency Responsibilities under Caltrans DBE Program Plan

LPA recipients of federal financial assistance must comply with all the elements of 49 CFR 26 entitled Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; these provisions apply to all Federal-aid transportation projects. LPA responsibilities are detailed in the Caltrans DBE Program Plan, the most recent copy of which is available at: https://dot.ca.gov/programs/civil-rights.

9.6.1 DBE Implementation Agreement for Local Public Agencies

As an initial step, each LPA must submit Exhibit 9-A to formally acknowledge the LPA's commitment to implement the Caltrans DBE program, and to comply with all the prescribed responsibilities detailed in the LAPM.

Exhibit 9-A: DBE Implementation Agreement for Local Agencies must be completed and submitted to the DLAE for execution by each agency before a request for authorization is

processed. This agreement must be signed by a representative authorized by the governing body to take such action.

Each agreement contains a policy statement expressing a commitment to the Caltrans DBE Program, stating its objectives, and outlining responsibilities for its implementation. Each LPA will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its Federal-aid contracts.

9.6.2 Local Public Agency DBE Annual Submittal Form

Each LPA must provide the DLAE with a completed LAPM 9-B: Local Public Agency DBE Annual Submittal Form by June 30 of each year for the following Federal Fiscal Year. This form must be received prior to submitting a Request for Authorization to proceed with a Federal-aid project.

This form will include:

1. Designated DBE Liaison Officer Information (name, address, phone number, and e-mail address).
2. Detail of planned race-neutral measures to be implemented as required by 49 CFR 26.51 and as outlined in the LPA's Exhibit 9-A.
3. The LPA's choice for method of Prompt Payment of Withheld Funds to Subcontractors, as well as a brief explanation of the monitoring and enforcement mechanisms the LPA has in place to ensure that all subcontractors, including DBEs, are promptly paid.

9.6.3 Overall Statewide DBE Goal

The overall statewide DBE goal is obtained through race-conscious and race-neutral components. The overall statewide goal is displayed on the OCR DBE website: https://dot.ca.gov/programs/civil-rights.

Race-Neutral Component

The race-neutral component of the overall statewide DBE goal is important because the race-neutral methods recipients can promote the participation of DBEs and other small businesses in their contracting programs by allowing all small business to compete with each other, including DBEs, to meet the DBE goal. The race-neutral component of the overall statewide DBE goal is accomplished when the prime consultant is a DBE firm or when DBE participation exceeds the contract DBE goal. Examples of race-neutral DBE participation are:

- A DBE wins a prime contract through customary competitive procurement procedures.
- A DBE is awarded a subcontract on a prime contract that does not carry a DBE goal.
- The DBE commitment exceeds the DBE contract goal.

Race-neutral means include, but are not limited to, the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation (e.g., unbundling large contracts to make them more accessible to small businesses, and requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).

- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing).
- Providing technical assistance and other services.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, provision of information in languages other than English, where appropriate).
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capabilities for DBEs and other small businesses.
- Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in various types of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
- Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low.
- Ensuring distribution of the DBE directory through print and electronic means to the widest feasible universe of potential prime contractors.
- Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

Race-Conscious Component

The use of contract goals is the primary example of a race-conscious measure in the DBE program. LPAs must establish contract goals on each Federal-aid contract where there are sub-contractable opportunities for DBEs.

9.6.4 DBE Liaison Officer

Each LPA must designate a Disadvantaged Business Enterprise Liaison Officer (DBELO) who must have direct independent access to the LPA's Chief Executive Officer concerning DBE program matters. This person must be responsible for the duties as described in the Exhibit 9-A: DBE Implementation Agreement for Local Agencies. Annually, the DBELO designation will be reported to Caltrans when the LPA completes its LAPM 9-B: Local Public Agency DBE Annual Submittal Form.

9.6.5 Required Contract Clauses

These and other requirements of this chapter are included in the Exhibit 12-G: Required Federal-aid Contract Language.

Contract Assurance

DBE regulations require the following contract assurance statement in every Federal-aid contract and subcontract:

- The contractor or subcontractor must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor must carry out applicable requirements of 49 CFR 26 in the award and administration of Federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy as recipient deems appropriate.

Prompt Payment from the Agency to the Contractors

Section 20104.50 of California Public Contract Code requires that LPAs pay contractors no more than 30 days after receipt of contractor's request for payment. The penalty is assessed, on the balance owed at 10% per annum. Section 7107 of California Public Contract Code provides that the agency must pay the prime contractor within 60 days after the date of completion (retention payment due). The penalty for failing to comply with this statute is the assessment of 2% per month on the balance owed in lieu of interest. In the event a lawsuit is filed, the prevailing party is entitled to attorneys' fees and costs.

Section 3329 of California Civil Code requires that LPAs pay design professionals within 30 days of their demand if it is progress payment, and within 45 days if retention is due. A penalty of 1.5% per month in lieu of interest plus attorneys' fees accrue to the prevailing party. If there is a good faith dispute as to an amount due, the LPA may withhold from the retention payment an amount not to exceed 150% of the disputed amount.

Prompt Progress Payment to Subcontractors

As the implementing agency of federal funds, the DBELO or their designee (e.g. resident engineer, project manager, contract manager, etc.) must ensure that prompt progress payments are made by prime contractors, subcontractors, lead consultants, and subconsultants. Section 7108.5 of the California Business and Professions Code (CBPC) requires a prime contractor or subcontractor (i.e. builders) to pay any subcontractor no later than seven (7) days after receipt of each progress payment received, unless otherwise agreed to in writing. The payment cannot be delayed because of disagreements on other contracts. This requirement applies to both DBE and non-DBE subcontractors.

Section 3321 of the California Civil Code (CCC) requires prime design professionals (prime consultants directly in contract with a public agency) to pay any subconsultant no later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. This requirement applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

49 CFR 26.29 requires one of the following three methods be used in Federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:

1. The LPA may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. The LPA may decline to hold retainage from prime contractors and include a contract clause, obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor or subcontractor to all subcontractors within the following timeframes:

a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and

b. For consultant contracts, retainage must be paid no later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

3. The LPA may hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors within the following timeframes:

   a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and

   b. For consultant contracts, retainage must be paid no later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

   In the above methods, a subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the agency. The work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed, when an agency has made an incremental acceptance of a portion of the contract work. Annually, LPAs choose one of the above three methods to ensure prompt pay. The LPA's choice will be reported to Caltrans when it completes LAPM 9-B: Local Public Agency DBE Annual Submittal Form.

Prompt Payment Certification

For projects awarded on or after September 1, 2023: the prime contractor or consultant must submit Exhibit 9-P to the LPA administering the contract by the 15th of the month following the month of any payment(s). If the prime contractor or consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

A failure to complete the Prompt Pay reporting requirement may result in the withholding of the prime contractor or consultant's next progress payment and/or final payment. Additionally, Caltrans may require the LPA to issue a corrective action plan and/or it may require the LPA to suspend the contract in whole or in part if the prime or consultant does not make up the shortfall.

LPAs must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LPA must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from prime contractor or consultant.

Monitoring and Enforcement Mechanism for Prompt Payment

Per 49 CFR 26.29(d), the agency is required to stipulate the monitoring and enforcement mechanisms in the contract to ensure that all subcontractors, including DBEs, are promptly

paid. These mechanisms may include appropriate penalties for failure to comply with the terms and conditions of the contract. The mechanisms may also provide that any delay or postponement of payment among the parties may take place only for good cause with the agency's prior written approval.

9.7 DBE Participation on the Contract

9.7.1 Participation Opportunities

The LPA should structure its contracts and cost estimates by task to identify potential opportunities for DBE participation. DBEs can participate in all phases of a project, including roles as prime consultants, prime contractors, sub-consultants, subcontractors, suppliers, manufacturers, and truckers.

9.7.2 DBE Contract Goals

DBE contract goals are applicable only on Federal-aid consultant contracts (A&E and non-A&E) and construction contracts that have potential subcontracting opportunities. A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. The DBE contract goal will vary depending on the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The contract goal may be zero in situations such as extremely limited subcontracting opportunities, the lack of certified DBEs available in the district for the work to be performed, or other reasons. The LPA will need to keep documentation in the project file when a zero percent DBE contract goal is deemed appropriate.

Some contracts, such as Emergency Opening, Sole-source, or Nonprofit contracts do not require a DBE goal. Work performed through Force Account also does not need a DBE goal. In these cases, there is no contract goal (different from zero percent goal).

Setting the DBE Contract Goal

When setting a DBE goal, the LPA may use contract goals only on those Federal-aid contracts that have subcontracting possibilities. The goal for a specific contract may be higher or lower than the percentage level of the statewide overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs the work of the particular contract. However, over the period covered by the State's overall goal, the LPA must set contract goals, and these individual contract goals will cumulatively result in meeting any portion of the state's overall goal. The actual DBE participation for each of the LPA's contracts contributes to the calculation used to determine if the statewide goal has been met.

DBE contract goals are established to encourage more participation of DBEs for Federal-aid transportation contracts. The bullets below provide a summary guidance of how to set the DBE contract goal. For a detailed set of instructions and a template example, please refer to Exhibit 9-D: DBE Contract Goal Methodology.

- The project analysis starts with finalizing the cost estimate and determining potential sub-contractable items of work in the Exhibit 9-D: DBE Contract Goal Methodology template.
- The LPA must consider the type of work involved (Work Category Code), location of the work (by Caltrans District number), and the potential number of DBEs listed in the

database. For each work category code, determine the number of available DBE subcontractor / subconsultants by conducting a search in the California Unified Certification Program (CUCP) database geographically by Caltrans District only. Use the district where the work will take place.

- Determine the DBE Work Factor for each task:
  - If the number of available DBE subcontractors or sub-consultants is 7 or more, use 100 percent.
  - If there are less than 7 (seven) DBEs available: for consultant contracts, use 0 Work Factor; for construction projects, determine whether or not there is a component of trucking or material supply, and apply a 10 or 12 percent DBE Work Factor, respectively; otherwise use 0.

Submitting DBE Contract Goals

The following are the DBE contract goal acceptance responsibilities for LPAs, DLAEs, and HQ DLA:

Local Public Agency Responsibilities

- Submit a completed Exhibit 9-D: DBE Contract Goal Methodology in Microsoft Excel format (not PDF file) to the DLAE for review and acceptance prior to proceeding with the procurement process and/or with the request for authorization (RFA) package as applicable.
- LPAs may not advertise the contract before review and acceptance of the DBE contract goal by the DLAE.
- For construction contract estimates greater than $4 million and consultant contract estimates greater than $1 million, the DBE contract goal must also be reviewed and accepted by HQ DLA.
- LPAs will have an opportunity to discuss and resolve any differences in the DBE contract goal calculations; however, the final decision rests with HQ DLA.

DLAE Responsibilities

- Review, provide comments and/or suggested revisions, and accept each DBE contract goal prepared by the LPA.
- For construction contract estimates greater than $4 million and consultant contract estimates greater than $1 million, e-mail Exhibit 9-D: DBE Contract Goal Methodology in Microsoft Excel format (not PDF file) to HQ DLA: DBEgoal.GFE@dot.ca.gov.
- Once Exhibit 9-D: DBE Contract Goal Methodology has been reviewed by HQ DLA, send a confirmation e-mail to the LPA with the recommended DBE contract goal.

HQ DLA Responsibilities

The following applies to DBE contract goal setting for construction contract estimates greater than $4 million or consultant contract estimates greater than $1 million:

- Review, provide comments and/or suggested revisions on each DBE contract submitted by the DLAE.

- Send confirmation email to the DLAE that Exhibit 9-D is being processed.
- After processing, reply to the DLAE with the recommended DBE contract goal.
- If the LPA and/or DLAE disagrees with the DBE contract goal, review the reasoning and make a decision if the goal needs to be adjusted.

It will not take more than 15 business days to review the Exhibit 9-D after receipt from HQ DLA. If there is no response from HQ DLA after 15 business days, the DLAE has the discretion to accept the LPA's DBE contract goal.

9.7.3 LPA Bidder or Proposer DBE Commitment and DBE Information Forms

On construction contracts, the Exhibit 15-G: Construction Contract DBE Commitment must be provided by each bidder and submitted no later than 4pm on the 5th calendar day after bid opening. On consultant contracts, Exhibit 10-O1: Consultant Proposal DBE Commitment must be included in each consultant's proposal and the Exhibit 10-O2: Consultant Contract DBE Commitment form must be included in best qualified consultant's executed consultant contract. Exhibit 15-G, Exhibit 10-O1, and Exhibit 10-O2 must include the names, addresses and phone numbers of DBE firms that will participate, and a complete description of work or supplies to be provided by each. Exhibit 15-G and Exhibit 10-O2 must also include the dollar value of each DBE work item or service to be performed (Exhibit 10-O1 will not have the dollar values since they are not known prior to consultant contract negotiation).

When 100% of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A bidder certified as a DBE should describe the work it has committed to perform with its own forces, as well as any other work that it has committed to be performed by DBE subcontractors, suppliers, and trucking companies. The bidder or proposer is required to provide written confirmation from each DBE participating in the contract. For A&E contracts, any format for written confirmation can be used. For construction contracts, LAPM 9-I: DBE Confirmation (or equivalent form) and DBE's quote must be submitted. The written confirmation must be submitted no later than 4pm on the 5th day after bid opening. If a DBE is participating as a joint venture partner, the bidder or proposer is encouraged to submit a copy of the joint venture agreement. Exhibit 15-G or Exhibit 10-O2 must be included in the construction or consultant contract whether or not there is a DBE goal on the contract. The LPA must submit this form to the DLAE within 30 days of contract execution for timely reporting. Failure to submit Exhibit 15-G or Exhibit 10-O2 to the DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract. The purpose of these forms is to capture all DBE proposed participation, or in instances when there is no DBE contract goal, DBE proposed participation acquired through normal contracting procedures as required under 49 CFR 26.

9.7.4 Running Tally of Actual Attainments

For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the prime contractor or consultant must now submit Exhibit 9-P to the LPA administering the contract. If the prime contractor or consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

9.7.5 Final Report

Upon completion of the construction or consultant contract, regardless of whether DBE participation was obtained, a summary of the DBE records must be prepared, certified correct, and submitted on the Exhibit 17-F: Final Report-Utilization of DBE and First-Tier Subcontractors, or equivalent by the contractor to the LPA showing total dollars paid to each subcontractor and supplier whether DBE or non-DBE. Exhibit 17-F is reviewed by the LPA and certified as complete and accurate. The information in this report is required by the DBE Program and the FHWA to demonstrate DBE participation on LPA projects.

The LPA must send one copy of the completed Exhibit 17-F to the DLAE as part of its Final Report of Expenditure package before final payment (see LAPM Chapter 17: Project Completion).

9.7.6 Counting DBE Participation

Actual payment to subcontractors that are certified DBEs performing a commercially useful function will be counted as DBE participation. If the prime contractor is a qualified DBE, his/her work is reported and counted.

Work Performed by DBEs

When a DBE participates in a contract, count only the value of the work actually performed by the DBE.

- Count the entire amount of that portion of a contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, supplies purchased, or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- Count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Federal-aid contract, provided that the LPA determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards DBE participation only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

Joint Venture

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces towards the DBE participation. The DBE's share of each of

the following must be commensurate with its ownership interest in the joint venture: capital contribution, control, management, risks, and profits.

9.7.7 Commercially Useful Function (CUF)

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additionally, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA must examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.

The prime contractor must perform CUF evaluation for each DBE working on a Federal-aid contract, with or without a DBE goal. This also includes DBE truckers, suppliers, and other vendors where a subcontract is not required. For contracts between the first-tier DBE and the second-tier DBE, the first-tier DBE must perform the CUF evaluation on the second-tier DBE following the same procedure described in this section. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

The prime contractor must provide written notification to the LPA at least 15 days in advance of each DBE's initial performance of work or supplying materials for the contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the contract, the contractor must submit to the LPA the initial evaluation and validation of DBE performance of a CUF using LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

The prime contractor must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the contract using LAPM 9-J:

DBE Commercially Useful Function Evaluation. The contractor must submit to the LPA these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

The contractor must notify the LPA immediately if the contractor believes the DBE may not be performing a CUF.

The LPA will verify DBE's performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LPA evaluations. The LPA must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LPA will provide written notice to the contractor and DBE at least two (2) business days prior to any evaluation. The contractor and the DBE must participate in the evaluation. Upon completing the evaluation, the LPA must share the evaluation results with the contractor and the DBE. An evaluation could include items that must be remedied upon receipt. If the LPA determines the DBE is not performing a CUF, then the contractor must suspend performance of the noncompliant work.

The prime contractor and DBEs must submit any additional CUF related records and documents within five (5) business days of LPA's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE CUF Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If the contractor and/or the LPA determine that a listed DBE is not performing a CUF in performance of their DBE committed work, immediately suspend performance of the noncompliant portion of the work. The LPA may deny payment for the noncompliant portion of the work. The LPA will ask the contractor to submit a corrective action plan (CAP) to the LPA within five (5) days of the noncompliant CUF determination. The CAP must identify how the contractor will correct the noncompliance findings for the remaining portion of the DBE's work. The LPA has five (5) days to review the CAP in conjunction with the prime contractor's review. The contractor must implement the CAP within five (5) days of the LPA's approval. The LPA will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a CUF on the contract, then the contractor may have good cause to request termination and replacement of the DBE.

The LPA's decision on commercially useful function matters is subject to review by the DLAE. CUF determinations are not subject to administrative appeal to the LPA, Caltrans and USDOT.

9.7.8 Use of Joint Checks

A joint check may be used between the contractor or lower-tier subcontractor and a DBE subcontractor purchasing materials from a material supplier if the contractor obtains prior approval from the LPA for the proposed use of joint check upon submittal of LAPM 9-K: DLA Disadvantaged Business Enterprises (DBE) Joint Check Agreement Request.

To use a joint check, the following conditions must be met:

- All parties, including the contractor, must agree to the use of a joint check
- Entity issuing the joint check acts solely to guarantee payment
- DBE must release the check to the material supplier
- LPA must authorize the request before implementation
- Any party to the agreement must provide requested documentation within 10 days of the LPA's request for the documentation
- Agreement to use a joint check must be short-term, not to exceed 1 year, allowing sufficient time needed to establish or increase a credit line with the material supplier

A request for a joint check agreement may be initiated by any party. If a joint check is used, the DBE remains responsible for all elements of 49 CFR 26.55(c)(1).

Failure to comply with the above requirements disqualifies DBE participation and results in no credit and no payment to the contractor for DBE participation.

A joint check may not be used between the contractor or subcontractor and a DBE regular dealer, bulk material supplier, manufacturer, wholesaler, broker, trucker, packager, manufacturer’s representative, or other persons who arrange or expedite transactions.

9.7.9 DBE Trucking

Use the following factors to determine if a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm including an owner-operator, who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

9.7.10 Materials and Supplies

Count expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE participation.

  Note: For purposes of counting DBE participation, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation.

  Note: For purposes of counting DBE participation, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- To be a regular dealer, the firm must be an established business that regularly engages, as its principal business and under its own name in the purchase and sale or lease of the products in question.

- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not considered regular dealers for purposes of counting DBE participation. With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transportation charges for the delivery of materials or supplies required on a job site toward DBE participation, provided the LPA determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, do not count any portion of the cost of the materials and supplies themselves toward DBE participation.

9.7.11 DBE Participation Not Counted

If a firm is not currently certified as a DBE at the time of the execution of the contract, do not count the firm's participation, except as provided for under Decertification of this section.

Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the state-wide DBE goal. Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or the LPA's overall participation until the amount being counted toward the participation has been paid to the DBE.

Apparent Lack of Control

In order for a firm to become a certified DBE, it should meet the various requirements prescribed in the CFR, as administered by the California Unified Certification Program (CUCP). The DBE must possess the power to direct or cause (49 CFR 26.71(d)).

Some situations may arise where the work to be performed by the DBE is being performed by someone else. The LPA will have to use discretion on when to investigate or report apparent cases of fraud to Caltrans. Caution is needed because those involved in performing the work may legitimately be doing so.

The three areas are as follow:

1. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
2. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable. The socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be, such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
3. The socially and economically disadvantaged owners must have an overall understanding of, and managerial, technical competence and experience directly related to the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in each critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities; to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

9.7.12 DBE Eligibility

The CUCP certifies and determines the eligibility of DBE consultant and contractor firms. The CUCP can also remove the eligibility of a firm and issue a written notice of ineligibility. A directory of certified DBE firms is available at: https://caltrans.dbesystem.com/.

Certification

A potential DBE may request certification from Caltrans by requesting an application form by mail:

Department of Transportation
Office of Civil Rights
Certification Unit
1823 14th Street, MS-79
Sacramento, CA 95811

Or email: DBE_Certification@dot.ca.gov. The form may also be downloaded at: https://dot.ca.gov/programs/civil-rights/dbe-certification-information.

Decertification

If a DBE firm becomes ineligible in the middle of a contract (i.e., due to decertification), the prime contractor may continue to use the DBE firm on the contract and may continue to receive credit toward its DBE goal for the DBE firms' work. In this case, or in a case where the DBE firm is already under contract prior to becoming ineligible, the portion of the ineligible DBE firm's performance of the contract remaining after the notice of its ineligibility must not count toward the state-wide DBE overall goal, but may count toward the contract goal.

If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the LPA may continue to count its participation on that contract toward overall and contract participation.

Appeal

When the CUCP makes an administratively final removal of a firm's eligibility, the firm may appeal the removal to the DOT under Section 26.89 of 49 CFR 26. Caltrans will provide information for an appeal with the removal of eligibility.

9.8 Good Faith Efforts

Note: For purposes of this section, bidder also includes proposer, contractor includes consultant, and subcontractor includes subconsultant.

When the LPA establishes a DBE contract goal on a Federal-aid contract, a bidder must, in order to be responsive, make Good Faith Efforts (GFEs) to meet the DBE contract goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient to meet the goal. Second, if the bidder does not meet the goal, the bidder can provide documentation in support of their adequate GFEs. This means that the bidder must show that they took all necessary and reasonable measures to achieve the DBE contract goal. The bidder could reasonably be expected to obtain maximum possible DBE participation even if they were not fully successful in meeting the DBE contract goal. An LPA must require a bidder to meet the DBE contract goal or

meet the burden of proof of GFEs in order to be awarded a contract. In any situation in which a DBE contract goal has been established, the use of GFEs must be allowed. The LPA can adopt a sample GFE procedure (Exhibit 9-G) to use verbatim or revise as necessary.

The LPA must make a fair and reasonable judgment whether a bidder that did not meet the set goal made adequate GFEs. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not GFEs to meet the DBE contract requirements. It is important to note that the LPA's determination concerning the sufficiency of the bidder's GFEs is a judgment call and the determination should not be made using quantitative formulas. Caltrans strongly cautions LPAs against requiring that a bidder meet a DBE contract goal in order to be awarded a contract, even though the bidder makes an adequate GFE showing. 49 CFR 26 specifically prohibits Federal-aid recipients from ignoring bona fide GFEs.

9.8.1 Anticipated Good Faith Efforts

The following types of actions should be considered by an LPA as part of the bidder's Good Faith Efforts (GFEs) to obtain DBE participation. It is not intended to be exclusive or exhaustive. Determining the adequacy of a bidder's GFEs to achieve DBE contract goals is a judgment call. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs that are capable of performing the work of the contract. The bidder must solicit this interest by allowing the DBEs sufficient time to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up the initial solicitation to the DBEs.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE contract goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with their own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers, and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

  Evidence of such negotiation includes: names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with the DBEs who were not selected to perform the work.
- A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's

price and capabilities as well as the DBE contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE contract goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make GFEs. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids or proposals in the contractor's efforts to meet the DBE contract goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority or women community organizations; minority or women contractors or consulting groups; local, state, and Federal minority or women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

The above actions are typically documented by the bidder on Exhibit 15-H: DBE Information - Good Faith Efforts, which is to be submitted no later than 4pm on the 5th day after bid opening. This information is used by the LPAs to determine if the GFE was adequate or not prior to awarding the contract. In determining whether a bidder has made GFEs, the LPA may take into account the performance of other bidders in meeting the DBE Contract Goal. The LPA should evaluate GFEs considering the DBE commitments of the 2nd and 3rd bidders. For example, when the apparent successful bidder fails to meet the DBE contract goal, but the 2nd and 3rd bidders meet it, it may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the DBE participation obtained by the 2nd and the 3rd bidders, this along with other supporting factors may be viewed as evidence of the apparent successful bidder having met the burden of proof of GFEs. See the Civil Rights Disadvantaged Business Enterprise Evaluating Good Faith Efforts video on the FHWA Federal-aid Essentials for Local Public Agency website.

The LPA should ensure that the following is included in the contract documents:

- The LPA may consider the DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made Good Faith Efforts to meet the DBE contract goal.
- For projects awarded based on a GFE, the LPAs must prepare and submit with the award package Exhibit 9-E: Sample Evaluation of Good Faith Efforts, that cites reasons as to why the GFE is adequate. In addition, Exhibit 15-H without supporting documentation, should be included in the award package.

Note: Exhibit 15-H and Exhibit 9-E need not be submitted with the award package, if the low bidder has met the DBE contract goal. However, bidders should be encouraged to submit Exhibit 15-H with their bid package, even if they believe they have met the DBE contract goal, in case errors are found in the Exhibit 15-G: Construction Contract DBE Commitment.

9.8.2 Bidder/Offeror's Requirements for Good Faith Efforts

Good faith efforts documentation must include the following information, and supporting documents, as necessary:

1. The bidder/offeror's overall DBE commitment.
2. Items of work the bidder/offeror has made available to DBE firms. The bidder/offeror identifies and describes those items of work the bidder/offeror might otherwise perform with the bidder/offeror's own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, the bidder/offeror must show the dollar value and percentage of the total contract. It is the bidder/offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
3. Names of certified DBEs and dates on which they were solicited to bid on the project. The bidder/offeror must include the items of work offered. The bidder/offeror must describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. The bidder/offeror must attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. The bidder/offeror is reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
4. Name of selected firm and its status as a DBE for each item of work made available. The bidder/offeror must include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, the bidder/offeror must provide the reasons for the selection.
5. Name and date of each publication in which the bidder/offeror requested DBE participation for the project. The bidder/offeror must attach copies of the published advertisements.
6. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, the bidder/offeror must provide copies of supporting documents.
7. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If the bidder/offeror has provided information, they must identify the name of the DBE assisted, the nature of the information provided, and date of contact. The bidder/offeror must provide copies of supporting documents, as appropriate.
8. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the bidder/offeror or its affiliate. If such assistance is provided by the bidder/offeror, they must identify the name of the DBE assisted, nature of the assistance offered, and date assistance was provided. Provide copies of supporting documents, as appropriate.
9. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor

whose participation it submits to meet a contract goal.

10. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the bidder/offeror's commitment.
11. Written documentation of reason(s) for rejecting DBE quotes.
12. Any additional data to support demonstration of good faith efforts.

The LPA may consider DBE commitments from other bidders when determining whether the low bidder made good faith efforts to meet or exceed the DBE goal.

9.8.3 Administrative Review and Reconsideration

An administrative review (49 CFR 26.53) and evaluation of the Good Faith Efforts (GFEs) should be made prior to award in each instance by the LPA. If the LPA determines that the apparent successful bidder has failed to meet the GFEs requirements, the LPA, before awarding the contract, must provide the apparent successful bidder the opportunity for administrative reconsideration in accordance with 49 CFR 26.53. A sample procedure for reconsideration hearing (Exhibit 9-H) can be found at the LAPM Exhibits webpage.

9.8.4 Termination and Replacement of DBE Subcontractors

A prime contractor cannot terminate or perform any work of a DBE listed on Exhibit 15-G: Construction Contract DBE Commitment or Exhibit 10-O2: Consultant Contract DBE Commitment; neither can it substitute any work for a DBE subcontractor without the written consent of the LPA prior to any replacement taking place. Unless the LPA provides prior written consent, the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G or Exhibit 10-O2. After affording the DBE due process (see Termination of DBE Subcontractors below), when a prime contractor receives written permission from the LPA to terminate it must then make adequate Good Faith Efforts (GFEs) for any necessary replacement of a DBE subcontractor to the extent needed to meet the DBE commitment.

Termination of DBE Subcontractors

The LPA must include in each prime contract a provision stating that the contractor must utilize the specific DBEs listed to perform the work and supply the materials for each item listed in the contract unless the contractor obtains the LPA's written permission.

After a contract with a specified DBE goal has been executed, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LPA:

- The listed DBE subcontractor fails or refuses to execute a written contract
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness

- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law
- Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law or is not properly registered with the California Department of Industrial Relations as a public works contractor.
- The LPA has determined that the listed DBE subcontractor is not a responsible contractor
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal
- The listed DBE is ineligible to receive DBE credit for the type of work required
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract
- Other documented good cause that the LPA determines compels the termination of the DBE subcontractor

To terminate a DBE or to terminate a portion of a DBE's work, the contractor must use the following procedures:

1. Send a written notice to the DBE of the contractor's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LPA. The written notice to the DBE must request they provide any response within five (5) business days to both the contractor and the LPA by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, the contractor may move forward with the request as if the DBE had agreed to the contractor's written notice.
3. Submit the DBE termination request by written letter to the LPA and include:
    - One or more above listed justifiable reasons along with supporting documentation.
    - The contractor's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of the contractor's written notice
    - The DBE's response to the contractor's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LPA must respond in writing to contractor's DBE termination request within five (5) business days.

Replacement of DBE Subcontractors

After receiving the LPA's written authorization of DBE termination request, the contractor must obtain the LPA's written agreement for DBE replacement. The contractor must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures must be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LPA which must include:
    a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
    b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
        - Quote for bid item work and description of work to be performed
        - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
        - Revised Subcontracting Request form
        - Revised Exhibit 10-O2: Consultant Contract DBE Commitment or a revised Exhibit 15-G: Construction Contract DBE Commitment
2. If contractor has not identified a DBE replacement firm, submit documentation of GFEs to use DBE replacement firms within seven (7) days of LPA's authorization to terminate the DBE. The contractor may request the LPA's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
    - Search results of certified DBEs available to perform the original DBE work identified and or other work the contractor had intended to self-perform, to the extent needed to meet the DBE commitment
    - Solicitations of DBEs for performance of work identified
    - Correspondence with interested DBEs that may have included contract details and requirements
    - Negotiation efforts with DBEs that reflect why an agreement was not reached
    - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
    - Copies of each DBE's and non-DBE's price quotes for work identified, as the LPA may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
    - Additional documentation that supports the good faith effort

The LPA must respond in writing to the contractor’s DBE replacement request within five (5) business days. The Contractor must submit a revised Subcontracting Request form if the replacement plan is authorized by the LPA.

9.8.5 Monitoring and Enforcement Mechanism for DBE Termination and Replacement

LPAs are required to implement appropriate mechanisms to ensure compliance with the requirements related to the termination and replacement of subcontractors by all program participants. The LPA needs to stipulate legal and contractual remedies available under federal, state and local law in the contract and must set forth these mechanisms in the LPA's DBE program.

The LPA's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that the LPA has reviewed contracting records and monitored work sites in the LPA's jurisdiction for this purpose (for example, a resident engineer certifies CUF in writing).

9.8.6 Noncompliance

LPAs must include in each prime contract a provision for appropriate sanctions that will be involved if the prime contractor fails to fulfill the DBE commitments made at the time of execution of the contract. The LPA must deny payment to the prime contractor for the portion of the contract that was committed at the time of contract execution to be performed by a DBE subcontractor but was completed by the prime contractor or a substitute non-DBE subcontractor, unless agreed by the LPA in writing.

9.8.7 Submitting the GFE and Supporting Document for Review

The following are Good Faith Effort Evaluation Review responsibilities for LPAs, DLAEs, and HQ DLA when the bidder/proposer does not meet the DBE Contract Goal.

Local Public Agency Responsibilities

- Submit a completed Exhibit 9-E: Sample Evaluation of Good Faith Effort to the DLAE for review and acceptance prior to awarding a construction contract or starting negotiations with a consultant. Include the following supporting documentation in the submittal:
  - Exhibit 15-D: Bid Tabulation Summary Sheet (or equivalent).
  - All bidder's Exhibit 15-G: Construction Contract DBE Commitment or Exhibit 10-O1: Consultant Proposal DBE Commitment.
  - All bidder's Exhibit 15-H: Proposer/Bidder Good Faith Efforts along with all documentation that supports the GFE Evaluation (i.e., call logs, available work items, accepted/rejected subcontractors). If bidders did not submit GFE documentation within five (5) days after bid opening, it should be noted in Exhibit 9-E: Sample Evaluation of Good Faith Effort.
- For construction contract estimates greater than $4 million and consultant contract estimates greater than $1 million that had their DBE goal approved by HQ DLA, if the low bidder or the most qualified consultant did not meet or exceed the DBE contract goal, the LPA must submit the above GFE documentation to their DLAE **prior to awarding a contract or starting the negotiation**.
  - LPAs **may not** award a contract to the low bidder or negotiate with the most qualified consultant without first receiving a memorandum from their DLAE that HQ DLA has determined that they made a GFE.

- If HQ DLA determines the GFE was inadequate, the LPA will take Caltrans feedback on GFE into consideration and re-evaluate the GFE. After the re-evaluation:
  - If the LPA still thinks the GFE is adequate, they can award the contract or start the negotiation process.
  - If the LPA concludes that the GFE is inadequate, they must invite the low bidder or the most qualified consultant to an Administrative Reconsideration.

DLAE Responsibilities

- For construction contract estimates less than or equal to $4 million and consultant contract estimates less than or equal to $1 million, conduct a review of the Exhibit 9-E and supporting documentation and send an email to the LPA to confirm acceptance or rejection of the GFE Evaluation.
- For construction contract estimates greater than $4 million and consultant contract estimates greater than $1 million that had their DBE goal approved by HQ DLA, e-mail all completed GFE documentation including the LPA's bid summary (Exhibit 15-D), DBE commitments (Exhibit 15-G or Exhibit 10-O1), the bidder's GFEs (Exhibit 15-H), and the LPA's GFE evaluation (Exhibit 9-E) to DBEgoal.GFE@dot.ca.gov.
- Communicate the outcome of HQ DLA's GFE evaluation review to the LPA.

HQ DLA Responsibilities

The following applies to the GFE evaluation for construction contract estimates greater than $4 million and consultant contract estimates greater than $1 million that had their DBE goal approved by HQ DLA:

- Send confirmation email to the DLAE that the GFE evaluation is being processed.
- Once the GFE evaluation review is complete, reply to the DLAE with the results of the GFE evaluation review.

The HQ DLA process will not take more than 15 business days after receipt of the GFE evaluation package by HQ DLA. If there is no response from HQ DLA after 15 business days, the DLAE has the discretion to accept the LPA's GFE evaluation.

9.9 References

49 CFR 26 (DBE Regulations)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

49 CFR 21 (Title VI Regulations)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr21_main_02.tpl

49 CFR 27 (Accessibility)
http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr27_main_02.tpl

28 CFR 35 (Accessibility)
https://www.ecfr.gov/current/title-28/chapter-I/part-35

23 U.S.C. 140(a) (EEO Contractor Compliance)
https://www.gpo.gov/fdsys/granule/USCODE-1995-title23/USCODE-1995-title23-chap1-sec140/content-detail.html

29 U.S.C. 791 et. Seq. (Accessibility)
https://www.gpo.gov/fdsys/granule/USCODE-2010-title29/USCODE-2010-title29-chap16-subchapV-sec791/content-detail.html

42 U.S.C. 12101 et. Seq. (Accessibility)
http://www.ada.gov/pubs/adastatute08.htm

California Business and Professions Code, Section 7108.5 (Prompt Payment)
http://law.onecle.com/california/business/7108.5.html

Section 54 of the California Civil Code
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=54

Chapter 10 **Consultant Selection**

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Exhibits

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Exhibit 10-I: Notice to Proposers DBE Information
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Exhibit 10-O2: Consultant Contract DBE Commitment
Exhibit 10-Q: Disclosure of Lobbying Activities
Exhibit 10-R: A&E Boiler Plate Agreement Language
Exhibit 10-S: Consultant Performance Evaluation
Exhibit 10-T: Conflict of Interest & Confidentiality Statement
Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

10.1 FEDERALLY-FUNDED A&E CONTRACTS

10.1.1 General

Introduction

A Local Public Agency (LPA) may engage consultants to perform architectural, engineering, and related services to develop a Federal-aid funded project. LPAs requesting federal funds to reimburse Architectural and Engineering (A&E) Consultants must follow the selection and contracting procedures detailed in Section 10.1: Federally-Funded A&E Contracts of this chapter. LPAs using local funds to procure an A&E Consultant on a Federal-aid funded project and will not seek federal reimbursement for the consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.1 of this chapter.

Definition of an Architectural and Engineering Consultant

23 CFR 172 and California Government Code 4525 define A&E services as program management, construction management, feasibility studies (includes environmental studies and analysis), preliminary engineering, design, engineering, surveying, mapping or architectural related services.

Architectural and Engineering Consultants

The Brooks Act (40 U.S.C.1101-1104) requires LPAs to award federally-funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the LPA must be sealed and must not be included as a criterion for rating such consultants. After ranking, cost negotiations will begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the LPA does not consider fair and reasonable, negotiations must be formally terminated, and the LPA must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the LPA must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the LPA.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to Federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman, or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations (DIR) websites below:

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

- DIR FAQ website
- DIR Wage Determination website

Non-A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value), or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal. For more details on non-A&E consultants, see Section 10.3: Non-A&E Contracts of this chapter.

Selecting the Project

The LPA is responsible for selecting and initiating a Federal-aid financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The LPA must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost, and the target date for project completion before commencing any consultant selection process.

Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the LPA. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the LPA. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C.106(g)(4) and 2 CFR 200.331-333.

Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using Federal-aid highway funds, LPAs must take all the steps necessary to prevent fraud, waste, and abuse. The LPA must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of Federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4).

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) requires that:

- LPA must maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal-funded contracts or subcontracts must have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal-funded project must have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a Federal-aid highway funded project must have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents must neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to sub-agreements;
- LPA must promptly disclose in writing any potential conflict of interest to FHWA.

Consultants Performing Work on Multiple Phases of Federal-aid Projects

LPAs may choose to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the LPAs are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, real or apparent, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications-based selection was conducted. All consultants acting in a management support role must complete Exhibit 10-U: Consultant in

Management Support Role Conflict of Interest and Confidentiality Statement (see Section 10.1.9: Miscellaneous Considerations in this chapter) and retain it in the LPA files.

Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the LPA an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see LAPM Chapter 3: Project Authorization). Eligible consultant contracts may be procured using local funds prior to receiving the E-76, but reimbursement is for work performed after the E-76 authorization date. If contract is procured using state or local funds, federal procedures must have been followed if seeking federal reimbursement. For state-funded projects see Section 10.2: State-Only Funded A&E Contracts and LAPG Chapter 25: State Programs for Local Agency Projects, for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the LPA project files for future audit.

10.1.2 Identifying & Defining a Need for Consultants

The need for a consultant is identified by comparing the project's schedule and objectives with the LPA's capabilities, its staff availability of the required expertise, and its funding resources. If the LPA does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the LPA determines that there is a need to solicit assistance from another LPA, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if Federal-aid funds are to be requested for the project segment to be contracted out.

Designate Contract Administrator

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is designated as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified LPA employee or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On Federal-aid contracts, the Contract Administrator or staff members must be a full-time public employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;

- Schedules and attends progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Documents contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.332-334;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the LPA's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Ensures consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- Identifies other LPA staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (Exhibit 17-F: Final Report - Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors or Exhibit 17-F1: Final Report - Utilization of Disadvantaged Business Enterprises (DBE) for A&E On-Call Contracts).

Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see LAPM Chapter 6 Environmental Procedures, Standard Environmental Reference (SER) Chapter 31:Environmental Assessment (EA)/Finding of No Significant Impact (FONSI), and SER Chapter 32: Environmental Impact Statement (EIS). Final design must not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-1: Segmenting Consultant Work, which illustrates several satisfactory ways to segment consultant activities.

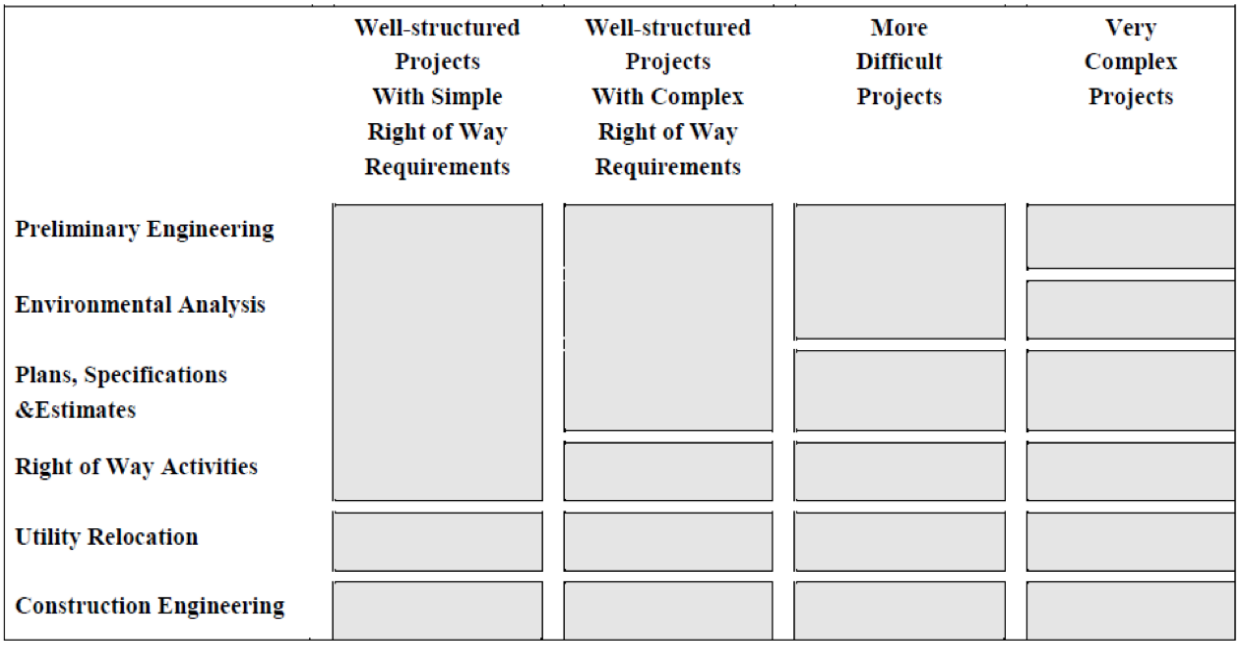


Figure 10-1: Segmenting Consultant Work

Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement, determine personnel and time requirements, and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

Title VI Assurances

Title VI Assurances Appendices A and E must be included in each consultant contract. Include Title VI Assurances Appendices B, C, and D if applicable. The consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract. Include Title VI Assurances Appendices B, C, and D if applicable. Refer to Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXII Title VI Assurances. Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

Non-Discrimination Clause

The Non-Discrimination Clause (Exhibit 10-R: A&E Boilerplate Agreement Language, Article XVI Non-Discrimination Clause and Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance

provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

Disadvantaged Business Enterprise (DBE) Participation

When administering Federal-aid projects, federal regulations (49 CFR 26) require the LPA to comply with the DBE program and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises for DBE requirements for A&E Consultant Contracts.

Estimated Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate must be prepared prior to opening the cost proposal from the top-ranked consultant, so the LPA has a cost comparison to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the LPA's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental, or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

Analogous Estimating

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate, and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

Parametric Estimating

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

Bottom-up Estimating

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

Determine Type of Contract

Types of contracts to be used are described as follows:

- Project-specific contract is between the LPA and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-phase contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period and maximum total contract dollar amount. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts must specify a reasonable maximum length of contract, not to exceed five (5) years, and a maximum total contract dollar amount (23 CFR 172.9(a)(3)). The maximum dollar amount for all contracts awarded under the solicitation must be stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. For example, if the solicitation lists that up to five (5) contracts may be awarded, the aggregate amount of these five (5) contracts is the maximum contract dollar amount. Setting maximum amount on each on-call contract under a multiple on-call solicitation does not meet the intent of 23 CFR 172. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation.

  There are two options on how task orders must be awarded under multiple on-call contracts for the same type of service under the same solicitation:

  1. Through an additional qualifications-based selection procedure also known as mini-RFP.
     - Solicit task order to the multiple on-call consultants on the master on-call contracts
       - Master on-call contracts are contracts awarded to on-call consultants at the initial RFQ/RFP procurement process.
       - Solicitation may be informal, e.g. email, letter, etc.; documentation is required.

- Evaluation criteria must be included in the solicitation. The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task.
- The evaluation criteria can include:
    i. availability of personnel,
    ii. staff capabilities,
    iii. DBE (10% or less of overall score); the overall DBE goal was established at the master on-call contract,
    iv. completion of time,
    v. experience of consultant
    vi. specialized expertise, and past performance.

- Evaluate and rank proposals and select from the multiple on-call contracted consultants
    - Recommend at least three panel members to evaluate and rank
    - Evaluate based on criteria in mini-RFP solicitation
- Negotiate and award to the on-call contracted consultant
    - The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.
- If only one proposal is received or there is an emergency, a Non-Competitive process must be justified, and Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive must be documented and signed by the DLAE
- Awarding task order to the multiple on-call consultants on a rotational basis does not meet the intent of the qualifications-based selection
- Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet must be used to track percentage of DBE after a task order is completed
- Each task order must have an Exhibit 10-O1: Consultant Proposal DBE Commitment and Exhibit 10-O2: Consultant Contract DBE Commitment as applicable

2. Regional basis where each on-call consultant is contracted to a designated area.

To maintain the intent of the Brooks Act (40 U.S.C.1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:

- Must define a general scope of work, complexity, and professional nature of services.
- Specify a task order procedure the LPA uses to procure project-specific work under the contract.

- Task order work performed after the master on-call contract has expired will result in those costs being ineligible for federal or state reimbursement.
- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.
- Specify procurement procedures in the contracts the LPA will use to award/ execute task orders among the consultants:
    - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFP process later in this chapter), OR
    - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a "backup" to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(iv)(B)(2), the "backup" option needs to be listed in the respective contracts.

An example of acceptable contract wording in multiple on-call contracts for the same type of service:

- "Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("CM Services Task Order Contracts"). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts must not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars ($7,500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency must send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum."

Determining the Project Schedule

The LPA develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

Determine Method of Payment

The method of payment of contract must be specified. The following four methods are permitted under 23 CFR 172.9(b) depending on the scope of services to be performed (sample cost proposals are provided on the DLA Consultant Selection and Procurement website):

- Cost-Plus-Fixed Fee
- Cost Per Unit of Work
- Specific Rates of Compensation
- Lump Sum

The method of payment to the consultant must be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work. Markups are not allowed on any of the four methods of payment.

The cost plus a percentage of cost and percentage of construction cost methods of payment must not be used. Both of these methods are explicitly prohibited by 23 CFR 172.9(b).

Cost-Plus-Fixed Fee

The consultant is reimbursed for costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee must take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract. See the DLA Consultant Selection and Procurement website for a useful tool on Profit/Fee Determination.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract must specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article V, Option 1). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved by the LPA before they incur work on the contract, or the costs can be questioned or disallowed. LPAs are not required to update the A&E Consultant Contract form when new key employees and/or classification are added to a contract; for more details, reference Section 10.1.8. Completing the Project.

Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious, and measurable, such as a specific geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract must also specify a

reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article V Option 2).

Specific Rates of Compensation

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly, or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate. Other direct costs regardless of amount are to be listed on the cost proposal.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project-specific contracts and is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant's level of effort and the classification of employees used to perform the contracted work. The contract must also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article V Option 3).

Lump Sum

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article V: Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment must be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal must document the agreed-upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

A firm fixed price method of payment is not the same as lump sum. A firm fixed price contract must not be amended.

Changes to Cost Proposal

Changes to the cost proposal requiring resubmittal to Independent Office of Audits and Investigations (IOAI) for review:

- Consultant/subconsultant name change
- New participating subconsultant's Indirect Cost Rate (ICR)
- Change in ICR rate

Since these changes require an amendment, the LPA is to update the A&E Consultant Contract form.

10.1.3 A&E Consultant Audit and Review Process

This section outlines the audit and review process for A&E contracts that at any time use state or Federal-aid highway funds in furtherance of highway construction projects. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

LPAs, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. LPAs are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between LPAs and Caltrans, (i.e., Master Agreements);
- Project Program Supplemental Agreements;
- 23 U.S.C., Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation (FAR), Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget
- 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards - Generally Accepted Government Auditing Standards (GAGAS);
- California Government Code sections 4529.5 and 4529.10-4529.20; and
- Proposed contract terms and conditions.

See Section 10.1.11: References of this chapter for links to above referenced standards.

Audit Guidance Available

The American Association of State Highway and Transportation Officials (AASHTO), Uniform Audit & Accounting Guide (AASHTO Audit Guide), which is referred to frequently in this section, is a valuable tool to guide LPAs, consultants, and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR-compliant ICR. The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

LPAs may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Chapter 2. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA's National Highway Institute (see https://www.nhi.fhwa.dot.gov/home.aspx). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

For training and additional information provided by Caltrans Local Assistance, visit the Caltrans Local Assistance Blog. For FHWA's Q&A for ICRs and audits, and A&E related services, visit FHWA Consultant Services website.

Allowable Costs

23 U.S.C.112(b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, must be performed and audited in compliance with the federal cost principles.

LPAs are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the federal cost principles.

All consultant ICRs must be supported with the required financial documents as outlined in the checklist on IOAI's Financial Document Review (FDR) Request Form; however, Category 4 applies to all consultants regardless of the participation amount.

Costs must be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions.

Consultants must account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with federal cost principles.

IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR 172 and 48 CFR 31.

Generally, whenever LPAs, consultants, and/or contractors are unable to provide requested documentation, it must be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and **disallowed costs**.

Safe Harbor Rate

Developing ICRs annually can place a significant burden on some small or new and emerging A&E consulting firms that lack financial sophistication to develop an ICR, as well as on other established A&E consulting firms that may not have previous experience with federally-funded

contracts for which an ICR would have been developed in compliance with federal cost principles 48 CFR 31. This may create a barrier for otherwise eligible and qualified firms to compete for federally-funded contracts.

To help alleviate and remove potential barriers, the Division of Local Assistance (DLA) has adopted Caltrans Division of Procurement and Contract's (DPAC) Safe Harbor Rate (SHR) process and rates which took into account LPA data. The SHR information and rates can be found at the DLA Consultant Selection and Procurement website: https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selection-procurement. To request information regarding the SHR methodology, email the A&E Oversight Branch at aeoversight@dot.ca.gov. Eligible A&E consultant firms can choose to use the DLA SHR rate on new A&E contracts using Federal-aid highway funds executed by LPAs in the State of California.

Use and application of the SHR by eligible firms provides reasonable assurance of consultant compliance with the federal cost principles per 23 CFR 172.11(c)(2). A&E consulting firms approved to use the established SHR will have their accounting system evaluated for capabilities of accumulating and tracking direct labor for applying the SHR, as well as for billing other direct costs by contract, segregating indirect costs, etc.

Use of the SHR is voluntary on behalf of the A&E consulting firm and LPAs. LPAs have the discretion to determine certification of eligibility based on requirements shown on the following SHR certification form: Consultant Firm Certification of Eligibility and Certification of Financial Management System.

A&E consultant firms (prime consultants and/or sub consultants) that have not had an ICR previously accepted by a cognizant agency may elect and request to use the SHR in a contract by submitting the completed SHR certification form, Consultant Firm Certification of Eligibility and Certification of Financial Management System, including the Questionnaire for Evaluating Consultant Firm's Financial Management System section, and any other documents as needed. This requirement is in addition to the A&E Consultant Audit and Review Process requirements described in this chapter.

It is the LPA's responsibility to:

- Collect and screen all requests to use the safe harbor indirect cost rate. See SHR certification form, Consultant Firm Certification of Eligibility and Certification of Financial Management System, including the Questionnaire for Evaluating Consultant Firm's Financial Management System section.
- Submit all SHR documents to the Independent Office of Audits & Investigations (IOAI) as part of the Financial Document Review Request package. The IOAI email address is: Conformance.Review@dot.ca.gov. Requests to use the safe harbor indirect cost rate must be accepted/approved by IOAI **before** contracts are executed.

Approval or Acceptance of Indirect Cost Rates

Cognizant Letters of Approval

A cognizant approved ICR has been audited by a cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of

the federal cost principles (per 48 CFR 31), and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans must perform an audit or review of a consultant's and subconsultant's ICR(s) to provide reasonable assurance of compliance with federal cost principles for consultant contracts with a dollar value equal to or greater than $1M.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172 and 48 CFR 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172 and 48 CFR 31; and issue an audit report;
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;
- Perform other evaluations in accordance with a risk-based oversight process in accordance with 23 CFR 172 and 48 CFR 31.

Financial Review Performed Prior to Contract Execution

All consultants, including prime consultants and subconsultants, on a proposed contract with a dollar value equal to or greater than $1M are subject to an ICR financial review by IOAI. The financial documents required are detailed in the Financial Document Review Request form. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or an LPA in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;

The outcome of an audit or review for contracts with a dollar value equal to or greater than $1M is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with

the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Contracts below $1 Million are not subject to the Caltrans Financial Document Review but LPAs are required to establish that all costs are in compliance with the federal cost principles, 48 CFR 31, and other applicable requirements are met. Cost analysis documents are required to be retained in the project files to demonstrate compliance. For further guidance, refer to 23 CFR 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

LPAs are required to apply Caltrans-accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or reviewed by Caltrans. Consultants must update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the federal cost principles. LPAs must ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. A consultant's accepted ICR for its one-year applicable accounting period must be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period must not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

ICRs that have not been accepted by Caltrans for contracts with a dollar value equal to or greater than $1M will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period, but an ICR accepted by Caltrans may only be applied to A&E contracts with Caltrans or LPA contracts using pass-through Caltrans funding. LPAs include Cities, Counties, Metropolitan Planning Organizations, Special Districts, and Regional Transportation Planning Agencies.

Local Public Agency Responsibilities

LPAs are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and subconsultants as outlined in the Financial Document Review Request form. LPAs are responsible for forwarding these documents to IOAI for review. LPAs are also required to ensure that IOAI has a copy of the Certification of Indirect Costs and Financial Management System form. The ICR included in the LPA's cost proposal must match the ICR included in the Certification of Indirect Costs and Financial Management System form and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in the Certification of Indirect Costs and Financial Management System form and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, LPAs are responsible for ensuring the Certification of Indirect Costs and Financial Management System form and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a short list or pre-qualified list.

The cost proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. LPAs must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with federal cost principles.

All contract supporting documentation must be retained by the LPA in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff, and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with federal cost principles.

Instructions are provided in the Financial Document Review Request form including requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to: conformance.review@dot.ca.gov.

Alternatively, Financial Review packets can be mailed to:

Department of Transportation
Independent Office of Audits and Investigations
MS 2 Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001

LPAs may check IOAI's website to verify whether consultants have been reviewed by Caltrans for the valid ICR period. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI's website. This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

Consultant Responsibilities (both prime consultants and subconsultants)

A&E prime consultants and subconsultants in contract with LPAs using state or Federal-aid highway funds should refer to the Financial Document Review Request form for the ICR financial documents required to be submitted to their LPA. Consultants must complete the Certification of Indirect Costs and Financial Management System form that attests that the ICR rate proposed is in compliance with federal cost principles (48 CFR 31) and that the consultant's financial management system is adequate to accumulate and segregate reasonable, allowable, and allocable direct and indirect project costs. The Financial Document Review Request and Certification of Indirect Costs and Financial Management System forms should be submitted to the LPA who will forward a copy to IOAI along with all other related and required financial documents. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Certification of Indirect Costs and Financial Management System form to the LPA.

Consultants must follow all the federal, state, and contract requirements outlined in the above, Applicable Standards section. Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiary's ICR.

ICR schedules for both prime consultants and subconsultants should be prepared using the accrual basis of accounting and be presented in compliance with the federal cost principles. See a Standard Indirect Cost Rate Schedule example that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project: http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html.

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant's employees. The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

Independent Office of Audits and Investigations' Responsibilities

After IOAI receives a consultant's complete financial document packet (per the Financial Document Review Request form) from the LPA, IOAI will review the proposed ICR and supporting documents and notify LPAs in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

Audits and Reviews to be Performed

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

Indirect Cost Rate Audits

During an ICR audit, IOAI or an independent CPA will examine the consultant's proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the federal cost principles (as specified in 23 U.S.C.112(b)(2)(B), 23 CFR 172.11, 48 CFR 31 and other FAR and State requirements). As a result of the audit, the LPA will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and the example Standard Indirect Cost Rate Schedule. The AASHTO Uniform Audit and Accounting Guide, Appendix A Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates is also a resource for consultants and CPAs when preparing an ICR for audit.

CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the federal cost principles and related

federal and state laws and regulations. Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. The AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

Contract Audits

During a Contract Audit, auditors will review a consultant's financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable, and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

Incurred Cost Audits

During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

Audit Findings and Review Deficiencies

If a consultant's ICR is audited or reviewed, LPAs are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). LPAs should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The LPA may be subject to sanctions outlined in Section 10.5 Sanctions if the state or federal government determines that any reimbursements to the consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

10.1.4 Consultant Selection Methods

There are three methods normally used in selecting a consultant:

- One-Step RFP
- One-Step RFQ
- Two-Step RFQ/RFP

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant; see Consultant Selection Flowchart.

Beginning with Section 10.1.5: Consultant Selection Using the One–Step RFP Method, each of the selection methods is explained in detail. Regardless of the method used, the LPA must retain all consultant selection documentation in their project files as required by 23 CFR 172.

One-Step RFP

The One-Step RFP method may be used for Project–specific contracts when the scope of work is well-defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. An RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by LPAs that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for pre-qualification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in Section 10.1.2: Identifying & Defining a Need for Consultants. This method requires substantially more work and time than the other two methods described above.

10.1.5 Consultant Selection Using the One-Step RFP Method

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal must be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a short list of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the LPA standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed, and all requirements are met.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Conflict of Interest & Confidentiality Statement.

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-state or local preference must not be used as factor in the evaluation, ranking, and selection phase. Local presence and DBE participation are the only two non-qualifications-based evaluation criteria that are permitted, however, the combined total of these criteria cannot exceed a nominal value of 10 percent of the total evaluation criteria (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The LPA should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See sample cost proposals at the DLA Consultant Selection and Procurement website;
- Contract audit and review process requirements (see Section 10.1.3: A&E Consultant Audit and Review Process);
- Proposal format and required contents;
- Method, criteria, and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see Exhibit 10-I: Notice to Proposers DBE Information), if a Federal-aid contract;
- CMSR requirements (see Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement);
- Protest procedures and dispute resolution process per 2 CFR 200.318(k) and 23 CFR 172.5(c)(18).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand-delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;

- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal must not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;
- References.

Financial Management and Accounting System Requirements

The LPA must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31. The LPA must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services must be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, Public Purchase, or posting the RFP on the LPA's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the LPA should retain copies of screen shots displaying the posted begin/end dates.

The LPA must keep a record of all consultants that have downloaded RFP online as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

Conduct Proposer's Conference or Answer Written Questions

The LPA may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The LPA must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172.7(a)(1)(iv)(D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172.7(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and an Exhibit 12-F: Cost-Effectiveness / Public Interest Finding / A&E Noncompetitive must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee evaluates each proposal, interviews the three or more highest ranked consultants (short listed) if noted in solicitation, and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. The LPA may have an established procedure adopted for conducting debriefings but may also consider the following: The selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both prime consultant and all subconsultants), and contract audit and review documents such as the Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever is applicable (see Section 10.1.3: A&E Consultant Audit and Review Process) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceed to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the LPA. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the LPA or any private entity that the LPA uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of in accordance with the LPA's written policies and procedures.

The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. LPAs must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

Initiate A&E Consultant Audit Process (Financial Document Review Request)

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process in this chapter). LPA Contract Administrator ensures that all required documentations are provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;

- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element;
- Hours, level of effort by task and/or classification.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA. The LPA and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the LPA must review contract to ensure that all federal and state requirements have been met and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the LPA must submit a completed A&E Consultant Contract form for all new federal funded A&E consultant contracts using the A&E Consultant Contract database at: https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form (Firefox or Chrome browser). Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

If there are any changes requiring an amendment to the contract after submittal of the A&E Consultant Contract form, refer to Section 10.1.8: Contract Amendments of this chapter.

10.1.6 Consultant Selection Using the One-Step RFQ Method

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a short list of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the LPA standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the LPA and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed, and all requirements are met.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Conflict of Interest & Confidentiality Statement.

Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. In-State or local preference must not be used as factor in the evaluation, ranking, and selection phase. Local

presence and DBE participation are the only two non-qualifications-based evaluation criteria that are permitted, however, the combined total of these criteria cannot exceed a nominal value of 10 percent of the total evaluation criteria (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the State. The LPA should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See sample cost proposals at the DLA Consultant Selection and Procurement website;
- Contract audit and review process requirements (see Section 10.1.3: A&E Consultant Audit and Review Process);
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified in the solicitation (see Exhibit 10-I: Notice to Proposers DBE Information), if a Federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement; Protest procedures and dispute resolution process per 2 CFR 200.318(k) and 23 CFR 172.5(c)(18).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand-delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is

published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal must not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;
- References.

Financial Management and Accounting System Requirements

The LPA must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31. The LPA must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services must be by public advertisement or any other public forum or method that assures qualified in-state and out-of-state consultants are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the LPA should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the LPA advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the LPA for the RFQ. The RFQs must then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

Issue/Publish RFQ

The LPA must publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The LPA must keep a record of all consultants that have downloaded the RFQ online as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

Receive/Evaluate Statements of Qualifications and Develop Short List

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified, and an Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a short list of consultants who are considered to be best qualified to perform the contract work. The short list includes enough qualified consultants to ensure that at least three consultants are interviewed.

Notify Consultants of Short List

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews if interviews were an option in the solicitation. Most consultants will request information as to why they were not placed on the short list. Therefore, the selection committee should keep notes why a particular consultant was not selected for the short list. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Interview Top-Ranked Consultants

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the short list and interviews, the LPA may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the LPA may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their

answers from the LPA in writing. It is required that all consultants on the short list receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant must be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or LPA must not gather additional information concerning the consultants after the interviews are completed.

Develop Final Ranking and Notify Consultants of Results

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

Conduct Scoping Meeting

The Contract Administrator should meet with the first-ranked consultant’s project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

Request Cost Proposal

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein.

Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the short list.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Negotiate Contract with Top-Ranked Consultant

Cost proposals (for both prime consultant and all subconsultants), and contract audit and review documents such as Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever applicable (see Section 10.1.3: A&E Consultant Audit and Review Process), will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the LPA reviews the cost proposal and compares it with the LPA's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the LPA the services or products required at a fair and reasonable cost.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the LPA or any private entity that the LPA uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with LPA's written policies and procedures.

The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

Initiate A&E Consultant Audit Process (Financial Document Review Request)

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process earlier in this chapter). LPA Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA. For on-call contracts, typically a price agreement is reached based on specific rates of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the LPA must review the contract to ensure that all federal and state requirements have been met, and receive Caltrans IOAI's Financial Review acceptance letter, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the LPA must submit a completed A&E Consultant Contract form for all new federal-funded A&E consultant contracts using the A&E Consultant Contract database at https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form (Firefox or Chrome browser).

If there are any changes to the contract after submittal of the A&E Consultant Contract form, refer to Section 10.1.8: Contract Amendments of this chapter.

10.1.7 Consultant Selection Using the Two-Step RFQ/RFP Method

Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a two-step process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and a request for proposal (RFP) is then provided to three or more of the most highly qualified consultants. The two-step method leads to an executed project specific contract.

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a pre-qualification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for pre-qualification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in the Two-Step RFQ/RFP method (up to the development and notification of the short list) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the short list are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the Two-Step RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex, or unusual.

The Two-Step RFQ/RFP is also well-suited for procuring multiple on-call contracts through a single solicitation (see Section 10.1.2 Determine Type of Contract). The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured through subsequent competition or mini-RFPs amongst the on-call consultants.

LPAs may also use the Two-Step RFQ/RFP method to:

1. Develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise. This list includes all consultants that meet the minimum published pass/fail requirements. The pre-qualified list can be updated annually or at least every two years and must be maintained by the agency. This list has not gone through the evaluation process.
2. Create a short list of evaluated and ranked consultants that leads to executed contracts

Because it is a combination of the One-Step RFQ and One-Step RFP methods, the Two-Step RFQ/RFP method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use when the scope of work is very complex or unusual.

Categorize Work

Descriptions of the categories of work, deliverables, and the minimum qualification standards for each category must be clearly identified.

The LPA may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration

- Landscape Architecture
- Land Surveying
- Intelligent Transportation System (ITS)
- Federal–aid Highway Project Development Support Services

Establish Minimum Qualifications

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the pre-qualification process.

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm's key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see Exhibit 10-O1: Consultant Proposal DBE Commitment)
- Professional references by the firm with the LPA
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the LPA
- Use of subconsultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices

Issue RFQ

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and web sites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included. This information should be the basis for evaluating and placing a consulting firm on a general pre-qualification list.

Federal regulations require that any procedures related to prequalifying consultants cannot restrict competition.

Pre-qualification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain pre-qualification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.

Set-Up Evaluation Process

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications, and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed.

The LPA must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a pre-qualified list. Whether the LPA has a “committee” of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well-defined, open, and transparent. The pre-qualification process must also allow for consultants to be re-evaluated in cases of denials. The LPA must specify how long the pre-qualified list lasts, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Conflict of Interest and Confidentiality Statement.

Evaluate Qualifications and Add Firm to List

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

Maintain List

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm's organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency's website. Firms can also apply to be on the list through the agency website for ease of operation.

Issue RFP to Short-Listed Consultants

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including subconsultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Subconsultants, DBE, their proposed participation, and other related information

Conduct Proposer's Conference or Answer Written Questions

The LPA may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The LPA must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each technical proposal contains all forms and other information required by the RFP. If all required information is not provided, a technical proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each technical proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified, and an Exhibit 12-F: Cost-Effectiveness / Public Interest Finding / A&E Noncompetitive must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each technical proposal, interviews the three or more highest ranked consultants (short listed), and develops a final ranking of the highest ranked consultants. All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all the consultants on the short list.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Cost proposals (for both prime consultant and all subconsultants) and contract audit and review documents, such as Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever applicable (see Section 10.1.3: A&E Consultant Audit and Review Process), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the LPA reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the LPA the services or products required at a fair and reasonable cost.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

Initiate A&E Consultant Audit Process (Financial Document Review Request)

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process). The LPA Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered

- Classification, wage rates, and experience level of personnel to be assigned
- Other Direct Cost items, and profit or fee

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA.

The LPA and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the LPA must review the contract to ensure that all federal and state requirements have been met.

10.1.8 Completing the Project

Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the LPA and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans IOAI that accepts, denies, or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal and is attached to and made a part of the consultant contract. Sample contract language and format have been included as Exhibit 10-R: A&E Boilerplate Agreement Language.

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the LPA to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal;
- Certification of Indirect Costs and Financial Management System (for prime consultants and subconsultants) and Financial Document Review Request forms and all supporting documents, if applicable (contracts at or above $1 Million), have been submitted to Caltrans IOAI;
- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- A&E Consultant Contract database must be used to ensure that required documentation has been provided;
- A cost proposal must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.
- Is not disbarred or suspended from state or federally-funded contracts. Per 23 CFR 172.7(b)(3) "A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR 1200 and 2 CFR 180."

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract must provide for LPA reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract must provide that the consultant and subconsultants must retain all books, documents, papers, accounting records, and other information pertaining to costs incurred for a three-year period once Caltrans submits the final voucher to FHWA. Such materials must be available for inspection and audit by federal, state, and LPA authorized representatives; copies thereof must be furnished, if requested.

Execute Contract and Issue Notice to Proceed to Consultant

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. All executed on-call contracts must have a begin and end date. All executed project-specific or multiphase contracts must have a begin date and should have an end date prior to the Project End Date. Work performed after the Project End Date is not eligible for reimbursement; see LAPM Chapter 3: Project Authorization. LPA consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be sent to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved. Task order expiration dates must not exceed the Master On-call agreement end date.

Administer the Contract

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the LPA manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing, and assessing reports, plans, and other required products/ deliverables;
- Receiving and reviewing state prevailing wages (see Department of Industrial Relations websites below):
    - DIR FAQ website: http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
    - DIR Wage Determination website: http://www.dir.ca.gov/oprl/DPreWageDetermination.htm
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see Exhibit 10-S: Consultant Performance Evaluation).

Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the LPA. Refer to LAPM Chapter 9: Civil Rights & Disadvantaged Business Enterprise and 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the LPA prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see LAPM Chapter 3: Project Authorization) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the LPA.

For federal reimbursement of consultant costs on a project, the LPA must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- Exhibit 10-O1: Consultant Proposal DBE Commitment
- Exhibit 10-O2: Consultant Contract DBE Commitment
- Copy of issued task order and Exhibit 10-O2 for the task order for on-call contracts.

DLAE must confirm that the LPA has submitted copies of the Certification of Indirect Costs and Financial Management System form (for prime consultant and subconsultants) to Caltrans IOAI and that LPA has submitted the A&E Consultant Contract form to Caltrans.

The LPA is to follow the procedures given in LAPM Chapter 5: Invoicing, to obtain reimbursement of federal or state funds.

Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services must be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see FHWA's Q&A for A&E related services).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the LPA, clearly outlining the changes and containing a mutually agreed-upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments must be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and LPA before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency must either procure the series under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work must not automatically warrant an increase in the fixed fee portion of a cost-plus-fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost-plus-fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the LPA and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of LPA funding. Section 10.1.3: A&E Consultant Audit and Review Process of this chapter must apply to the entire contract and must be completed prior to execution of the contract amendment. For contracts greater than or equal to $1 Million, submit the Financial Document Review Request

form to IOAI for all amendments on consultant/subconsultant's name change, amending an ICR, or adding new subconsultant's ICR. ICRs that have not been accepted by IOAI are not eligible for federal or state reimbursement. For contracts with original amounts under $1 Million but subsequently became greater than or equal to $1 Million after amendment, IOAI Financial Document Review is not required. If there are any changes to the contract after submittal of the A&E Consultant Contract form, the LPA must submit an amended form to the A&E Consultant Contract database prior to the first invoice after the contract has been amended. Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts. All amendments must incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit the A&E Consultant Contract form to the A&E Consultant Contract database prior to the first invoice after the contract has been amended (please use Firefox or Chrome if not supported by your browser).

Performance Evaluation

Pursuant to 23 CFR 172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See Exhibit 10-S: Consultant Performance Evaluation for a suggested format for use by the LPA.

Project Records

Federal-Aid Highway Program funding recipients and subrecipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR 200). These records must be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR 200.334).

For audit purposes, project records and documentation must be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including Exhibit 10-O1: Consultant Proposal DBE Commitment, Exhibit 10-O2: Consultant Contract DBE Commitment), Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet, Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprise and First-Tier Subcontractors or Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise for A&E On-Call Contracts, and Exhibit 17-O: Disadvantaged Business Enterprise Certification Status Change.
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions, and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet);

- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Certification of Indirect Costs and Financial Management System form) for contracts at or above $1 Million;
- A&E Consultant Audit Request Letter and Checklist (Financial Document Review Request form) for contracts at or above $1 Million and all supporting documentation.
- Executed consultant contracts, cost proposals, and amendments (see Exhibit 10-R: A&E Boilerplate Agreement Language);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see Exhibit 10-S: Consultant Performance Evaluation);
- A&E Consultant Contract form (see A&E Consultant Contract database);
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms (Exhibit 10-T: Conflict of Interest & Confidentiality Statement, all personnel involved in the procurement of the agreement should complete Exhibit 10-T, Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement, and Exhibit 10-Q: Disclosure of Lobbying Activities, as appropriate). Exhibit 10-Q is included in the solicitation and must be completed if the consultant needs to disclose any lobbying activities.

Retention Clauses

At the option of the LPA, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article VIII).

Review of Local Public Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The LPA files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

The A&E Consultant Contract form is to be completed prior to award, or after contract award but no later than the first invoice. A copy of this form must be retained in the LPA project files.

10.1.9 Miscellaneous Considerations

Agreements with Other Governmental Agencies

Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed (2 CFR 200, PCC 10340, and California Government Code 11256).

Small Purchase Contracts

Contracts that are less than $250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is no recognized small purchase procedure and all A&E contracts are procured using qualifications-based selection and not cost. For federal contracts that are less than $250,000 and are not anticipated to exceed this amount, the agency must use either Section 10.2: State-Only Funded A&E Contracts or the federal guidance for contracts greater than $250,000. If the contract is anticipated to exceed $250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure (see Section 10.2: State-Only Funded A&E Contracts) must not exceed $250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements must not be broken down into smaller components to permit the use of small purchase procedure. DBE requirements apply for all federally-funded projects.

Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. An Exhibit 12-F prepared by the LPA and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive.

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The LPA must:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The LPA must carefully document details of the special conditions, obtain Caltrans approval on the Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive and retain all documents in the project files for future Caltrans' or FHWA's review.

Retaining a Consultant in a Management Support (CMSR) Role

Management support role means performing engineering management services or other services acting on the contracting agency's behalf, which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by Title 23 of the United States Code, other federal and state laws, and applicable regulations. Other services can include supervising construction including serving as single point of contact, developing and maintaining project document tracking system, establishing project internal communication protocol, performing document control and implementing a quality assurance program.

Management support roles may include, but are not limited to, providing oversight of an element of a highway program, function, or service on behalf of the contracting agency or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and contractors on behalf of the contracting agency. Contracting agency written policies and procedures as specified in 23 CFR 172.5(c) may further define allowable management roles and services a consultant may provide, specific approval responsibilities, and associated controls necessary to ensure compliance with federal requirements.

The LPA may retain a qualified CMSR on its staff in professional capacities for Federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the city.
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects, or the work of other consultants and contractors on behalf of the public agency.
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency.

However, typically a CMSR is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a CMSR should be limited to unique or very unusual situations. These situations require a thorough justification as to why the LPA cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. CMSR contracts with local/state funding only do not require FHWA approval. However, if the CMSR is not approved, the CMSR may not be used as a local/state match on another activity when the CMSR provides services on a Federal-aid project (i.e., soft match).

Eligibility for federal reimbursement for a CMSR requires the following:

- Compliance with the selection procedures specified in this chapter;

- Existence of a contract between the LPA and the consultant specifying the LPA engineering services to be performed;
- Written designation by the LPA of the responsibilities and authority of the consultant as an agency engineer;
- For a Federal-aid project, completion of Exhibit 10-T: Conflict of Interest & Confidentiality Statement by all panel members (both consultants and employees) prior to participating in the A&E Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions must be by the use of qualification-based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a Federal-aid project, the LPA's CMSR must not:
    - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
    - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the LPA consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables, and approving invoices.
    - Apply for or receive reimbursement of Federal-aid funds for the LPA's Federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other Federal-aid requirements have been met.
    - Where benefiting more than a single Federal-aid project, allocability of consultant contract costs for services related to a management support role must be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ must not be considered in the selection of consultants for the resulting project specific work.

When a CMSR is procured with Federal-aid funds, the LPA (subgrantee) must fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer, or agent of the subgrantee must participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Subparagraph of 23 CFR 172.7(b) requires that the LPA must receive approval of the CMSR from FHWA.

- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally-funded projects, LPAs that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution. In order for a contract for a CMSR to be federally eligible, the following are required prior to contract execution:

- The LPA must submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the A&E Oversight Branch at HQ Division of Local Assistance (HQ DLA) at aeoversight@dot.ca.gov, prior to contract advertisement.
- Once the LPA receives FHWA's written response, the LPA may need to revise the documents reflecting FHWA's opinions and can proceed with the RFQ.
- Before award, the LPA must submit the completed Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement to the A&E Oversight Branch at HQ DLA at aeoversight@dot.ca.gov. LPA will receive FHWA's approved Exhibit 10-U via email. FHWA approval required prior to award of consultant contract.

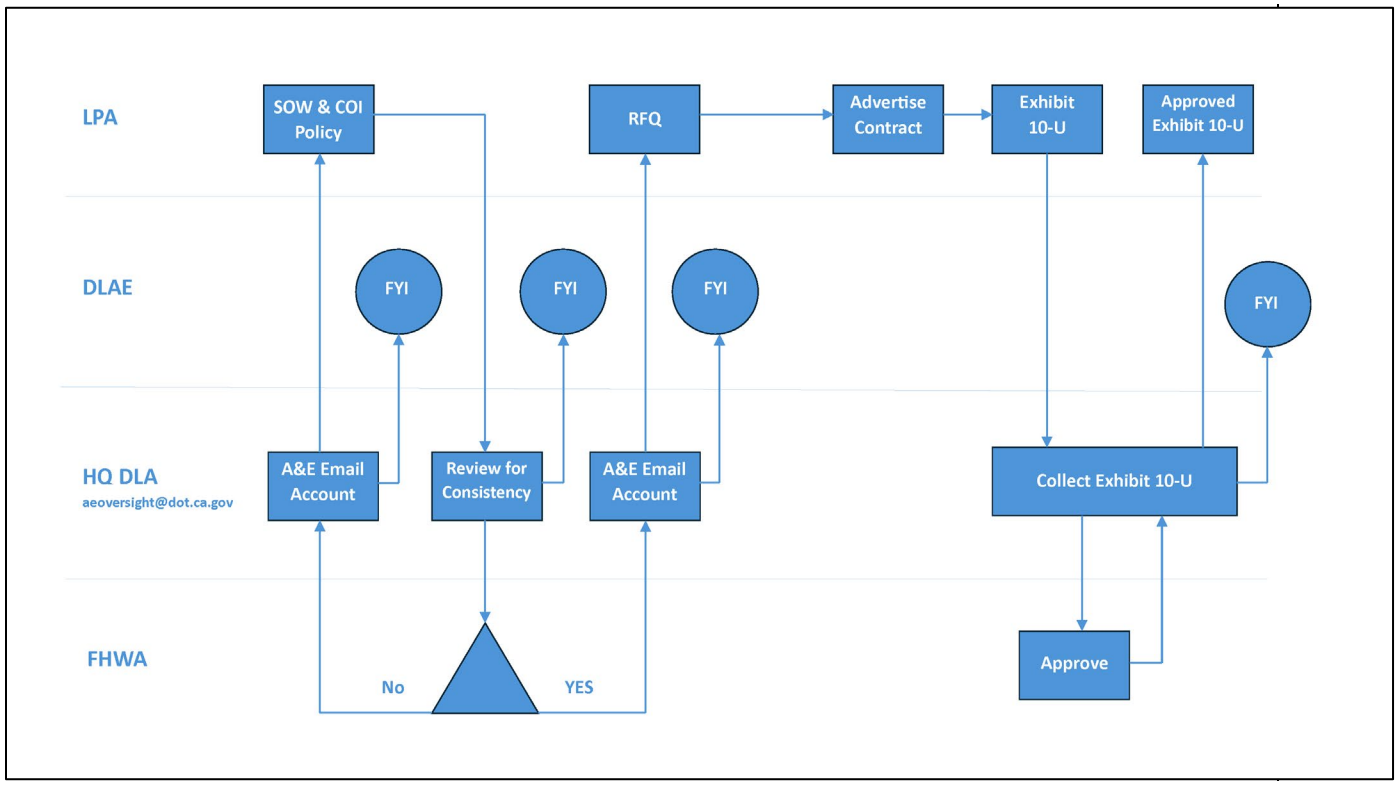


Figure 10-2: Consultant in a Management Support Role Flowchart

Construction Engineering Services

Under Federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the LPA. The LPA must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the LPA in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the LPA, a formal consultant contract must be executed which follows this chapter's requirements. The contract must provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted; these reviews are to be made by the LPA.

10.1.10 Program Management

According to 23 CFR 172.5, LPAs are required to adopt written policies and procedures prescribed by Caltrans. As such, the LPA must adopt LAPM Chapter 10: Consultant Selection, which contain the A&E policies and procedures.

To meet this requirement, LPAs are required to email and provide one of the following documents to the A&E Oversight Branch at DLA Office of Guidance and Oversight (OGO) at aeoversight@dot.ca.gov:

1. A Board Resolution showing that the LPA is adopting Caltrans LAPM Chapter 10; OR
2. An official letter signed by the LPA's Public Works Director or equivalent manager addressed to the DLA OGO Office Chief, stating that the agency is adopting Caltrans LAPM Chapter 10

The DLA Consultant Selection and Procurement website includes an example of the adoption resolution and letter. These examples are for reference only; the appropriate language to be used is determined by the individual agency.

LPAs are responsible for providing all resources necessary for the procurement, management, and administration of A&E consultant contracts including subcontracts. Ensuring consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

- Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;

- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.334 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and
- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

10.1.11 References

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirement, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1

2 CFR Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
https://www.govinfo.gov/app/details/CFR-2013-title2-vol1/CFR-2013-title2-vol1-part215/context

23 U.S.C.112 Letting of Contracts
https://www.govinfo.gov/app/details/USCODE-2021-title23/USCODE-2021-title23-chap1-sec112/context

23 CFR Part 172 Procurement, Management, and Administration of Engineering and Design Related Services
https://www.ecfr.gov/current/title-23/chapter-I/subchapter-B/part-172

40 U.S.C. Chapter 11 Brooks Act
https://www.govinfo.gov/app/details/USCODE-2021-title40/USCODE-2021-title40-subtitleI-chap11/context

41 CFR Public Contracts and Property Management
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl

41 U.S.C. Public Contracts
https://www.govinfo.gov/app/details/USCODE-2020-title41/context

48 CFR Part 15 – Contract By Negotiation
https://www.ecfr.gov/current/title-48/chapter-1/subchapter-C/part-15

48 CFR Part 31 – Contract Cost Principles and Procedures
https://www.ecfr.gov/current/title-48/chapter-1/subchapter-E/part-31

48 CFR Part 16 – Types of Contracts
https://www.ecfr.gov/current/title-48/chapter-1/subchapter-C/part-16

48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts
https://www.ecfr.gov/current/title-48/chapter-1/subchapter-E/part-27/subpart-27.3

48 CFR 31.201-3 – Determining Reasonableness
https://www.ecfr.gov/current/title-48/chapter-1/subchapter-E/part-31/subpart-31.2/section-31.201-3

48 CFR, Chapter 99 - Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget
https://www.ecfr.gov/current/title-48/chapter-99

49 CFR Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
https://www.ecfr.gov/current/title-49/subtitle-A/part-26

American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide
https://transportation.org/audit/

Caltrans Division of Procurement and Contracts Website
http://www.dot.ca.gov/dpac/index.html

California Labor Code, Section 1775
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=1775

California Government Code Sections 4525 through 4529.5
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.&article=

California Government Code Sections 4529.10 through 4529.20
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.1.&article=

Government Auditing Standards (GAS) issued by the United States Government Accountability Office
http://www.gao.gov/yellowbook/overview

Standard Environmental Reference (SER)
http://www.dot.ca.gov/ser/

10.2 STATE-ONLY FUNDED A&E CONTRACTS

10.2.1 General

LPAs are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the LPA must use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications-based selections. LPAs using local funds to procure an A&E Consultant on a state-only funded project and will not seek state reimbursement for consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.2: State-Only Funded A&E Contracts of this chapter.

All consultants must comply with 48 CFR 31: Contract Cost Principles and Procedures. Also, consultants and LPAs must comply with 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections 200.318-200.326 Procurement Standards.

Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. Exhibit 10-R: A&E Boilerplate Agreement Language contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans' Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow Section 10.1.3 A&E Consultant Audit and Review Process.

CMSR contracts with local/state funding only do not require FHWA approval. However, if they are not approved, they may not be used as a local/state match on another activity when the CMSR provides services on a Federal-aid project (i.e., soft match). Refer to Section 10.1.9 Retaining a Consultant in a Management Support Role (CMSR).

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference Section 10.3: Non-A&E Contracts.

Reference: California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.

10.2.2 Definition of A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide construction project management services must provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction

project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

Reference: California Government Code §4525-4529.5 and 4529.10-4529.20

10.2.3 Minimum Audit Requirements

A. Written Procedures

LPAs must follow the minimum requirements listed below in addition to any local laws and regulations.

California Government Code §4526

B. Conflict of Interest

The LPA must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state-funded contracts, including the prevention of conflicts of interest.

California Government Code §4526, §1090, §4529.12

C. Records

LPAs must keep adequate records of all contracts including the procurement, project management, accounting, and financial administration.

California Government Code §4529.14, §4006

D. Full & Open Competition

All A&E contracts must be procured through a qualifications-based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference. If less than three consultants are evaluated, provide justification for agency file.

California Government Code §4526, §4527, §4529.12

E. Selection Basis

Selection of a firm must be based on qualifications and the order of ranked preference.

California Government Code §4526, §4527

F. Publication

Solicitations for A&E contracts must be in a manner that is open and competitive.

California Government Code §4527

G. Solicitation

The solicitations must include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

California Government Code §4527

H. Cost Comparison

An independent cost comparison to the consultant's cost proposal must be done in order to ensure the contract is negotiated at a fair and reasonable price.

California Government Code §4528

I. Negotiations
Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.
California Government Code §4528

J. Audit and Review Process
A&E contracts procured by public agencies must be subject to standard accounting practices and may require financial and performance audits. All LPAs must follow the Audit and Review Process as stated in Section 10.1.3: A&E Consultant Audit and Review Process.
California Government Code §4529.14, 2 CFR 200

K. A&E Consultant Contract Form
The A&E Consultant Contract form must be completed and submitted in the A&E Consultant Contract database at https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form (Firefox or Chrome browser) prior to contract award, or after contract award but no later than the first invoice for all new state-only funded A&E consultant contracts.

If there are any changes requiring an amendment to the contract after submittal of the A&E Consultant Contract form, the LPA must submit an updated form to the A&E Consultant Contract database prior to the first invoice after the contract has been amended. Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

10.2.4 References

California Government Code Section1090
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=1090.

California Government Code Section 4006
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4006.

California Government Code Section 4525
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4525.

California Government Code Section 4526
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4526.

California Government Code Section 4527
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4527.

California Government Code Section 4528
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4528.

California Government Code Section 4529.5
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4529.5.

California Government Code Section 4529.12
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4529.12.

California Government Code Section 4529.14
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4529.14.

California Government Code Section 4529.20
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=4529.20.

10.3 NON-A&E CONTRACTS

Scope

This section covers the procurement requirements for the services that are not included in Section 10.1 Federally-Funded A&E Contracts and Section 10.2 State-Only Funded A&E Contracts. This guidance is for contracts utilizing Federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although LPAs are required to follow 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for all contracts, the Procurement Standards section 200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code (PCC). Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

LPA must designate one person within the LPA as a contract manager. A contract manager must be a full-time, public employee of the contracting agency. The contract manager must have knowledge of legal and contractual arrangements (PCC 10348.5).

LPAs using local funds to procure non-A&E consultants on a Federal-aid funded or state-only funded project and will not seek federal or state reimbursement for consultant costs may choose not to follow the selection and contracting procedures detailed in Section 10.3: Non-A&E Contracts of this chapter.

Determining Non-A&E

After identifying that there is a need for consulting services, the LPA must determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public's best interest. These types of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design-related services are considered non-A&E. The services must not be included in Section 10.1.1: Definition of Architectural and Engineering Consultant and 10.2.2: Definition of A&E.

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

Example of Determining Non-A&E

Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the LPA can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)

- Non-Infrastructure
- Local Roadway Safety Plan (LRSP) associated with Highway Safety Improvement Program (HSIP)-funded projects
- Traffic Counts
- Speed Surveys

Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, fund the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The Federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers, and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact aeoversight@dot.ca.gov for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to LAPG Chapter 13: Intelligent Transportation Systems (ITS) Program.

Non-Infrastructure Projects

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13: Right of Way), or the eventual physical construction of transportation facilities.

Procurement of non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to LAPM Chapter 3: Project Authorization.

Governing Regulations and Codes for Non-A&E

When procuring non-A&E services with Federal-aid funds, LPAs must comply with 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections 200.318-200.326 Procurement Standards. LPAs must follow the same policies and procedures that the State uses for procurement with its non-federal funds. When procuring non-A&E services with Federal-aid and state-only funds, the governing procurement code is California Public Contract Code 10335-10381.

Procurement of Non-A&E Consultant Contracts

All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. LPA must meet the code of conduct governing the performance of its employees engaged in the award and administration of Federal-aid and state-funded contracts, including the preventions of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) must not limit the competition directly or indirectly to any one consultant. The RFP must be publicized, and all evaluation factors and their relative importance identified (PCC 10339).
2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed (PCC 10329).
3. LPA must secure at least three competitive proposals for each contract (PCC 10340). When receiving less than three proposals, refer to the Cost-Effective/Public Interest Finding in this section as an alternative to re-advertisement.
4. No proposals must be considered which have not been received at the place, and prior to the closing time as stated in the RFP (PCC 10344(a)).
5. LPA must have a written procedure for evaluating proposals (PCC 10344).

RFP Basic Requirements

There are two general types of consulting service contract solicitations:

A. Request for Proposal using Cost only
B. Request for Proposal using Cost and Qualifications

The LPA must include the following in the request for proposal:

A. A clear, precise description of the work to be performed or services to be provided.
B. Description of the format that proposals must follow and the elements they must contain.
C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.
D. The date the proposals are due.

E. The procurement schedule that the LPA will follow in reviewing and evaluating the proposals.

(PCC 10344)

Additional Requirements and Evaluation Criteria

Additional Requirements for Request for Proposal using Cost only

A. LPA must require consultants to submit their proposals and cost in a separate, sealed envelope.

B. LPA must determine those that meet the format requirements and the standards specified in the request for proposal.

C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards must then be publicly opened and read.

D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

Additional Requirements for Request for Proposal using Cost and Qualifications

A. LPA must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized must be given to the cost amount proposed by the consultant.

B. LPA must determine those that meet the format requirements specified in the RFP.

C. LPA evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets must be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.

D. The non-A&E contract must be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

When using RFP (Cost and Qualifications), the criteria used to evaluate the consultant's proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

An example RFP for non-A&E is provided on the DLA Consultant Selection and Procurement website and may be modified.

Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

Consultant's Proposal

The consultant's proposal should include the following information:

- Consultant Project Manager – qualifications, roles, and responsibilities.

- Methodology - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- Workplan and Work Schedule - the technical proposal should include activities and tasks, and their delivery schedule.
- Personnel - List of personnel who will be working on the project, and their resumes.
- Facilities and resources (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- Subcontracts - Identify all subcontracts that are to be used, description of each, and the work by each subconsultant/subcontractor. No work must be subcontracted unless listed in the technical proposal. Subconsultant resumes should be provided.
- References - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

Cost Proposal Worksheet

The RFP should provide a standard format for cost proposal that all proposers must include in their proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

LPA is not required to award a contract if it is determined that the contract price is not reasonable (PCC 10344(d)).

DBE Consideration

DBE consideration is required on all Federal-aid funded contracts including non-A&E.

Administrative Requirements

Advertisement for RFPs may be through the LPA website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant's questions must be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

A proposal may be considered nonresponsive and rejected without evaluation if all required information is not provided. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation (see Exhibit 15-H: Proposer/Contractor Good Faith Efforts), late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.
(PCC 10365.5)

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities must be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate must not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally-funded projects.

Oral Presentations Optional

When oral presentations are required by the LPA, the evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon these criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Cost-Effective / Public Interest Finding

A minimum of three proposals must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract must document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

(PCC 10340(c))

Protest / Appeals / Reinstatement Procedures

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.

10.4 A&E OVERSIGHT PROGRAM AND PROCESS REVIEW

General

The A&E Oversight Branch is responsible for the oversight of consultant contracts procured by LPAs complying with federal regulations 23 CFR 172 and 23 U.S.C.112, and California Government Code 4525-4529.5.

For locally-administered Federal-aid highway projects, A&E consultant contract oversight reviews will be performed by Caltrans' Local Assistance A&E Oversight Engineers (A&EOEs). DLAE staff should participate in the reviews.

Type of Reviews

The purpose of A&E consultant contract oversight reviews is to verify LPA compliance with federal and state consultant contract administration requirements. A risk-based approach has been identified by the A&E Oversight Branch to aid LPAs with compliance that includes requiring LPAs to complete and submit the A&E Consultant Contract form prior to contract award, or after contract award but no later than the first invoice. The objective is to create a database documenting all consultant contracts and to perform process reviews on a sample of contracts for the annual performance measures report.

Although the risk-based approach is the submittal of the A&E Consultant Contract form via the database, a process review may be conducted on projects for reporting purposes and to determine accuracy of the A&E Consultant Contract form information.

A&E Consultant Contract Form Review

The purpose of the A&E Consultant Contract form is to provide oversight and guidance to an LPA regarding consultant contract administration on a federal or state-funded project prior to the award of the contract. The A&E Consultant Contract form includes items considered critical for compliance with federal and state regulations.

Subsequent process reviews may be performed on selected state and/or federal projects requiring a greater degree of oversight if deemed necessary for LPAs with a noncompliance history.

The following factors may be used when selecting projects for subsequent review:

- LPAs with identified deficiencies during an Incurred Cost Audit
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained LPA personnel
- Request by LPA or DLAE for additional assistance

During subsequent process reviews, the A&EOE will meet with the LPA's consultant contract administration team and discuss project record documentation requirements using the A&E Consultant Contract form. The timing of these types of reviews is targeted for pre-advertisement, pre-negotiations, and pre-award of the consultant contract. This will allow for any changes to take place prior to execution or termination of negotiations for re-advertising. The A&EOE will also explain new policies or procedures, discuss available training, and highlight common problem areas and the means to avoid them.

Review Findings and Deficiencies

Caltrans will not be involved in most project-level reviews and approval activities. Instead, the Process Review as outlined in this section is Caltrans' primary method of ensuring that federal and state requirements are met. During a Process Review of the LPA's project files, errors and/or deficiencies that may violate federal or state law or regulation could be found. If that happens, federal and/or state funds may be withdrawn from a project depending on the severity and circumstance of the deficiency, as well as the possibility of jeopardizing future federal and/or state funding opportunities for the agency's other projects.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing project submittals by DLAEs or DLA Area Engineers.

Review findings from any subsequent reviews will be forwarded to the LPA and the DLAE within five business days. Deficiencies identified during a review may require development of a corrective action plan by the LPA in consultation with the district within 30 calendar days of receipt of the deficiency notification, unless the agency disagrees with the deficiencies identified and appeals the decision as discussed below.

A list of common A&E consultant procurement-related deficiencies is found at the DLA Consultant Selection and Procurement website. These examples, not all-inclusive, should assist LPAs with knowing common deficiencies found in the past and the possible ramifications for those errors and deficiencies. The key to avoiding possible sanctions is to follow the procedures outlined in this chapter and other appropriate policies and guidelines, and if you have any questions, to consult your DLAE.

Corrective action plans, if required, will identify actions the LPA will take to address each deficiency noted. Corrective actions may include the following: Re-advertising, modifications of LPA policies and procedures, and participation in training to address systemic related deficiencies. Project-specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal/state ineligibility notices against the project or LPA and could prevent federal or state participation in all or a portion of the project.

In the event the LPA disagrees with the deficiencies identified, the LPA will have 30 calendar days from receipt of the deficiency notification to submit their written request for appeal in accordance with the DLA's Local Agency Dispute Resolution Process. If the appeal is denied, the LPA will have 30 calendar days from receipt of the decision to submit their corrective action plan.

The Dispute Resolution Process provides a means for the LPA to appeal a sanction that they feel has been imposed upon them unfairly or they feel the penalty is too harsh for the error or deficiency. This appeal process is not limited to just the appeal of sanctions; it can be used by LPAs when they disagree with the decision, they receive from a district office.

Sanctions

Depending on the severity and circumstances of the deficiencies which may require sanctioning by Caltrans, the DLA or DLAE may impose one of the following sanctions:

- Freeze on all future programming of federal or state funds until corrective action is implemented
- Freeze progress payments for a Federal-aid project until the project's deficiency is corrected
- Percentage of federal or state funds for a project withdrawn
- All federal or state funds withdrawn from a project

The DLAE will be responsible for notifying the LPA of sanctions imposed. Whether or not sanctions are imposed against an LPA, the LPA will be expected to develop a corrective action plan and implement it to correct the deficiencies. LPAs will be given adequate time to develop and implement their action plan. Failure to correct the deficiencies in a timely manner will be grounds for imposing additional sanctions.

Chapter 11 **Design Guidance**

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Exhibits

Exhibit 11-A: Geometric Design Guidelines for Local 3R Projects (Off the SHS)
Exhibit 11-B: Bridges and Structures
Exhibit 11-F: Sample Design Fact Sheet

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 11 **Design Guidance**

11.1 Introduction

The purpose of this chapter is to provide statewide design guidance applicable to Local Public Agency (LPA) administered Federal-aid transportation projects. These guidlines and procedures should be considered in the design of transportation projects and applied with engineering knowledge, experience, and judgement to provide a safe, sustainable, integrated, and efficient transportation system.

11.2 Design Guidance for Local Assistance Projects

New and Reconstruction Projects

23 CFR 625 designates the standards, policies, and standard specifications that are acceptable for application in the geometric design of Local Assistance projects. The standards are dependent on the type and location of the project.

New construction involves building a new facility that did not previously exist along a highway segment including new roadways, alignments, interchanges or grade separation crossings and new parking lots or safety roadside rest areas. The addition of appurtenances to an existing facility, such as striping, signs, signals, noise barriers, etc. is not considered new construction.

Reconstruction replaces the entire existing pavement structure with an equivalent or increased new pavement structure and rebuilding of adjacent operational and roadside features. Reconstruction is typically warranted when the roadway has become functionally and structurally obsolete. Reconstruction features typically include significant change to the horizontal or vertical alignment of the highway and may include the addition of lanes.

Reconstruction differs from lane/shoulder replacement roadway rehabilitation options in that lane/shoulder replacements typically involve replacing portions of the roadway width, whereas reconstruction is the removal and replacement of the entire roadway width. Incidental rebuilding of existing pavements for rehabilitation to conform to bridges, existing pavement, or to meet vertical clearance standards is considered rehabilitation and not reconstruction. Storm and earthquake damage repairs (i.e., catastrophic) also are not considered reconstruction projects.

Reconstruction involves the following:

- Replacement of existing pavement structure
- Addition of a lane (except climbing or auxiliary lanes)
- Significant change in horizontal and/or vertical alignment
- Reconstruction of an interchange by adding moves or relocating ramps (widening ramps for storage, turning movements, or ramp metering are not included)
- Replacement of an entire bridge or the major parts of an existing bridge (in such a manner that it is effectively a new bridge)
- Seismic retrofit projects for the following:
    - Major or unusual structures (all tunnels, unusual and movable bridges, unusual hydraulic or geotechnical structures, or bridges with a total deck area greater than 125,000 square feet)

    - Construction cost greater than $5 million per structure
- Major modifications to Traffic Management Centers

Projects on the State Highway System (SHS)

LPA new or reconstruction projects on the SHS must be designed in accordance with the current Caltrans Highway Design Manual and other Caltrans Division of Design standards, policies, and procedures.

Projects on the National Highway System (NHS)

LPA new or reconstruction projects on the NHS and not on the SHS must be designed in accordance with the FHWA-adopted edition of the American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets.

Projects not on the NHS

LPA new or reconstruction projects not on the NHS may be designed in accordance with locally developed design standards or the current Caltrans Highway Design Manual or the current FHWA-adopted AASHTO Policy on Geometric Design of Highways and Streets.

LPA developed design standards may be used on LPA new or reconstruction projects not on the NHS if:

- The standards have been approved by the County Board of Supervisors or the City Council.
- The standards are signed by the City/County Public Works Director who is a California licensed Civil Engineer. If the Public Works Director is not licensed, the standards may be signed by the LPA's highest level licensed Civil Engineer. Standards may be signed by a consultant on retainer as the City/County Engineer if such individual is licensed and is responsible directly to the Public Works Director or City/County Manager.
- The standards are reviewed for possible updating whenever the applicable AASHTO standards are updated.

Resurfacing, Restoration and Rehabilitation (3R) Projects

In accordance with 23 CFR 625.4(a)(3), the geometric design standards for 3R projects on the NHS must be the procedures and the design or design criteria established for individual projects, groups of projects, or all 3R projects in a state, and as approved by the FHWA. Below are the standards approved by FHWA.

3R work does not fall into the defined categories for new construction, reconstruction, or preventive maintenance, and typically involves the improvement of highway pavement surfaces through resurfacing, restoration, or rehabilitation. Specifically, 3R work is defined as the following:

- Resurfacing - placing additional hot mix asphalt concrete over a structurally sound highway or bridge that needs treatment to extend its useful service life.
- Restoration - returning a road, structure, or collateral facility to the condition existing after original construction.
- Rehabilitation - providing some betterments, such as upgrading guardrail or widening shoulders.

3R work is generally regarded as heavy, nonroutine maintenance work designed to preserve and extend the roadway service life for at least ten years and enhance safety wherever reasonable. However, the work may include selective improvements to highway geometry and other roadway features, including safety appurtenances, and still be considered 3R work.

Projects on the SHS

LPA 3R projects on the SHS must be designed in accordance with the geometric standards and guidance provided by Caltrans Design Information Bulletin 79-04 (DIB 79-04).

Projects not on the SHS

LPA 3R projects not on the SHS must be designed in accordance with the geometric standards and guidance provided in Exhibit 11-A: Geometric Design Guidelines for Local 3R Projects (Off the SHS).

Bridges and Other Structures

All LPA bridge and structure projects must be designed in accordance with the current Caltrans adopted edition of the AASHTO Load and Resistance Factor Design (LRFD) Bridge Design Specifications with California Amendments and Caltrans Bridge Design Manuals, Policies, Standards, and Guidance in accordance with 23 CFR 625.4(b). Additional information applicable to the design of bridges and other structures is provided in Exhibit 11-B: Bridges and Structures.

11.3 Standard Plans

The Caltrans Standard Plans must be used for all LPA projects on the SHS.

The following standard plans are acceptable for use on LPA projects not on the SHS:

- Current edition of Caltrans Standard Plans
- Current edition of the Standard Plans for Public Works Construction developed by the Public Works Standards, Inc.
- LPA developed standard plans

LPA developed standard plans may be used on LPA new or reconstruction projects not on the NHS if:

- The standards have been approved by the County Board of Supervisors or the City Council.
- The standards are signed by the City/County Public Works Director who is a California licensed Civil Engineer. If the Public Works Director is not licensed, the standards may be signed by the LPA's highest level licensed Civil Engineer. Standards may be signed by a consultant on retainer as the City/County Engineer if such individual is licensed and is responsible directly to the Public Works Director or City/County Manager.

11.4 Standard Specifications

For LPA projects on the SHS, the current Caltrans Standard Specifications must be used.

The following standard specifications are acceptable for use on LPA projects not on the SHS:

- Current Caltrans Standard Specifications
- Current edition of the Standard Specifications for Public Works Construction
- LPA developed standard specifications

LPA developed standard specifications may be used on LPA new or reconstruction projects not on the NHS if:

- The standards have been approved by the County Board of Supervisors or the City Council.
- The standards are signed by the City/County Public Works Director who is a California licensed Civil Engineer. If the Public Works Director is not licensed, the standards may be signed by the LPA's highest level licensed Civil Engineer. Standards may be signed by a consultant on retainer as the City/County Engineer if such individual is licensed and is responsible directly to the Public Works Director or City/County Manager.

11.5 Design Decisions

Flexibile and context-sensitive approaches which consider the full range of project needs and the impacts to the community and natural and human environment are encouraged. Alternatives to design guidance are a useful tool that may be employed to achieve a balance of project needs and community values. LPAs must evaluate, approve, and document design decisions.

Projects on the SHS

LPA projects on the SHS must follow the design alternative approval procedures outlined in Caltrans Project Development Procedures Manual (PDPM) Chapter 21: Design Decision Standards.

Alternatives to accessibility design standards on SHS projects are outlined in Caltrans DIB #82-06: Pedestrian Accessibility Guidelines for Highway Projects.

Projects not on the SHS

For LPA projects not on the SHS and either on or off the NHS, the approval of design alternatives is delegated to City and County Public Works Directors. Approval of design alternatives on LPA Federal-aid highway transportation projects must be signed by the Public Works Director or the person to whom approval authority has been delegated. The person with approval authority must be a licensed Civil Engineer in the State of California. The approval authority for design alternatives may be delegated to a private consulting firm that is on retainer as a City or County Engineer if such individual is licensed and responsible directly to the Public Works Director or City/Country Manager.

Design alternative processes may vary, but the fundamental steps should include:

- Determining the cost and impacts of meeting the design criteria.
- Developing and evaluating the potential consequences and risks of alternatives that may fall outside of design guidance.

- Evaluating potential mitigation features.
- Reviewing, documenting, and approving the use of proposed alternatives.

Documentation should be signed, stamped with an engineer's seal, approved by the Director of Public Works or the person whom approval authority has been delegated, and retained in projects files for at least three years from acceptance of final voucher per 23 CFR 710.201(f). A sample design fact sheet including other information to document is shown in Exhibit 11-F: Sample Design Fact Sheet.

A tracking system for design decisions should be implemented by LPAs to retrieve project information quickly and accurately. The data should include:

- Project description
- Project location
- Nonstandard features approved
- Indication if future commitments have been made

Bridge Design and Details

LPA proposed bridge or structure design alternatives must follow the procedures outlined in Exhibit 11-B: Bridge and Structures.

Signs and Markings

Alternatives to mandatory signs and markings as defined in the California Manual on Uniform Traffic Control Devices (CA MUTCD) may be permitted if a proposal to experiment with non-standard devices is submitted to and approved by the FHWA and California Traffic Control Devices Committee prior to implementation.

11.6 Other Considerations

Highway Cross Drainage, Hydraulic, and Hydrologic Design

For LPA funded projects on the SHS, project cross drainage, hydraulic, and hydrologic design must be designed in accordance with the current edition of the Caltrans Highway Design Manual.

For LPA highway projects not on the SHS, it is recommended to design project cross drainage, hydraulic, and hydrologic design in accordance with the current edition of the Caltrans Highway Design Manual. LPAs may refer to the current editions of the AASHTO Highway Drainage Guidelines for a general discussion of drainage and the AASHTO Drainage Manual for more detailed guidance on highway hydraulic design. FHWA's Hydraulic Engineering website contains several other useful references regarding drainage, hydraulic, and hydrologic design.

Floodplain Encroachment

LPAs have the following options for meeting the base floodplain encroachment evaluation requirements of 23 CFR 650:

1. Follow the procedures and guidance provided in Topic 804, Floodplain Encroachments, of the Caltrans Highway Design Manual, or

2. Provide their own Floodplain Evaluation Report following general policy guidance provided in 23 CFR 650.

For further guidance on preparing a Location Hydraulic Study and a Floodplain Evaluation Report, refer to the Chapter 17: Floodplains of the Standard Environmental Reference.

Copies of the Location Hydraulic Study and the Summary of Floodplain Encroachment forms for local projects can be found on the Caltrans Local Assistance Environmental Issues website.

Bicycle and Pedestrian Facilities

LPAs are encouraged to incorporate designs that help ensure the needs of non-motorized users in all programming, planning, construction, maintenance, operations, and project development activities and products.

Design guidance for bikeway projects is provided in Chapters 100, 200, 300, and 1000 of the Caltrans Highway Design Manual and AASHTO Guide for Development of Bicycle Facilities. Publications such as the National Association of City Transportation Official (NACTO) Urban Street Design Guide, NACTO Urban Bikeway Design Guide, and the Institute of Transportation Engineers (ITE) Designing Urban Walkable Thoroughfares are resources that can also be referenced when making planning and design decisions on local streets and roads. Alternatives to bikeway design guidance must meet the criteria outlineds in Section 891 of the California Streets and Highways Code.

Accessibility and the Americans with Disabilities Act

State and local governments, regardless of whether they receive federal funds, are required to comply with the Federal 2010 ADA Standards, Title 24 of the California Code of Regulations (which contain California building regulations) or local codes, whichever provides the greatest access. Private-funded improvements within the public right of way are also required to comply with whichever code offers the greatest access or protections to individuals with disabilities. If discrepancies are found between federal, state, or local requirements, the discrepancies should be brought to the attention of the District Local Assistance Engineer. The best practice is for the City or other local public entity conducting the work, the State transportation agency, and FHWA to work together to come to an agreement on reasonable determination, document their policies, and apply that determination consistently in their locality.

Certain types of resurfacing treatments must be considered an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

The following roadway treatments are considered an alteration:

- Open-graded Surface Course
- Cape Seals
- Mill & Fill / Mill & Overlay
- Hot In-Place Recycling
- Microsurfacing / Thin Lift Overlay

- Addition of New Layer of Asphalt
- Asphalt and Concrete Rehabilitation and Reconstruction
- New Construction

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray must be considered maintenance because they do not significantly affect the public's access to or usability of the road.

The following types of treatments are considered maintenance:

- Crack Filling and Sealing
- Surface Sealing
- Chip Seals
- Slurry Seals
- Fog Seals
- Scrub Sealing
- Joint Crack Seals
- Joint Repairs
- Dowel Bar Retrofit
- Spot High-Friction Treatments
- Diamond Grinding
- Pavement Patching

In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps. More information on treatments that are considered an alteration triggering the requirement to add curb ramps can be found at https://www.ada.gov/doj-fhwa-ta-glossary.htm.

In accordance with Section 4454(b)(a) of the California Government Code, Approval of Plans and Specifications, LPA plans and specifications with pedestrian facilities to be constructed with state funds must be reviewed and approved by the Division of the State Architect (DSA). LPA plans and specifications of pedestrian facilities within the state highway right of way, excluding rail and transit systems, can be reviewed and approved (certified) by Caltrans in place of DSA. Approval of the plans and specifications by DSA will require fees be paid directly to DSA. DSA regional offices can be found at: https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Accessibility-Plan-Review.

The Accessible Parking and Curb Ramp plans included in Caltrans Standard Plans are FHWA-approved for the SHS. Refer to the most current version of DIB-82 for further direction and discussion on the use of these standard plans.

The U.S. Department of Justice and the Federal Access Board both have very comprehensive websites committed to accessible design including ADA design standards (http://www.ada.gov/) and design guidance (https://www.access-board.gov/guidance.html).

Intelligent Transportation Systems/Traffic Signal Controllers

In accordance with 23 CFR 940, Intelligent Transportation System Architecture and Standards, all Intelligent Transportation Systems (ITS) projects must adhere to ITS Standards. The choice of ITS Standards hinges on the development of a Regional ITS Architecture. For details on ITS Standards refer to the Caltrans Local Assistance ITS Program website.

Section 21401 of the California Vehicle Code also requires:

(a) Except as provided in Section 21374, only those official traffic control devices that conform to the uniform standards and specifications promulgated by the Department of Transportation must be placed upon a street or highway.

(b) Any traffic signal controller that is newly installed or upgraded by the Department of Transportation must be of a standard traffic signal communication protocol capable of two-way communications. A local authority may follow this requirement.

(c) In recognition of the state and local interests served by the action made optional for a local authority in subdivision (b), the Legislature encourages LPAs to continue taking the action formerly mandated by this section. However nothing in this subdivision may be construed to impose any liability on the LPA that does not continue to take the formerly mandated action.

Communication standards for traffic signal controllers are available from the National Transportation Communications for ITS Protocol. Other ITS elements to enhance pedestrian safety at intersections can be found at pedbikeinfo.org.

11.7 References

Refer to Exhibit 11-B: Bridge and Structures for references related to bridges and other structures.

AASHTO

A Policy on Geometric Design of Highways and Streets
https://store.transportation.org/Item/CollectionDetail?ID=180

Drainage Manual
https://store.transportation.org/Item/PublicationDetail?ID=5219

Guide for Achieving Flexibility in Highway Design
https://store.transportation.org/Item/CollectionDetail?ID=31

Guide for the Development of Bicycle Facilities
https://store.transportation.org/item/collectiondetail/267

Guide for the Planning, Design and Operation of Pedestrian Facilities
https://store.transportation.org/Item/CollectionDetail?ID=224

Highway Drainage Guidelines
https://store.transportation.org/Item/PublicationDetail?ID=1747

Roadside Design Guide
https://store.transportation.org/Item/CollectionDetail?ID=105

Caltrans

California Manual on Uniform Traffic Control Devices (CA MUTCD)
https://dot.ca.gov/programs/safety-programs/camutcd

Complete Intersections: A Guide to Reconstructing Intersections and Interchanges for Bicyclists and Pedestrians
http://nacto.org/docs/usdg/complete_intersections_caltrans.pdf

Construction Contract Standards (Plans and Specifications)
https://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications

Design Information Bulletin 79-04 (DIB-79) - Design Guidance and Standards for Major Pavement Roadway Rehabilitation Projects
https://dot.ca.gov/-/media/dot-media/programs/design/documents/signed-dib-79-04-posting-030123-a11y.pdf

Director's Policy DP-37 - Complete Streets
https://dot.ca.gov/-/media/dot-media/programs/esta/documents/complete-streets/dp-37-complete-streets-a11y.pdf

Flexible Pavement Structural Section Guide for California Cities and Counties
https://worldcat.org/title/932236136

Highway Design Manual
https://dot.ca.gov/programs/design/manual-highway-design-manual-hdm

Main Street California, a Guide for Improving Community and Transportation Vitality
https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-main-street-california

NEPA Assignment and Environmental Compliance website
https://www.environment.fhwa.dot.gov/nepa/program_assignment.aspx

Project Development Procedures Manual
https://dot.ca.gov/programs/design/manual-project-development-procedures-manual-pdpm

Standard Environmental Reference (SER) Standard Plans
https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser

FHWA

23 United States Code, Section 109 – Standards
https://www.fhwa.dot.gov/map21/docs/title23usc.pdf

2010 ADA Standards Website
http://www.ada.gov/2010ADAstandards_index.htm

Accommodating Bicycle Pedestrian Travel: A Recommended Approach
http://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design.cfm

Designing Sidewalks and Trails for Access (Part 2), FHWA-EP-01 027
http://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/sidewalk2/

FHWA Contract Administration Core Curriculum Participant's Manual and References Guide, 2006
http://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf

FHWA Hydraulic Engineering Home Page
http://www.fhwa.dot.gov/engineering/hydraulics/

FHWA Performance Based Practical Design Website
http://www.fhwa.dot.gov/design/pbpd/

FHWA Separated Bike Lane Planning and Design Guide
https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/separated_bikelane_pdg/separatedbikelane_pdg.pdf

Other

Designing Safer Roads - Practices for Resurfacing, Restoration and Rehabilitation, Special Report 214, Transportation Research Board
http://onlinepubs.trb.org/onlinepubs/sr/sr214/sr214_001_fm.pdf

Designing Urban Walkable Thoroughfares: A Context Sensitive Approach, Institute of Transportation Engineers
http://library.ite.org/pub/e1cff43c-2354-d714-51d9-d82b39d4dbad

Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, US Access Board
https://www.access-board.gov/webinars/2023/10/05/accessibility-guidelines-for-pedestrian-facilities-in-the-public-right-of-way/

Recommended Procedures for the Safety Performance Evaluation of Highway Features, Report 350, National Cooperative Highway Research Program
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_350-a.pdf

Roadside Safety, Transportation Research Record 1065, Transportation Research Board
http://trid.trb.org/view.aspx?id=309335

Standard Plans for Public Works Construction, developed and promulgated by the American Public Works Association, Southern California Chapter, and the Associated General Contractors of California, Southern California Districts
https://www.bnibooks.com/products/standard-plans-for-public-works-construction-2021-edition?_pos=2&_sid=1911b0503&_ss=r

Standard Specifications for Public Works Construction, developed and promulgated by the American Public Works Association, Southern California Chapter, and the Associated General Contractors of California, Southern California District
https://www.bnibooks.com/collections/public-works/products/2021-greenbook-standard-specifications-for-public-works-construction

Urban Bikeway Design Guide, National Association of City Transportation Officials
http://nacto.org/publication/urban-bikeway-design-guide/

Urban Street Design Guide, National Association of City Transportation Officials
http://nacto.org/publication/urban-street-design-guide/

Chapter 12 **Plans, Specifications & Estimate**

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Exhibit 12-D: PS&E Checklist
Exhibit 12-E: PS&E Checklist Instructions
Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive
Exhibit 12-G: Required Federal-Aid Contract Language
Exhibit 12-H: Sample Bid

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 12 **Plans, Specifications & Estimate**

12.1 Introduction

The policies and procedures contained in this chapter reflect current federal requirements for the Plans, Specifications and Estimate (PS&E) phase of local projects off the State Highway System (SHS). These instructions are not intended to address the relevant state laws and local regulations with which a Local Public Agency (LPA) must also comply.

The preparation of the PS&E for local federal-aid projects off the SHS is the responsibility of the LPA. LPAs will certify on LAPM 3-A: Project Authorization/Adjustment Request that their project PS&E complies with all applicable federal and state regulations and procedures. Exhibit 12-D: PS&E Checklist summarizes the items required for LPA compliance. The LPA's project PS&E Certification and PS&E Checklist must be submitted to the Caltrans District Local Assistance Engineer (DLAE) along with their Request for Authorization to Proceed with Construction.

Federal-aid projects in which the total project costs are expected to be $100 million or more, require that the Financial Plan Annual Update (FPAU) be prepared when all elements of the plan are fully known, but not later than the request for authorization of federal financial assistance for construction. Financial Plans for projects of $100 million or more must be submitted to the Caltrans DLAE. Submittal of the Financial Plan and a Project Management Plan (PMP) are required for projects of $500 million or more. Major Federal-aid projects of $500 million or more require that a PMP be prepared and submitted to Caltrans/Federal Highway Administration (FHWA). FHWA also requires that a Cost and Schedule Risk Assessment (CSRA) be performed prior to National Environmental Policy Act (NEPA) completion and prior to construction authorization. For more information see LAPM Chapter 2: Roles and Responsibilities.

For locally-administered projects on the SHS, the LPA must enter into a cooperative agreement with Caltrans to establish the responsibility for project PS&Es (see Caltrans Project Development Procedures Manual (PDPM) Chapter 1: Introduction).

12.2 PS&E Procedures for Significant NHS Projects

For significant projects (as defined in LAPM Chapter 7: Field Review, Section 7.2) on the NHS, the LPA's written PS&E procedures must be approved by Caltrans before final design is started. The DLAE will determine which projects require this approval at the field review (see LAPM Chapter 7). The written PS&E procedures should identify changes from the procedures described in this chapter and as a minimum cover the following items:

- Project management personnel and procedures
- Highway design standards (and any other technical standards as appropriate)
- Consultant selection procedures
- Project DBE participation procedures
- Review and approval procedures
- Oversight procedures if a state highway is involved
- Maintenance of records and access

The DLAE should consult with headquarters Division of Local Assistance (HQ DLA) for assistance with the review of the LPA procedures.

12.3 Environmental Procedures

23 CFR 771.113 prohibits starting work on the final design phase of a federally-funded project until after approval of the final environmental document (see LAPM Chapter 6: Environmental Procedures). Failure to comply with this requirement will make a project ineligible for federal reimbursement.

12.3.1 Compliance with Environmental Laws

The LPA is responsible for ensuring that mitigation measures presented as commitments in environmental documents, and that conditions and restrictions associated with regulatory permits, are incorporated into appropriate contract documents, plans, specifications and estimates prior to proceeding with major construction activities such as land acquisition or construction. Environmental documents referred to here may be a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

Failure to meet mitigation commitments may render the project ineligible for federal reimbursement.

Omission or modification of a mitigation commitment, thereby creating new significant environmental effects, will result in the need to prepare a re-evaluation to assess any changes that have occurred and their effect on the validity of the environmental document. Changes in project design, applicable laws or regulations, or environmental impacts may also require environmental re-evaluation, including additional studies, consultation, and public involvement. If the document is an EIS, a Supplemental EIS may be required.

12.3.2 Preliminary Design

23 CFR 636.103 defines preliminary design as the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. In addition to the activities specified in the definition, Appendix A of FHWA Order 6640.1A provides examples considered to be preliminary design. Prior to completion of the NEPA review process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the NEPA review process.

12.3.3 Final Design

LPAs may not proceed with final design activities until Caltrans District Senior Environmental Planner and the DLAE have signed the CE Form, Caltrans Deputy District Director has signed the Finding of No Significant Impact (FONSI), or Caltrans District Director has signed the Record of Decision (ROD). Granting approval to proceed with final design prior to final environmental approval would be a premature commitment to one alternative at a time when other alternatives, including the alternative of taking no action, are still being actively considered in the environmental process. Upon final environmental approval, it is incumbent upon the DLAE

to immediately provide notification to the LPA and a copy of the approved environmental determination or documents.

LPAs are required to provide a list of mitigation commitments to the DLAE (for projects processed with a CE), provide a list of mitigation commitments in the FONSI (for projects processed with an EA), and provide a list of mitigation commitments in the ROD (for projects processed with an EIS).

Unique mitigation commitments including but not limited to preservation of historic sites, protection of public-owned parklands, removal and disposal of hazardous materials, and the establishment of sensitive plant communities or wetland mitigation sites are often complex and require technical expertise in the translation and transfer into final design. Any plant establishment and monitoring periods must also be addressed during final design.

For complex projects, Caltrans staff is available to assist in the translation and proper transfer of mitigation commitments into the final design. Caltrans assures that mitigation commitments and any required ongoing maintenance of mitigation are implemented by conducting periodic process reviews.

12.3.4 Permits

The LPA is also responsible for translating permit conditions and restrictions into the final design. Permits include, but are not limited to: Army Corps of Engineers Section 404 Nationwide Permit; Section 404 Individual Permit; NEPA/404 Integration MOU, Section 10 Permit; United States Coast Guard Bridge Permit; Regional Water Quality Control Board Section 401 Water Quality Certification and National Pollution Discharge Permit; California Department of Fish and Wildlife Streambed Alteration Agreement; California Coastal Commission Coastal Development Permit, and Bay Conservation and Development Commission Permit. Typical mitigation includes hay bales, silt fencing, dust control, riprap, soil stabilization matting, slope drain, turbidity barrier, etc.

LPAs should work closely with the permitting agency to ensure accurate translation and proper transfer of permit conditions and restrictions (as appropriate) into final design. Conversations with regulatory agencies regarding translation of permit conditions and restrictions should be well documented.

12.3.5 Documentation

Well documented records, referencing the page numbers and/or plan sheets on which commitments are illustrated, should be maintained and the Environmental Commitments Record (ECR) equivalent addressing all environmental mitigations should be submitted along with other PS&E documents by the LPA, as this information will be necessary when certifying the PS&E. For more details refer to LAPM Chapter 6, Section 6.3. This information will also be useful during the PS&E and process reviews.

12.4 Method of Construction

Except as noted below, all Federal-aid construction projects must be completed by contracts awarded to the lowest responsible bidder of a competitive bid process (23 CFR 635.104). In addition, LPAs may not, under any circumstances, negotiate with a bidder prior to award to reduce the price of a construction contract.

Occasionally, situations arise which may support the use of a contracting method other than competitive bidding. Non-competitive construction contracting may be approved under the following conditions:

- When an emergency exists of such magnitude that work cannot be delayed
- There is only one organization qualified to do the work
- Competition is deemed inadequate after soliciting bids
- When it is more cost-effective to do the project by force account (defined below)
- When using some design/build or Construction Manager/General Contractor (CMGC) methods of procurement

The use of a non-competitive contracting method must be thoroughly justified in writing (generally utilizing a Public Interest Finding (PIF)), submitted to the Caltrans DLAE for approval, documented in the project files, and retained for future reference. When utilizing Design-Build, CMGC, or ID/IQ contracting methods, a PIF justification is not required (23 CFR 635.104(c)(d)). When utilizing CMGC, the LPA must follow Caltrans Local Assistance Procedures for CMGC Projects.

12.4.1 Force Account (Day Labor)

23 CFR 635.203 defines force account as the direct performance of construction work by the LPA, railroad, or public utility using labor, equipment, materials, and supplies furnished by them and under their direct control. Payment under force account is based on the actual cost of labor, equipment, and materials furnished, with consideration for overhead and profit.

Since work by force account is an exception to the normal contract method, which is based on competitive bidding, each LPA must also look to its own charter and applicable state code(s) when considering work by force account.

The performance of work by force account on a Federal-aid project may be appropriate when:

- It is determined that the rights or responsibilities of the community are so affected as to require a special course of action, including a lack of competition or unreasonable bids (must be documented).
- By the inherent nature of the operation, it is deemed cost-effective to perform minor adjustments of railroad and utility facilities while the major work is still accomplished by competitive bidding (the use of force account work under this circumstance has been predetermined to always be cost-effective without further documentation or authorization).
- It is deemed cost-effective to perform some work (incidental to the main purpose of the project and other than minor adjustments of railroad and utility facilities), while the major work is still accomplished by competitive bidding.
- It is necessary for emergency relief.

A public interest finding (PIF) fully justifying the use of force account work on a Local Federal-aid project must be prepared by the LPA (see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive). The documentation should include:

- An identification and description of the project and the kinds of work to be performed.

- A comparison of the detailed cost estimates for work by force account versus a competitive bid contract.
- An estimate of federal funds to be provided based on the reimbursement ratio of the qualifying costs.
- The reason(s) the use of work by force account is considered to be cost-effective or an emergency.
- An authorization by the City or County Public Works Director authorizing LPA forces to perform the work and certifying that the documentation reflects the true and current estimates of costs to perform the work.

With the submittal of the PIF to justify the use of force account work, the LPA must demonstrate the following abilities to perform the work (FHWA Order 5060.1, March 12, 2012):

1. Availability of equipment
    a. The LPA must own (or currently lease) most of the equipment that is needed to perform the work. If the LPA must acquire or lease substantially more equipment than required for its normal operation, it would be difficult to justify an affirmative finding of cost-effectiveness. While no contractor, subcontractor or LPA owns all of the equipment that it may need, the costs associated with leasing equipment on a force account project should be a relatively minor portion of the overall cost. FHWA and Caltrans may elect to limit the percentage of equipment leasing costs for differing types of work.
    b. In LPA force account work, the rates on publicly owned equipment eligible for federal participation may be the agreed unit price or actual cost. For agreed unit prices, the equipment need not be itemized on the estimate. If the project is to be performed on the basis of actual cost, the estimate should include a schedule of rates, exclusive of profit, to be charged for the use of publicly owned equipment.

2. Use of minor agreements

    It is anticipated that the LPA will perform all work with its own forces. However, in some instances, it may be appropriate for the LPA to enter into agreements for specific minor services associated with the scope of work (e.g., guardrail installation). Such instances should be documented and pre-approved. Any work done by contract forces would be subject to prevailing wage rate requirements as appropriate.

3. Ability to comply with design, construction and material, quality standards

    The LPA must have the ability to comply with the appropriate design, construction, and material quality standards.

4. Ability to document compliance with quality assurance requirements

    The LPA must be able to obtain and document the same level of quality that is required for competitively let contracts under 23 CFR 637.

5. Schedule

   The project/contract completion time is to be equal for both LPA and contract work estimates in order to provide a fair comparison of prices.

6. Cost comparison

   The LPA must provide sufficient cost information so that a cost-effectiveness determination can be made by comparing the total cost for the LPA to perform the work versus the total cost using competitively bid prices.

   a. LPA's cost estimate

      The LPA's cost estimate should be prepared on a force account basis including estimated quantities and prices for material, labor, and equipment. The estimate should be based on one of two methods:

      i. Actual Cost: Payment will be based on the actual cost of labor, materials, and equipment rates. Estimated hours and rates should be included and final reimbursement will be based on an audit of actual costs.

      ii. Unit Price: Payment will be based on agreed unit prices and the actual number of units constructed. Agreed unit prices must be developed using quantities, man-hours, pay rates, material costs, and equipment rental rates.

   b. Materials

      When the LPA proposes to use previously purchased and stockpiled material, the value of the material should be the same as the price listed on the LPA's cost inventory. All material must comply with FHWA's general material requirements in 23 CFR Subpart D.

   c. Work items

      The LPA must include all work items in the LPA cost estimate (regardless of federal participation) so that a fair comparison can be made with the estimate of contract work.

   d. LPA's total cost estimate

      The LPA's total cost estimate must include an adjustment for the agency's overhead or indirect cost rates for labor, equipment, and materials. The agency's overhead or indirect costs rates must be developed in compliance with the Cost Principles for State, Local, and Indian Tribal Governments (2 CFR Part 225).

   e. Reductions not allowed to LPA's total cost estimate

      The total LPA cost estimate must not be reduced by: potential savings resulting from use of less than complete plans, potential savings from reduced quality assurance during construction, and anticipated savings from reduced construction management and documentation.

   f. Assurances that the project will comply with all Federal-aid requirements

      The LPA must assure that it will comply with all applicable Title 23 requirements during construction such as the applicable sections of Form FHWA-1273, job site poster requirements, environmental commitments, etc.

The DLAE must sign to approve the submitted public interest finding (Exhibit 12-F).

12.4.2 Emergency Work

In an emergency situation competitive bidding may be waived on any of the Federal-aid programs, and the work may be performed by either force account or negotiated contract. For projects that are exempt from FHWA oversight, the waiver must be approved by the DLAE. An emergency is a situation that requires emergency repair work, as provided under the Emergency Relief Program or when a major element or segment of a highway system has failed and the situation is such that competitive bidding is not possible or is impractical. Competitive bidding under such circumstance may not be possible or practical because immediate action is necessary to:

- Minimize the extent of the damage,
- Protect remaining facilities, or
- Restore essential travel.

As an example: The LPA has a bridge programmed for replacement using Highway Bridge Program (HBP) funds and has begun preliminary engineering on the bridge replacement project. A major storm causes damage to the bridge before the LPA completes the design of the bridge, such that repairing the bridge is not practical. At this point, the LPA can contact their DLAE to be granted a waiver (Authorization to Proceed), to begin negotiations with contractor(s) to replace the bridge using HBP funds and using the plans that have been completed to date.

It should be noted that this waiver to competitive bidding only applies to emergency repairs as defined above. Reconstruction work and permanent repairs that can be separated from emergency repairs are to be performed using the competitive bidding process.

12.5 Value Engineering Analysis

Federal requirements mandate that a Value Engineering Analysis (VA) be performed on (1) all Federal-aid highway projects on the NHS with a total estimated project cost of $50 million or more; (2) all Federal-aid bridge projects on the NHS with an estimated total cost of $40 million or more; (3) any major project (as defined in 23 U.S.C. 106(h)), located on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the major project; (4) any project where a VA has not been conducted and a change is made to the project's scope or design between the final design and the construction letting which results in an increase in the project's total cost exceeding the thresholds identified in (1), (2), or (3) of this section; and (5) any other project FHWA determines to be appropriate that utilizes Federal-aid highway program funding. In addition to the federal requirements, local HBP projects require a VA for both NHS and non-NHS bridge projects with an estimated total cost of $40 million or more. Design/Build projects are excluded. VA requirements are applicable to CMGC projects and are required to be completed. The approved recommendations must be incorporated into the project plans prior to requesting a construction price proposal from the CMGC contractor. The VA consists of a systematic process of review and analysis of the project during the concept and design phases, by a multi-disciplined team of persons not involved in the project. The LPA administering the project has been delegated the responsibility to ensure that VA is performed under Caltrans delegation authority. For each project, the LPA must indicate in the appropriate checkbox on Exhibit 12-D: PS&E Checklist whether VA was performed.

12.5.1 Procedures

The multi-disciplined team can be qualified LPA staff, qualified personnel from the current design consultant contract, or qualified personnel from a certified VA consultant contractor. The most important factor is that the multi-disciplined team be qualified and not involved in the project in which they are performing the VA.

The multi-disciplined team performing VA must provide recommendations:

- To improve the value and quality of the project
- To provide the needed functions safely, reliably, and at the lowest overall cost
- To reduce the time to complete the project
- To combine or eliminate otherwise inefficient use of costly parts of the original proposed design for the project
- To completely redesign the project using different techniques, materials, or methods to accomplish the original purpose of the project

For bridge projects, the multi-disciplined team must also include bridge substructure requirements based on construction material and be evaluated as follows:

- On engineering and economic bases, taking into consideration acceptable designs for bridges.
- Using an analysis of life-cycle and duration of project construction. For VA studies of projects on the State Highway System, it is advisable to have Caltrans' participation on the VA team.

This process concludes with a value analysis report that contains the approved recommendations. A copy of this report must be submitted by the LPA to the DLAE who forwards it to the District Value Analysis Coordinator (DVAC) in Caltrans' Division of Design who is responsible for the project. The DVAC will submit this report to the Value Analysis Branch in headquarters, who will then include it in their annual report to FHWA. As a guide, PDPM Chapter 19: Value Analysis can be used. The DVAC may be consulted for applicable sections.

12.6 Plans

Plans must describe the location, design features, and construction requirements in sufficient detail to facilitate the construction, contract control, and estimation of construction costs for the project. The LPA may use the Caltrans Plans Preparation Manual as a guide for preparing contract plans.

12.6.1 Design Guidance

Guidance for the design of Federal-aid highway projects is contained in LAPM Chapter 11: Design Guidance.

12.6.2 Design Decisions

The Public Works Director, or the person to whom approval authority has been delegated, must sign approval for design decisions. The person with approval authority must be a registered Civil Engineer in the State of California. Additional information is provided in LAPM Chapter 11.

12.6.3 Plan Sheet and Specification Signatures

On LPA Federal-aid projects, the title sheets of the plans and specifications must bear the signature and seal or stamp, the date of signing and sealing or stamping, and the expiration date of the licensed professional engineer in the State of California. If signed by the LPA consultant, the title sheets must also be signed by a full-time employee of the LPA who is responsible for the project. Additional LPA signatures on the title sheet are optional. Plans and specifications for projects advertised, awarded, and administered by the LPA do not include the State Engineer's signature, except as required for a state encroachment permit and/or cooperative agreement. The title sheets of the plans and specifications must also show the Federal-aid Project Number.

Other plan sheets (including typical section sheets) must bear the signature of the professional engineer under whose direction the sheets were prepared. Signature of the sheets may be delegated to a California registered engineer retained by the LPA to prepare the plans.

12.6.4 Standard Plans

Current Caltrans Standard Plans must be used for locally-sponsored projects on the SHS.

The following Standard Plans are acceptable for use with Local Federal-aid projects off the SHS:

- The current edition of the Caltrans Standard Plans
- The current edition of the Standard Plans for Public Works Construction, developed and promulgated by the American Public Works Association - Southern California Chapter and the Associated General Contractors of California - Southern California Districts

In addition to the above, standard plans that are developed locally for non-federally funded projects may be used on Local Federal-aid projects. The local standard plans must be signed (with registration number) by the person who is registered in California in the professional field for the type of standard plan being signed. Details included in local standard plans used for projects on the NHS must meet statewide geometric standards.

Bridge construction details included in local standard plans must meet Caltrans' bridge design standards. When the LPA requests structure-review assistance from Caltrans, the Caltrans Standard Plans must be used, as appropriate, for the structure portion of the project.

12.6.5 Erosion Control Plans

Erosion control measures and practices must be taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed. Emphasis must be placed on erosion control in the preparation of PS&E. All reasonable steps must be taken to ensure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

The AASHTO Highway Drainage Guidelines are to be followed on all construction projects. These guidelines are not intended to pre-empt any local requirements or State law if such requirements are more stringent. Federal-aid funds must not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

12.6.6 Work Zone Safety and Mobility

Local Public Agency Policy

23 CFR 630 Subpart J: Work Zone and Safety and Mobility requires the implementation of a policy by the LPA for systematic consideration and management of work zone impacts on all Federal-aid transportation projects. This policy may take the form of processes, procedures, and guidance, and may vary based on the characteristics and expected work zone impacts of individual projects or classes of projects.

Each LPA may develop its own policy or may choose to pattern their policy after Caltrans' to provide a smooth and efficient flow of traffic, while retaining safety through the roadway work zone. For Caltrans' policy refer to Deputy Directive-60: Transportation Management Plans. The LPA's policy can be as simple as providing a smooth and efficient flow of traffic, while retaining safety through the roadway work zone.

LPAs are encouraged to implement this policy for their Nonfederal-aid projects as well. More information on Work Zone Safety and Mobility is provided at https://ops.fhwa.dot.gov/wz/resources/final_rule.htm. FHWA's Local and Rural Safety Program can be found at: https://safety.fhwa.dot.gov/local_rural/.

Significant Projects

As defined in 23 CFR 630.1010, a Significant Project is one that, alone or in combination with other concurrent projects nearby, is anticipated to cause sustained work zone impacts greater than what is considered tolerable by the traveling public, based on the agency's policy and/or engineering judgment. Work zone impacts as defined in 23 CFR 630.1004, refer to work zone-induced deviations from the normal range of transportation system safety and mobility. The extent of the work zone impacts may vary based on factors such as, road classifications, area type (urban, suburban, and rural), traffic and travel characteristics, type of work being performed, time of day/night, and complexity of the project. These impacts may extend beyond the physical location of the work zone. They may occur on the roadway on which the work is being performed, as well as other highway corridors, other modes of transportation and/or the regional transportation network.

If a project is expected to be significant, the Transportation Management Plan (TMP) for that project must also contain both Transportation Operations (TO) and Public Information (PI) components. Agencies are encouraged to consider TO and PI strategies for all projects. Identification of upcoming projects expected to be significant should be done as early as possible in the project delivery and development process.

Transportation Management Plan (TMP)

A TMP is required for all Federal-aid construction projects. The TMP needs to include a Temporary Traffic Control (TTC) Plan that addresses traffic safety and control in the work zone. It consists of strategies to manage the work zone impacts of a project. The TMP scope, content, and degree of detail may vary based upon the LPA's work zone policy, and an understanding of the expected work zone impacts of the project. For significant projects, the LPA must develop a TMP that consists of a TTC plan and addresses both TO and PI components.

The TMP may consist only of a TTC Plan for individual projects or classes of projects determined by the LPA to have less significant work zone impacts. If additional information is needed by the LPA, the DLAE may refer the LPA to the Transportation Management Plan

Guidelines and may obtain additional information from the Caltrans headquarters TMP Coordinator in the Division of Traffic Operations.

Temporary Traffic Control (TTC) Plan

A TTC Plan describes the measures to be used to facilitate road users through a work zone, an incident area, or other event that temporarily disrupts normal road user flow. The TTC Plan has a vital role in providing continuity of reasonable, safe, and efficient road user flow and for highway workers' safety.

The TTC Plan must be consistent with the provisions under Part 6 of the California Manual on Uniform Traffic Control Device (CA MUTCD), and with the work zone hardware recommendations in Chapter 9 Traffic Barriers, Traffic Control Devices and Other Safety Features for Work Zone (2002 Edition) of the AASHTO Roadside Design Guide.

In developing and implementing the TTC Plan, the pre-existing roadside safety hardware must be maintained at an equivalent or better level than what existed, prior to project implementation. The scope of TTC Plan is determined by the project characteristics and the traffic safety and control requirements identified by the LPA for that project. The TTC Plan must be either referenced to specific TTC elements in the MUTCD or be designed specifically for the project.

Transportation Operations (TO)

The Transportation Operations (TO) must include the identification of strategies that will be used to mitigate impacts of the work zone in the operation and management of the transportation system. Typical TO strategies may include, but are not limited to, demand management, corridor/network management, safety management and enforcement, and work zone management. The scope of the TO component should be determined by the project characteristics and the transportation operations and safety strategies identified by the LPA.

Public Information (PI)

The Public Information (PI) must include communication/traveler strategies that seek to inform affected road users, general public, area residences and businesses, and appropriate public entities about the project, the expected work zone impacts, and the changing conditions on the project. The scope of the PI component must be determined by the project characteristic, public information, and outreach strategies identified by the LPA. Public information will be provided through methods suited for the project and may include, but not be limited to, information on the project characteristics, expected impacts, closure details, and commuter alternatives.

LPAs should develop and implement the TMP in sustained consultation with stakeholders (e.g., other transportation agencies, railroad agencies/operators, transit providers, freight movers, utility suppliers, police, fire, emergency medical services, schools, business communities, and regional transportation management centers).

The PS&E must include either a TMP or provisions for contractors to develop a TMP at the most appropriate project phase that will be applicable to the LPA's chosen contracting methodology for the project. A contractor-developed TMP must be subject to the approval of the LPA and must not be implemented before it is approved.

The PS&E must include appropriate pay item provisions for implementation of the TMP, either through method or performance-based specifications:

1. For method-based specifications individual pay items, lump sum payment, or a combination thereof may be used.

2. For performance-based specifications, applicable performance criteria and standards may be used (e.g., safety performance criteria such as number of crashes within the work zone; mobility performance criteria such as travel time through the work zone delay, queue length, and traffic volume; incident response and clearance criteria; work duration criteria).

The LPA and the contractor must each designate a trained person at the project level who has the primary responsibility and sufficient authority for implementing the TMP and other safety and mobility aspects of the project.

12.6.7 Work Zone Implementation and Improvement Procedures

Work Zone Assessment and Management Procedures

The LPA must develop and implement systematic procedures to assess work zone impacts in project development and manage safety mobility during project implementation. The scope of these procedures must be based on the project characteristics.

Work Zone Data

The LPA must use field observations, available work zone crash data, and operational information to manage work zone impacts for specific projects during the implementation. The LPA must continually pursue improvement of work zone safety and mobility by analyzing work zone crash and operational data from multiple projects to improve the processes and procedures. The LPA must maintain elements of the data and information resources that are necessary to support these activities.

Training

The LPA must require that personnel (either staff or contract personnel) involved in the development, design, implementation, operation, inspection, or enforcement of work zone-related transportation management and traffic control be trained appropriate to the job descriptions each individual is required to perform. The LPA must require periodic training updates that reflect changing industry practices and state processes and procedures.

Process Review

Process reviews may be performed to evaluate work zone data at the LPA level and/or review of randomly selected projects throughout the LPA's jurisdictions. Appropriate personnel who represent the project development stages and the different offices within Caltrans and FHWA may participate in this review. Other non-state stakeholders may also be included in this review, as appropriate. The results of the review are intended for the improvements in the work zone processes and procedures, data and information resources, and training programs to enhance efforts in addressing safety and mobility of both current and future projects.

12.6.8 Americans with Disabilities Act (ADA) Compliance Plans

Within the project limits, the plans (and specifications if applicable) must comply with the federal ADA and the California and Local Building Codes. 28 CFR 35: Nondiscrimination on the Basis of Disability in State and Local Government Services or 28 CFR 36: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities including Appendix A require each new or altered facility (includes roads and streets) or part of a facility constructed or altered by, on behalf of, or for the use of a public entity must be designed and constructed or altered in such manner that the facility or part of the facility is readily accessible to and usable

by individuals with disabilities. Each altered facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to, and usable by individuals with disabilities. As mentioned in LAPM Chapter 11: Design Guidance, Title II-6.6000 of the Department of Justice's Technical Assistance Manual, when streets, roads, or highways are newly built or altered, they must have ramps or sloped areas, wherever there are curbs, or other barriers to entry from a sidewalk, or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas, wherever they intersect with streets, roads, or highways. The Curb Ramp Details included in the Caltrans Standard Plans fully comply with both the federal and state requirements for curb ramps. Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g., structural overlays, mills, and fills), signal installation and upgrades, and projects of similar scale and effect.

Normal maintenance activities are not considered to be alterations. Resurfacing beyond normal maintenance is considered to be an alteration. Normal maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. These activities include, but are not limited to, thin surface treatments (non-structural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems.

12.7 Standard Specifications

The specifications for a construction contract include the requirements contained in the standard specifications and special provisions written specifically for a contract. The special provisions provide the technical contract requirements applicable to the specific project construction features as well as legal and administrative requirements peculiar to the project.

A list of federally required contract provisions, contractor certifications, as well as contract provisions requiring prior justification/approval for Local Federal-aid construction projects is included in Exhibit 12-D: PS&E Checklist. A description of these contract provisions, requirements and their application is provided in Exhibit 12-E: PS&E Checklist Instructions, Exhibit 12-G: Required Federal-aid Contract Language and Exhibit 12-H: Sample Bid.

12.7.1 Acceptable Standard Specifications and Special Provision

The LPA must use current Caltrans Standard Specifications and Standard Special Provisions (including revisions and updates) for locally-sponsored projects on the SHS.

Note: In this manual current Caltrans Standard Specifications is understood to mean the most currently available Caltrans Standard Specifications inclusive of all revisions, amendments, and updates.

The following standard specifications are acceptable for use on all Local Federal-aid projects off the SHS:

- Current Caltrans Standard Specifications and applicable Standard Special Provisions
- The current edition of the Standard Specifications for Public Works Construction (commonly referred to as the Green Book), developed and promulgated by the American Public Works Association, Southern California Chapter and the Associated General Contractors of California, Southern California Districts.

In addition to the above, standard specifications which are developed locally for non-federally funded projects may be used for Local Federal-aid projects that are off the NHS. However, the use of local standard specifications and standard special provisions are subject to the following conditions:

- In the event that any conflict arises between the local standard specifications and the local assistance procedures contained in this manual or elsewhere, the local assistance procedures must apply.
- Bridge construction methods and materials specifications included in local standard specifications must meet the bridge requirements of Caltrans Standard Specifications.

12.7.2 Caltrans Specifications

For projects off the SHS, Exhibit 12-G: Required Federal-aid Contract Language has combined required federal contract provisions into a single document to assist LPAs. Exhibit 12-H: Sample Bid has assembled federal certifications, disclosures, and other requirements into a single document. For SHS projects, current Caltrans Standard Specifications and Standard Special Provisions and federal contract boilerplate (Form FHWA-1273 and other required federal contract provisions) are available from the Caltrans Office Engineer at: http://ppmoe.dot.ca.gov/des/oe/. For LPA projects to be advertised, awarded, and administered by Caltrans, Caltrans boilerplate specifications are inserted by Caltrans.

12.8 Federal Contract Requirements

12.8.1 Required Federal Contract Language

Exhibit 12-G is available to assist LPAs in complying with federal regulations on transportation construction projects. It specifies to the contractor the terms of the contract including, but not limited to, when the contractor is to start, number of working days, liquidated damages, payment, work operations, and items of work.

12.8.2 Disadvantaged Business Enterprise (DBE)

Individual DBE contract goals will be established. Complete evaluation documentation is required and must be retained for each contract (see DBE references in LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises). For contracts that contain a specific DBE goal, Caltrans' Standard Specifications are required to describe the DBE policy, the DBE contract goal, eligibility criteria, good faith effort requirements, sanctions on failure to comply, procedures for counting DBE participation, award documentation procedures, post-award compliance procedures, and required records and reporting. Exhibit 12-G includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, DBE, and other requirements. All Federal-aid projects are subject to the legislative and regulatory DBE requirements. The main objective is to ensure that DBE firms have an opportunity to participate in federally-funded projects. If a there is a DBE goal placed on the contract, the contractor must meet the goal or document a good faith effort to meet the contract goal by using DBEs (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises). Good faith efforts must be documented and verified (see Exhibit 15-H: Proposer/Contractor Good Faith Effort). If a DBE subcontractor is unable to perform, the contractor must make a good faith effort to replace him or her with another DBE subcontractor if the goal is not otherwise met. Contracts must contain special provisions stating that it is the LPA's policy to comply with 49 CFR 26 and specify the contractor's obligation under these regulations. In accordance with LAPM Chapter 9, Section

9.6: Local Public Agency Responsibilities under Caltrans DBE Program Plan, each LPA is required to create and maintain a bidders list containing information about all DBE and non-DBE firms that bid or quote on the LPA's Federal-aid construction contracts. The required bidders list is to include the name, address, DBE/non-DBE status, date established, and annual gross receipts of the firms. Exhibit 12-B: Bidder's List of Subcontractors (DBE and Non-DBE) provides a sample form that LPAs may choose to use in their solicitations to compile a bidders list. If an agency makes their own form, required information must be included to satisfy 49 CFR 26.11 and Section 4104 of the Public Contract Code of the State of California.

12.8.3 Contract Time

Contract time is defined as the maximum time allowed in the contract for completion of all work contained in the contract documents. This time can be established in the specifications by either a specific completion date or a fixed number of working days. Contract time often becomes an issue when the traveling public is inconvenienced without any apparent reason.

While there may be several reasons for a project to appear dormant, frequently the cause can be traced to excessive contract time or poor contractor scheduling.

The contract time must be specified in the bidding documents and must be monitored by the administering agency. Insufficient contract time can result in higher bid prices, increased time overruns and claims, inefficiencies, and safety problems. On the other hand, excess contract time can result in increased inefficiencies, equating to costs to both the LPA and contractor. In addition, delays and inconvenience to the public may be unnecessarily extended.

Caltrans will periodically perform a process review of LPA procedures for determining contract time to assess whether the resulting contract times are appropriate. There are several different techniques used to determine contract time. FHWA Technical Advisory 5080.15, Construction Contract Time Determination Procedures, describes time determination techniques for NHS projects in detail, and is available in the appendix of the FHWA Contract Administration Core Curriculum.

The LPA should strive for the shortest practical duration of traffic interruptions during highway construction. Alternative contracting methods including Incentive/Disincentive (I/D), lane rental, A+B contracts, or other contract provisions for early completion are available to minimize traffic inconvenience and delay. These provisions are available from Caltrans. Alternative contracting should be discussed with the DLAE prior to use. FHWA Technical Advisory 5080.10: Incentive/Disincentive for Early Completion describes this technique in detail.

12.8.4 Changed Condition Clauses

The regulation requires the use of three different clauses: Standardized changed condition clauses are required to be included in all contracts. Caltrans' Standard Specifications and the Standard Special Provisions for Public Works Construction (Green Book) contain standard changed condition clauses. If the LPA chooses to use a different standard specifications book, the federal regulations must still apply.

12.8.5 Differing Site Conditions

This clause provides for the adjustment of the contract terms if the contractor encounters:

- Subsurface or latent physical conditions that differ materially from those indicated in the contract, or

- Unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work

12.8.6 Suspensions of Work Ordered by the Engineer

This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the resident engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the resident engineer within seven (7) calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. The LPAs may address constructive delays and suspensions, as they choose, in their standard specifications and contract administration procedures.

Suspensions must be for unreasonable delays and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing, approval of shop drawings, material sources, etc. and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

12.8.7 Material Changes in the Scope of the Work

This clause provides for the adjustment of the contract terms if the resident engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. The term significant change must be constructed to apply only to the following circumstances:

- The altered character of the work differs materially from that of the original contract, or
- A major item of work, as defined in the contract, is increased or decreased by more than 25 percent of the original contract quantity (adjustments must apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed)

This clause provides for adjustments resulting from formal change orders by the resident engineer, in writing, to the extent that the impacted work is part of the contract. Both parties may initiate an adjustment, and both must be in agreement before the work is performed. As with the suspension of work provision, this clause does not preclude the recognition of constructive suspensions or delays.

12.8.8 Liquidated Damages

The term liquidated damages means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by the LPA because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified.

Federal law requires the provision for liquidated damages on all Federal-aid projects on the NHS. For projects off the NHS, this provision is optional. Liquidated damages are based on the estimated cost of field construction engineering. In special cases, liquidated damages greater

than the estimated field construction engineering cost may be specified provided that detailed reasons, such as project-related costs for delays and public inconvenience, are given to support the greater amount. The LPA may withhold liquidated damages before the accrual date if the anticipated liquidated damages exceed the value of the remaining work.

Liquidated damages are not to be used as disincentives or incentives to encourage timely completion. If project completion time is critical, then Incentive/Disincentive (I/D) provisions should be considered to motivate the contractor to complete the work sooner, and the I/D amount and time should be documented in the project file.

Liquidated damages for all work except plan establishment or permanent erosion control establishment are shown in the following table:

Table 12-1: Liquidated Damages

Total Bid		Liquidated damages per day
From over	To	
$0	$200,000	$2,800
$200,000	$500,000	$3,600
$500,000	$1,000,000	$3,600
$1,000,000	$2,000,000	$4,200
$2,000,000	$5,000,000	$5,200
$5,000,000	$10,000,000	$6,700
$10,000,000	$20,000,000	$9,500
$20,000,000	$50,000,000	$13,200
$50,000,000	$100,000,000	$16,000
$100,000,000	$250,000,000	$19,300

If all work except plant establishment or permanent erosion establishment is complete and the total number of working days have expired, liquidated damages are $950 per day.

If the LPA uses an alternate method to determine liquidated damages for locally-funded projects, it may be used on Federal-aid projects as long as it avoids excessive charges. If an alternate method is used, the LPA should have a calculation or justification for liquidated damage in the project files.

12.8.9 Buy America

FHWA's policy for Buy America requires a domestic manufacturing process for all steel and iron products, manufactured products, and construction materials that are permanently incorporated in a federally funded project.

Applicability

Buy America requirements are applicable on all Federal-aid projects with ≥ $500,000 in federal funding regardless of the funding source used to purchase the product and/or material and regardless of how the products and/or materials were procured (i.e., agency furnished materials, materials added by change order, etc.).

When Buy America is applicable, the LPA must include the Buy America provisions from LAPM Exhibit 12-G: Required Federal-aid Contract Language (or equivalent) in the PS&E packages prior to advertising for bids. Awarding a federally funded contract, without applicable Buy America provisions, could render the contract ineligible for federal funds.

The LPA must not list non-domestic steel and iron products, or construction materials as nonparticipating to circumvent Buy America requirements.

Buy America provisions may also be applicable to non-federally funded projects, if:

- the non-federally funded contract is included within the scope of the NEPA document, and
- at least one other contract within the scope of the same NEPA document is funded or will be federally funded. This includes any contract eligible for federal funds including but not limited to environmental, design, right-of-way, construction, etc.

Awarding a non-federally funded contract without applicable Buy America provisions could render all contracts within the scope of the NEPA document ineligible for federal funds.

Buy America requirements apply to Emergency Opening projects under a NEPA document if the subject materials (iron or steel products, construction materials, and manufactured products) are to be installed as part of the permanent facility. If, however, these items are temporary and replaced with compliant materials in the permanent restoration project then these materials are not required to meet Buy America requirements.

Definitions

A material is solely classified based on its status at the time it is brought to the project site as either an iron or steel product, construction material, or a manufactured product. These products/materials are further defined below.

Iron or Steel Products - defined by 23 CFR 635.410 as articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. For a product to be considered to consist predominantly of iron or steel or a combination of both means the cost of the iron and steel content of the product exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

All manufacturing processes involved in steel or iron products must occur within the United States. The manufacturing process begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.). Domestically produced steel billets or iron ingots shipped overseas for any process and returned to the United States do not conform to this requirement.

When iron or steel products are used in a project, the Buy America requirements do not prevent a minimal use of foreign iron or steel products, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel or iron products as they are delivered to the project.

Manufactured Products - defined by 23 CFR 635.410 as articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials,

or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or other product categories. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

With respect to precast concrete products that are classified as manufactured products, components of precast concrete products that consist wholly or predominantly of iron or steel or a combination of both are required to meet the Buy America requirements for iron or steel products. The cost of such components shall be included in the applicable calculation for purposes of determining whether the precast concrete product is produced in the United States.

With respect to Intelligent Transportation Systems (ITS) and other electronic hardware systems that are classified as manufactured products, the cabinets or other enclosures of such systems that consist wholly or predominantly of iron or steel or a combination of both are required to meet the Buy America requirements for iron and steel products. The cost of cabinets or other enclosures shall be included in the applicable calculation for purposes of determining whether systems referred to in the preceding sentence are produced in the United States.

Additional information regarding how to determine the cost of components of a manufactured product is found in 2 CFR 184.5.

Construction Materials – defined by 2 CFR 184.6 as an article, material, or supply that consists of only one of the following items:

- Non-ferrous metals - All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, must occur in the United States.
- Plastic and polymer-based products - All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, must occur in the United States.
- Glass - All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, must occur in the United States.
- Fiber optic cable (including drop cable) - All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, must occur in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- Optical fiber - All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, must occur in the United States.
- Lumber - All manufacturing processes, from initial debarking through treatment and planing, must occur in the United States.
- Drywall - All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, must occur in the United States.
- Engineered wood - All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, must occur in the United

States.

If one or more of these construction materials have been combined by a manufacturer with other materials through a manufacturing process, they are considered a manufactured product.

Buy America Exceptions

Buy America requirements do not apply to the following:

- Pig iron and processed, pelletized, and reduced iron ore manufactured outside the United States
- Tools and construction equipment used in performing the work
- Temporary work that is not incorporated into the finished work
- Section 70917(c) materials (cement and cementitious material; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives) as defined in 2 CFR 184.3

Waiver of Buy America Requirements for De Minimis Costs and Small Grants

FHWA's general waiver for manufactured products, established in 1983, has been rescinded, and manufactured products permanently incorporated into the project must be manufactured in the United States. However, a waiver is available for de minimis costs and small grants, which applies to manufactured products and construction materials when:

- The total value of non-compliant products does not exceed the lesser of $1,000,000 or 5% of total applicable project costs (de minimis costs); or
- The total amount of Federal financial assistance applied to the project, through awards or subawards is below $500,000 (small grants).

The percent threshold is calculated based on the following formula:

(total value of non-compliant manufactured products and construction materials) / total applicable project costs (steel, iron, manufactured products, and construction materials)

This threshold is based on the actual cost of the steel, iron, manufactured products, and construction materials, not just the anticipated cost of those materials. In other words, the applicable project costs only include total actual material costs and does not include excluded materials as part of this total.

The cost of the non-compliant products must be accompanied by invoices and must include transportation to the project site.

Waivers

Use of non-domestic steel or iron products, manufactured products, or construction materials that exceed the De Minimis Costs waiver will require a waiver by the appropriate federal administration authority prior to advertisement of the construction project. Any authorized waivers of Buy America requirements must be clearly identified within the contract's specifications for bidders' consideration as part of contract advertisement.

Typically, the need for Buy America waivers is identified during the early phases of the project. If the need for a waiver is identified during the design phase, the LPA must wait until the FHWA's Buy America waiver is approved before requesting authorization to proceed for construction. In the case of non-federally funded projects covered under the NEPA document, the LPA must wait for the FHWA's Buy America waiver approval to advertise the project for bids. If during

construction, the LPA identifies the need for a Buy America waiver, the LPA must wait for FHWA's approval of the Buy America waiver to incorporate the material in the project. A request for a Buy America waiver does not guarantee FHWA's approval of the waiver request. The LPA must expeditiously contact their DLAE to discuss potential Buy America waivers.

The LPA may request a waiver of the Buy America requirement for specific projects, certain materials or products in specific geographical areas, or combinations of both if:

- Buy America is inconsistent with the public interest, or
- There is not a sufficient supply of domestic materials of satisfactory quality.

The LPA must submit their Buy America waiver request to the DLAE which will review the request and recommend to FHWA for further processing. The following supporting information must be provided by the LPA, but additional information may be requested during the waiver review period:

- Federal project number
- Project description
- Total construction project cost, including Federal, State, and Local share amounts
- Description of the waiver item(s)
- Cost of waiver item(s)
- Country of origin of the product(s) (if known at the time)
- Reasons for the waiver request
- A description of the efforts made by the LPA to locate domestically-manufactured product(s)
- An analysis of re-design of the project using alternate or approved equal domestic product
- LPA's documentation of good faith efforts to maximize the use of domestic iron and steel products in accordance with U.S. President Executive Order 14005 Section 1: Ensuring the Future is Made in All of America by All of America's Workers

In addition to the Buy America waiver, FHWA's Buy America policies allow the LPA to incorporate non-domestic steel or iron materials if the cost of foreign steel and iron materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. The total cost of iron and steel includes the cost of the material plus the cost of transportation to the project site, but does not include labor costs involved in final assembly.

Approval authority for waiver of Buy America requirements has not been delegated from the FHWA to Caltrans, and therefore, is not delegated to the LPAs. The LPA should plan for a Buy America waiver request to take at least one year; however, longer timeframes for review and approval should be considered. Additionally, LPAs should be particularly careful not to specify, in the design process, items that are not Buy America compliant. Information on the Buy America waiver process can be found at: http://www.fhwa.dot.gov/construction/contracts/waivers.cfm.

Non-Compliance

The LPA's failure to comply with Buy America provisions will result in the loss of federal funding for not only the applicable contract items, but may potentially include all federal funding authorized for the construction phase of the project based on potential circumstances. In the event an after-the-fact discovery of non-compliant foreign materials occurs, the LPA must expeditiously inform their DLAE, which will coordinate with FHWA to determine the appropriate resolution.

12.8.10 Form FHWA-1273

Form FHWA-1273 is a package of federally-required contract provisions that must be physically included, unmodified, in the executed contract for all Federal-aid projects. The provisions apply to all work performed on the contract including work performed by subcontract. The unmodified Form FHWA-1273 is required to be physically incorporated into each executed contract, subcontract, and subsequent lower-tier subcontracts. To be directly incorporated into the contract means one of the following:

- Form FHWA-1273 is inserted in the project's final contract agreement package signed by the LPA and the contractor and continuously numbered on all pages including Form FHWA-1273.
- Form FHWA-1273 is referenced and numbered in the table of contents of the contract, and attached as an appendix. The appendix and the project's final contract agreement package signed by the LPA and the contractor must be within the same document.

In the same manner, Form FHWA-1273 must be physically inserted into any subsequent subcontracts. FHWA does not consider simply placing, or stapling Form FHWA-1273 in the special provisions or standards specifications to be directly incorporated into the contract. Even if contract documents such as the contract special provisions or standard specifications are considered by the LPA as part of the contract, the LPA still must insert the Form FHWA-1273 into the contract by one of the two methods mentioned above.

Failure of the LPA to incorporate Form FHWA-1273 in the executed contract makes the construction phase of the project ineligible for federal reimbursement. The prime contractor is responsible for compliance with the requirements of all subcontractors and lower-tier subcontractors. Failure of the prime contractor to comply with this requirement is grounds for LPA termination of the contract with the contractor and debarment of the contractor by the FHWA.

Modifications of Form FHWA-1273 by Special Provision

Sections IV (Davis-Bacon and Related Act Provisions) and Section VI (Subletting or Assigning the Contract) of Form FHWA-1273 may not be applicable to some projects. If the project is exempted from either of these two provisions, it must be specified elsewhere in the contract by special provision that it does not apply.

Form FHWA-1273 includes significant changes to the applicability of Davis-Bacon and Related Acts which states that where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project.

Use of Local Hiring Preference

The Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL) allows LPAs to implement geographic or economic hiring preference (including local hiring preferences) relating to the use of labor on Federal-aid construction projects.

LPAs may now include local hiring preference specifications in Federal-aid contracts. The LPA must ensure the establishment and implementation of a hiring preference complies with all federal, State, and local laws, policies, and procedures. FHWA review and approval is not required.

Local hiring preferences should not be confused with project labor agreements (PLAs). Local hiring preferences may be implemented through contract specifications, without the use of a PLA. While local hiring preferences may be added to a PLA, doing so will trigger FHWA review and approval. This will add up to four to six months to the process.

More information regarding use of local hiring preference can be found at: https://www.federalregister.gov/documents/2022/02/11/2022-02974/enhancing-highway-workforce-development-opportunities-contracting-initiative.

Nondiscrimination

The provisions of this section related to 23 CFR 230 are applicable to Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR 230 are not applicable to material supply, engineering, or architectural service contracts. Please read the Form FHWA-1273 for complete details on Section II. Include Item 12, Female and Minority Goals of Exhibit 12-G: Required Federal-aid Contract Language in contract provisions. The contractor and each non-material subcontractor are required to report annually to the LPA on the composition of their workforce by race, gender, and job category who perform work during the last payroll period of July, using Form FHWA-1391 Federal-aid Highway Construction Contractors Annual EEO Report. The LPA must forward completed FHWA-1391 forms to the Caltrans DLAE.

12.8.11 Federal Trainee Program

On selected Federal-aid highway construction projects, Federal Trainee Program or On-the-Job Training (OJT) special provisions (Item 14 of Exhibit 12-G) must be included in the contract provisions to establish the number of trainees for the construction contract.

The main objectives of the Federal Trainee/OJT Program are to:

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher paying trade jobs and journeyman-level positions and
- Ensure that a diverse work force will meet future labor needs in the construction industry.

Filling training positions on each project must focus on hiring women and minorities, but not exclude anyone. If a contractor cannot meet the OJT objectives, direct recruitment efforts must be documented to show an effort at OJT compliance.

The major components of an OJT program include:

- The LPA must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The LPA should select contracts that contribute to the Contract Training Goals. These contracts must show the number of trainees, the number of trainees upgraded to journeyman, and the level of skills.
- The LPA must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.
- Caltrans must determine if statewide OJT is effective.
- The contractor is responsible for recruitment and selection of trainees.
- The contractor must evaluate training based on an approved training program.
- OJT provision costs are reimbursed by the FHWA in accordance with the Federal Requirement Training Special Provisions included in selected contracts. Required trainees/apprentices are to be funded on the bidding schedule or by change order at $0.80/hour; or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and an OJT program administration by others.
- If the contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

In California, federal trainees are considered registered apprentices. There are relatively few crafts in highway work which utilize apprentices - bricklayers, carpenters, cement masons, electricians, equipment operators, ironworkers, pile bucks, and a few others. The ratio of journeymen to apprentices is generally 5 to 1.

With these thoughts in mind, the number of trainees established for a project should be determined by examining the extent of only that work which will be done by the apprentice-able crafts. The following procedure may be used as a guide for establishing the number of trainees for a Federal-aid project:

1. If the proposed construction contract has less than 100 working days, no trainees and no Federal Trainee Program special provisions are needed.
2. If the proposed construction contract has 100 working days or more, add individual totals for each of the following work categories in the Engineer’s Estimate:
    - Earthwork (except for imported borrow)
    - Pile driving
    - Portland Cement Concrete (except for precast concrete)
    - Masonry
    - Bar reinforcing and pre-stressing steel
    - Structural steel erection
    - Electrical

- Buildings

3. Using the totals obtained above, determine the number of trainees for each work category from the following table:

Table 12-2: Federal Trainee Schedule

Cost for Work Category	Number of Trainees	Cost for Work Category	Number of Trainees
< 400,000	0	16,000,000	15
≥ 400,000	1	18,000,000	16
700,000	2	20,000,000	17
1,000,000	3	23,000,000	18
1,500,000	4	26,000,000	19
2,000,000	5	29,000,000	20
2,500,000	6	33,000,000	21
3,000,000	7	37,000,000	22
4,000,000	8	41,000,000	23
5,000,000	9	45,000,000	24
6,500,000	10	50,000,000	25
8,000,000	11	> 50,000,000	*
10,000,000	12		
12,000,000	13		
14,000,000	14		

* 25, plus 1 additional trainee for every $5,000,000 over $50,000,000

4. If the totals for each of the work categories listed under Step 2 above are all less than $400,000 then no trainees and no Federal Trainee Program special provisions are needed.
5. For any work category equal to or greater than $400,000, total the trainees obtained for the applicable work categories and include the Federal Trainee Program special provisions. Calculate the contract cost using $800 per trainee and include Federal Trainee Program under Trainees of the Engineer's Estimate.

12.8.12 Federal Wage Rate Determinations (29 CFR 1.6)

The payment of federal prevailing wage rates on Federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 U.S.C.113. The federal prevailing wage rates must be physically inserted into the contract or referenced by the applicable Wage Determination (WD) # website address in the project special provisions during advertisement.

The federal prevailing wage rates are available directly from the U.S. Government website at https://sam.gov/content/wage-determinations.

See LAPM Chapter 15.3: Project Advertisement for conformance with 29 CFR 1.6.

12.8.13 Relations with Railroad

Where construction of a Federal-aid project requires use of railroad properties or adjustments to railroad facilities, there must be an agreement in writing between the LPA and the railroad company.

FHWA approval of railroad agreements is required for nonexempt projects. A copy of the conformed agreement must be transmitted through the DLAE for FHWA review.

The pertinent portions of this agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract. Caltrans uses standard special provisions for this section on Caltrans projects.

12.8.14 Sample Bid

Exhibit 12-H: Sample Bid is available to assist the LPA and the bidder. In addition to the name, address, etc., it contains the Engineer's Estimate, list of subcontractors (including license numbers), EEO certification, Public Contract Code requirements, Non-collusion Affidavit, Debarment and Suspension Certification, Non-lobbying Certification, Bidders Bond, Payment Bond, Performance Bond, Local Public Agency DBE information, Federal Wage Rates, and Disclosure of Lobbying Activities.

12.8.15 Certifications/Disclosures

Non-collusion – On all Federal-aid construction projects, a non-collusion certification protects the integrity of the Federal-Aid Highway Program and serves as a tool in prosecuting construction contract bid rigging cases. A non-collusion certification is required from all bidders as part of the bid proposal package (see Exhibit 12-H). Failure to submit the certification will render the bid ineligible for award. Equal Employment Opportunity – Federal-Aid Highway Act of 1968 (23 U.S.C.140(a)) and implementing regulations at 23 CFR 230, require that the LPA receiving federal financial assistance assure that employment in connection with federal highway construction projects is provided without regard to race, color, creed, national origin, or sex. Refer to LAPM Chapter 9: Civil Rights & Disadvantage Business Enterprise, Section 9.4: Equal Employment Opportunity (EEO) Contractor Compliance, Form FHWA-1273, and Exhibit 12-H for further guidance.

Debarment, Suspension and Ineligibility Certification – On all Federal-aid construction contracts and all related subcontracts of $25,000 or more, the contractor and lower tier participants must certify they are in compliance with this provision. This includes subcontractors, material suppliers, and vendors.

Each participant in the contract must certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency and they have not been convicted or had civil judgment rendered within the past 3 (three) years for certain types of offenses (see Part X of Form FHWA-1273 in Exhibit 12-G and Exhibit 12-H). It is the administering agency's responsibility to assure that the contractor is not suspended or debarred from federal contracts. A listing of parties excluded from federal procurement and non-procurement programs is at www.sam.gov.

Lobbying – The language of Standard Form-LLL, Disclosure Form to Rep Lobbying, in accordance with the form instructions certification must be included in all lower tier sub-agreements which exceed $100,000 (see Exhibit 12-H: Sample Bid and Part XI of Form FHWA-1273 in Exhibit 12-G: Required Federal-aid Contract Language).

12.9 Restricted Contract Provisions

12.9.1 Indian Preference

Federal law permits an Indian employment preference provision for Federal-aid projects on or near Indian reservations or Indian lands. Roads near an Indian reservation are those within a reasonable commute to and from the reservation. Indian preference must be applied without regard to tribal affiliation or place of enrollment.

In setting employment goals, consideration should be given to the potential employment requirements of the contractor and core-crew. A contractor must not layoff or terminate a core-crew employee to meet a preference goal. Any sanctions for failure to meet employment goals should be included as part of the contract.

Many tribes have a Tribal Employment Rights Office (TERO) tax, which applies to contracts performed within the reservation boundaries. FHWA will reimburse any local tax as long as it does not single out Federal-aid highway construction contracts. TEROs can bill contractors for services rendered during recruitment and related support services. These fees are not eligible for federal participation. If part of a project is not within the reservation boundaries, the TERO tax must not apply to that portion. On and Off reservation portions of the project should be clearly indicated in order to avoid over-payment.

12.9.2 Bonding and Prequalification

Bonding is grouped into three classifications which are:

- Bid bonds – Consisting of a bond, certified check, or negotiable instrument submitted with the bid as assurance that the bidder will execute the contract within the specified time.
- Performance bonds – Executed with the contract to assure the contractor's obligations under the contract.
- Payment bonds – Executed in connection with a contract to assure payment, as required by law, to all persons supplying labor and material in the contract.

Prequalification is defined as a means of predetermining job experience and work capacity and is used to identify individuals and organizations from which the LPA may accept a bid.

The procedures and requirements a State Transportation Department proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, must be submitted to the Division Administrator for advance approval. Only those approved procedures and requirements may be used for Federal-aid highway projects. Any changes in approved procedures and requirements must likewise be subject to approval by the Division Administrator.

FHWA does not require implementation of procedures or requirements for prequalification, bonding, or licensing on Federal-aid projects.

However, if the LPA has such procedures or requirements, they must conform to FHWA's competitive bidding policy as follows:

- No procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors must be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible

contractor, whether a resident or nonresident of the State wherein the work is to be performed.

- No contractor must be required to obtain a license before the submission of a bid or before the bid may be considered for award of a contract.

12.9.3 Price Adjustment Clauses

On all Federal-aid construction projects, price adjustment clauses may be implemented under the following conditions:

- Material costs are extremely volatile
- Suppliers are unable to provide a price quote for the full term of the contract
- Price quotes are subject to delivery or market conditions
- Shortages are expected

These provisions should be limited to materials whose price volatility may produce a large effect on contract prices. The standard adjustment(s) should be quantifiable and set out in the contract specifications. The standard adjustment(s) should be based on a price or base index, which is not susceptible to manipulation by contractors or suppliers, such as the consumer price index. Published price data may be found in the Bureau of Labor Statistics: Producer Price Indexes, Engineering News Record (weekly) or various oil-related publications with price data for oil-related products.

Some concepts for developing price adjustment clauses include:

- Price adjustment does not need to be a standard specification unless shown in the bid-proposal.
- There should be upper and lower limits on adjusted compensation.
- Both upward and downward adjustments should be calculated.
- Only a significant change in the index should trigger a price adjustment.
- Basis of payment should clearly indicate coverage of the price adjustment clause.
- Contractor should not have an option to accept or reject price adjustment compensation and the compensation should be automatically incorporated in the progress and partial payment computations.
- Compensation should not be based on actual invoiced receipts.
- Upward price adjustments should not be allowed after the contract time has expired.

When local conditions warrant the use of price adjustment clauses, the following should be considered:

- Use for projects which will exceed nine months duration from bid opening to completion.
- On single season contracts, provide price adjustment clauses for all price volatile materials which affect the unit costs of the major items of work.
- On multiple season contracts, provide price adjustment clauses for all price volatile materials and supplies.

When fuel prices are volatile, a price adjustment clause may be needed. This may occur on projects that are fuel intensive such as excavation, embankment, aggregate hauling, and paving.

12.9.4 Project Labor Agreements

On February 6, 2009, President Obama issued Executive Order 13502 (the Order) on the use of a Project Labor Agreement (PLA) for Federal-aid construction contracts. The Order revoked two Executive Orders issued under President Bush, which required any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects to ensure that no project specifications were used that either required or prohibited bidders from utilizing PLAs. The Federal government now believes that PLAs could be beneficial for large-scale construction projects, generally those with a total cost of $25 million or more, due to the benefits that PLAs can offer by promoting the efficient and expeditious completion of such projects. LPAs may request the use of PLAs on projects totaling less than $25 million if the project would otherwise comply with this guidance. FHWA has issued this interim guidance for use until final implementing guidance is released by the Office of Management and Budget. Pursuant to the Executive Order, PLAs may be used on Federal-aid construction project contracts by local public agencies provided that the agency presents evidence that the use of such an agreement on the relevant project will:

1. Advance the government's interest in reducing construction costs and achieving economy and efficiency, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters as appropriate; and
2. Be consistent with law.

If the LPA would like to utilize a PLA on a Federal-aid construction contract, the agency should submit a request for approval to their DLAE that includes the draft PLA and written justification describing why the project advances the interest of the government. The draft PLA must be submitted, and approval received at least five months before construction begins. The use of a PLA may be approved if the LPA has made a reasonable showing that the use of a PLA on the project will advance the interests of the government. In determining whether the use of a PLA is in the interest of the government, the LPA may consider many factors including, but not limited to:

- The size and complexity of the project;
- The importance of the project and need to adhere to a certain timeline;
- The risk of labor unrest on the project and the circumstances that are present that may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;
- The impacts of a labor disruption to the users, the operation of the facility, and the region;
- The costs of a delay should a labor disruption occur; and
- The available labor pool relative to the particular skills required to complete the project.

A showing of any one or more of these factors may be adequate to justify the use of a PLA in a particular project. This list is not exclusive - other factors may reasonably permit the LPA to conclude that the use of PLA is appropriate for a given project.

In order to be valid, the draft PLA must:

- Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- Contain guarantees against strikes, lockouts, and similar job disruptions;
- Set forth effective, prompt, and mutually-binding procedures for resolving labor disputes arising during the PLA;
- Provide other mechanisms for labor-management cooperation on matters of mutual concern, including productivity, quality of work, safety, and health; and
- Fully conform to all statutes, regulations, and executive orders.

Upon receipt of the request for approval, the draft PLA and the written justification, the request will be reviewed, using the established criteria, by Caltrans and then forwarded to FHWA for their review and approval. Executive Order 13502 is available at: https://obamawhitehouse.archives.gov/realitycheck/the-press-office/executive-order-use-project-labor-agreements-federal-construction-projects.

12.10 Optional Contract Provisions

12.10.1 Additive or Deductive Bid Items

LPAs may use additive or deductive bid items on Federal-aid projects provided they use one of the following methods, with one exception, specified in California Public Contract Code, Section 20103.8. That one exception is the method described in subparagraph 20103.8(d) which cannot be used on Federal-aid projects because it does not provide for a public opening of bids with full disclosure nor a predetermined method of identifying the lowest bidder.

20103.8. A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of a specification, only the method provided by subdivision (a) will be used:

a. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

d. Deleted as it is not to be used. A responsible bidder who submitted the lowest bid before the first bid is opened as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

e. Nothing in this section shall preclude the prequalification of subcontractors.

12.10.2 Alternate Bids

Alternate bidding is a method used to minimize the overall cost of any Federal-aid projects through increased competition. By considering alternate design schemes and construction methods, it is possible to attract the greatest number of bidders and realize the lowest possible bid prices. Alternate bidding procedures should be used when more than one alternate is judged equal over the design period and there is a reasonable possibility that the least costly design approach will depend on the competitive circumstances. The potential for using alternates will normally be developed through design studies and value engineering analysis during project development. Moreover, there may be standard plan alternates developed for repetitive design items (i.e., drainage items, bridge structures, sound walls, and pavement details, etc.). The bidding documents and contract plans should clearly indicate the design criteria and the type of alternate designs or contractor options that will be acceptable. The contractor should be permitted to bid any designated alternate that is consistent with its expertise and equipment.

12.10.3 Incentive/Disincentive (I/D) Provisions

FHWA's long-standing policy prohibiting bonus payments on Federal-aid projects, as formerly stated in 23 CFR 635.118, was rescinded on June 13, 1984. The decision was based on the findings of National Experimental and Evaluation Program (NEEP) 24. The NEEP-24 demonstrated that the use of early completion incentive payments could be used beneficially and without abuses.

A discussion of factors to consider when selecting and developing I/D projects is available in FHWA's Contract Administration Core Curriculum at: https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm.

Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions at: https://dot.ca.gov/programs/design/design-memoranda.

A clear distinction should be made between the intent of I/D provisions and the purpose of liquidated damages. Although they have similar mechanisms, the function of each is different. The primary function of liquidated damages is to recover costs associated with the contractor's failure to complete the project on time. On the other hand, I/D provision is intended to motivate the contractor to complete the work on or ahead of schedule without jeopardizing quality of work. An I/D provision for early completion is defined as a contract provision, which compensates the contractor for each day that identified critical work is completed ahead of

schedule and assesses a deduction for each day that completion of the critical work is delayed. The use of I/D provisions is primarily intended for critical projects where it is essential that traffic inconvenience and delays be held to a minimum. It must be emphasized that I/D provisions should not be used routinely.

12.10.4 Quality – Price Adjustment Clauses

Price adjustment clauses and schedules are an important and effective component of quality assurance specifications. Quality Assurance specifications generally include statistically based acceptance plans, require contractor process control testing, and have provisions for pay adjustments based on the degree of compliance with specified requirements. Incentives and disincentives should rationally relate to the gain or loss in service life or performance of the product. Quality assurance specifications and programs may lead to better contractor control of the quality of the product; however, they do not diminish the need for effective construction inspection. FHWA has traditionally endorsed the use of incentive provisions up to five percent of the unit bid price for improved quality provided they are based on readily measured physical properties that reflect improved performance. Incentives greater than five percent on NHS projects are considered on a case-by-case basis following an analysis of performance data.

For non-NHS projects, consideration for incentives greater than 5 (five) percent is delegated to the LPA. A detailed discussion of the criteria (such as: typical critical physical properties, acceptance plans, and pay schedules) to consider when developing price adjustment provisions are provided in FHWA's Contract Administration Core Curriculum.

12.10.5 Alternative Contracting Practices

Neither FHWA nor Caltrans have any intention of mandating the use of any of the alternative contracting practices cited below on LPAs. However, FHWA is trying to develop a process nationwide through which states that LPAs and the industry can bring forth alternative contracting practices that they believe could result in worthwhile improvements to our traditional ways of doing business. It is FHWA's intent to try all promising concepts proposed that fall within the flexibility of the Federal-aid program requirements

A discussion on the Cost-Plus-Time Bidding (A+B method), Lane Rental, Design/Build Alternative, and Warranty contracting techniques is provided in FHWA's Contract Administration Core Curriculum. Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions at: https://dot.ca.gov/programs/design/design-memoranda.

12.11 Materials and Equipment

12.11.1 Publicly-Owned Equipment

On all Federal-aid construction projects, publicly-owned equipment should not normally compete with privately-owned equipment on a project going out for bid. The LPA may approve the use of publicly-owned equipment when justified by a Cost-Effectiveness Determination (see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive).

Federal participation is permitted provided:

- The PS&E submittal provides for the proposed use;

- The specifications indicate equipment availability, rates, and delivery point;
- The specifications include the provision that the contractor must have the option of providing or renting all or part of the equipment.

Public agencies must not benefit from the rental of its own equipment and rental rates must be competitive. The rates for work performed by force account work should be based on an agreed unit price or actual cost. The equipment need not be included in the estimate; however, the estimate should include a schedule of rates charged for use of publicly-owned equipment.

12.11.2 Contractor Purchases for Local Ownership

On all Federal-aid construction projects, equipment purchased by the LPA or by a contractor with ownership transferred to the LPA for construction engineering (CE) is not totally eligible for federal participation. Only that portion of the amortized equipment cost (over its useful life) attributable to the time the equipment is used on a Federal-aid project is accounted for as CE and eligible. Equipment is defined as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

12.11.3 Convict-Produced Materials

Materials produced by convict labor after July 1, 1991 may be used on any Federal-aid projects if:

- Such materials have been produced by convicts on parole, supervised release, or probation from prison;
- Such material has been produced in a qualified prison facility and the amount produced during any 12-month period does not exceed the amount produced during the 12-month period ending July 1, 1987.

These materials are not given preferential treatment and are subject to the same requirements as materials from other sources. The contractor furnishes all materials through normal contracting procedures and selects either public or private sources of materials. Prison Industries may not bid directly on projects but may serve as a material supplier to contractors.

12.11.4 Local Preferences

On all Federal-aid construction projects, materials produced within the state or local area must not be favored over comparable materials produced outside of the state or local area. Also, in-state material sources cannot be given preference over foreign materials or actions taken against materials of foreign origin unless permitted by federal law (for example Buy America materials). State or local preference provisions are not allowed on Federal-aid project contracts.

12.11.5 Warranty Clauses

For projects off the NHS, LPAs may include warranty provisions in construction contracts in accordance with procedures they have developed for their nonfederal projects.

For projects on the NHS, LPAs may include warranty provisions in construction contracts in accordance with the following conditions:

- Warranty provisions must be for a specific construction product or feature. Items of maintenance not eligible for federal participation must not be covered.

- No warranty requirements must be approved which may place an undue obligation on the contractor for items over which the contractor has no control.

The LPA must provide documentation of these conditions in the project files. LPAs are advised that items of maintenance are not eligible for federal participation. Including maintenance items will result in the items being considered non-participating and requiring pay back of the federal funds involved.

12.11.6 Proprietary Items

For the purpose of providing greater flexibility and encouraging innovation in the development of highway transportation technology and methods, the use of federal funds for patented or proprietary materials, specifications, or processes is allowed. Therefore, federal fund participation is not restricted when LPAs specify a trade name in Federal-aid contracts. In addition, Federal-aid participation is not restricted when the LPA specifies patented or proprietary materials in design-build (DB) Request-for-Proposal (RFP) documents.

This Federal regulation does not, however, affect State requirements for the use of patented or proprietary products. For State requirements on the use of patented or proprietary products, California Public Contract Code 3400 still applies.

12.11.7 Equipment Rental Rates

Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not readily available. Therefore, FHWA permits the LPAs to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rate schedules developed by the LPA which are in conformance with the federal cost principles and FHWA's policy contained in the Contract Administration Core Curriculum, published by FHWA. Caltrans' Equipment Rental Rates are in conformance with these requirements.

12.12 Estimates

The estimate used to authorize the construction phase of a Federal-aid project must reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the LPA and FHWA and to permit an effective review and comparison of the bids received. Initially, a preliminary estimate is prepared by the LPA, which includes the basic items that a contractor will be asked to bid. This is a confidential document, which represents the LPA's best estimate of a fair and reasonable price for the items or work to be performed. As such, the Engineer's Estimate should not be made available to contractors and the general public prior to opening bids. This estimate must be prepared in a format, which describes the item of work, unit amount, quantity, unit price, amount, a subtotal, contingencies, and a total (LAPM 3-A: Project Authorization/Adjustment Request). Other estimates must also be prepared, if appropriate, for LPA furnished materials, supplemental work, construction engineering, the Federal Trainee Program, and force account (day labor) work performed by the LPA. Also, for Highway Bridge Program projects, the quantities and costs for each structure or bridge must be tracked individually, even if there are multiple structures or bridges in the same project or contract. Furthermore, any items of work, which are ineligible for federal participation in a category, must be segregated from the eligible items of work. These estimates are used to prepare the Finance Letter and the Request for Authorization for Construction. After bids are opened and the project has been awarded, a Detail Estimate is prepared by the LPA, which

upgrades the preliminary estimate by using actual bid amounts rather than estimates. For more information on detail estimates, refer to LAPM Chapter 15: Advertise and Award Project.

12.12.1 Nonparticipating Work

On all Federal-aid construction projects, work which is not within the limits of the project must be segregated under a category called Not Part of Federal Project for purposes of the preliminary and detail estimates (work funded by others is most generally nonparticipating).

Work within the Federal-aid project limits, but ineligible for federal funding, is referred to as nonparticipating work. Items considered nonparticipating work include but are not limited to the following:

- Betterment work such as capital outlay, safety improvements, or operational improvements that goes beyond restoring a site to its original condition or to the current standard (for emergency relief work)
- Right-of-way obligations when right of way is nonparticipating
- Maintenance-related activities
- Spare parts not incorporated in the work
- Bid items ineligible for the federal program funding the project

Except as permitted by 23 CFR 630.106(f)(2), when a cost or item of work is identified as nonparticipating at the time the authorization (E-76) is executed it must remain that way for the life of the project.

A full list of nonparticipating work can be found at: https://dot.ca.gov/-/media/dot-media/programs/construction/documents/contract-administration/change-order-information/fhwa-nonpart-cost-items-a11y.pdf.

These nonparticipating cost items must also be identified and segregated for the purposes of the preliminary and detail estimates. Quantities for each structure must be shown separately with an appropriate structure code. Miscellaneous work, such as utility adjustments by a utility company, must also be separate.

12.12.2 Contract Items

In order to determine which contract items should be included in the preliminary estimate, the work is broken down into the basic types of construction, such as excavation, concrete, and steel.

Each type and each classification of a type of construction comprises one bid item. Each contract item must be measured accurately. When practical, work performed by a different subcontractor should also be segregated into separate contract items. The list of contract items should be analyzed to be sure that all phases of the work are included in the estimate. Care should also be taken to ensure that there is no overlap of contract items, which could result in a duplication of payments. The Coded Contract Item List published by Caltrans may be used by the LPA with or without the item code number. The contract item list should be used if the LPA is using Caltrans Standard Specifications as the item descriptions are matched with the specifications.

12.12.3 Agency Furnished Materials

Federal regulations require that the contractor must furnish all materials to be incorporated in the work. Exceptions to this requirement may be made when a public interest finding (PIF) is approved for the LPA to furnish materials (23 CFR 635.407). Agency Furnished Materials are a part of the total cost of the project and should be sub-totaled and included in the total project cost. All Agency Furnished Materials are subject to Buy America requirements.

To be eligible for federal participation, any material (other than local natural material) purchased by the LPA and furnished to the contractor for mandatory use in the project must be acquired on the basis of competitive bidding, except when there is a finding of public interest that justifies the use of another method of acquisition (23 CFR 635.407). PIFs are to be approved by the LPA and submitted to the DLAE for review. Refer to Section 12.8.9: Buy America regarding applicability of Agency Furnished Materials and De Minimis Waiver requirements.

12.12.4 Supplemental Work

Supplemental work is work that is anticipated and required but cannot be described and quantified for delivery on a unit-price or lump sum basis.

Such work must be included in the project estimates and should follow the Subtotal Contract Items. Supplemental work should include extra work, additional work, traffic control (if required) or other work to be performed by the contractor and charged to the contract work order. Supplemental work can be listed and included in the total project cost, as a separate line item, or included in the contingencies section of the preliminary estimate. Supplemental work must be included in the contingencies of the Detail Estimate (see Exhibit 15-M: Detail Estimate).

For additional information on the use of supplemental work as an item of work, refer to the Construction Contract Development Guide (Section 7: Preparing the Project Cost Estimate).

12.12.5 Contingencies

Estimates may include contingencies, including supplemental work, of five to ten percent of the total estimate. Contingency amounts should be adjusted to give the total contract a round number. If there is a large amount of supplemental work, ten percent may be exceeded, but contingencies should always be at least five percent.

12.12.6 Construction Engineering

FHWA defines construction engineering as the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates. Construction engineering costs should be shown on the Estimate if federal reimbursement is desired.

Historically, federal participation in construction engineering (CE) was limited to fifteen percent of the federal participating construction costs. Current federal statutes no longer contain such a limitation. As a general guide, it is highly recommended that LPAs continue to use 15% as a guide for estimating CE costs and maintain justification for higher CE costs. CE costs in excess of 15% will continue to need justification by LPAs and approval by the DLAEs. Projects funded from federal programs under direct Caltrans management (i.e., those programs for which Caltrans selects and programs the project) will need approval by the appropriate program manager.

12.12.7 Federal Trainee Program

Estimates for Federal-aid projects may include an estimated amount for the Federal Trainee Program. It is up to the LPA to establish the number of trainees for each project. For additional information on the Federal Trainee Program refer to Section 12.8: Federal Contract Requirements of this chapter.

12.12.8 Estimates for Force Account (Day Labor)

If force account work (day labor) is to be included in the project, it must be listed in the estimate as a separate item. Such work must be justified and documented by a Cost-Effectiveness Determination as described in Section 12.4: Method of Construction of this chapter (also see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive).

12.12.9 Optional Bridge Review

When a bridge or major structure is involved, the LPA may request a cursory review of the structural designs by Caltrans Division of Engineering Services (DES), Structures Local Assistance. Caltrans review and comments will be advisory only. If requested, Caltrans' decision to review structural plans will be based on:

- Experience of LPA staff
- Complexity of project, type of structure

If the LPA requests a cursory review, they must submit independently checked plans to the DLAE. The DLAE will forward the plans to Caltrans DES, Structures Local Assistance. The checker's signature or initials must appear on each sheet of the structure plans. Unsigned plans will be returned to the LPA. The project special provisions, estimates, and engineering reports (Hydraulics Report and Geotechnical Report) must have the engineer's stamp, signature, and registration number on the title sheet. Plans submitted without the required documents will be returned to the LPA. Submittals must be electronically-printed PDFs and cannot be scanned copies.

For major Federal-aid construction projects on the NHS, involving a bridge or major structure, the bridge review must be in accordance with PS&E procedures described in Section 12.2: PS&E Procedures for Significant NHS Projects of this chapter.

When transmitting the project documents to the DLAE for review, the LPA must identify the following:

- Agency advertising the project
- Estimated advertising date
- Type of funding
- Expenditure authorization number on state-advertised projects

12.13 Review and Submittal of the PS&E Package

12.13.1 Responsible Charge Certification

LAPM 3-A: Project Authorization/Adjustment Request must be signed by the engineer responsible for the project (who must be either an LPA employee or a consultant retained by the LPA and a professional civil engineer registered to practice in California).

In the certification, the LPA certifies that the PS&E has been prepared in accordance with the LAPM and that any necessary design decisions have been approved by the Public Works Director or his/her designee. The certification must also acknowledge that review of PS&E will not be performed by Caltrans. By this certification, the LPA accepts responsibility for compliance with applicable design standards, Title 23 of the United States Code, and other applicable federal requirements (DBE, EEO, Buy America, federal and state wage rates, license requirements, etc.). Failure to comply with any of these requirements may cause withdrawal of funds.

12.13.2 PS&E Checklist

LPAs will complete Exhibit 12-D: PS&E Checklist which has been developed to address the flexibility allowed under federal regulations and still ensure that the minimum required provisions are included in each set of contract documents. However, if any of the required provisions are left out of a construction contract, the project will not be eligible for federal reimbursement. Exhibit 12-E: PS&E Checklist Instructions is provided to assist the LPA through the checklist and determine which of the various federal contract provisions are required. Samples of required federal contract provisions and certifications are provided in Exhibit 12-G: Required Federal Contract Language and Exhibit 12-H: Sample Bid. These samples are based on Caltrans Standard Specifications; however, the LPA may use equivalent provisions based on other standard specifications as long as the intent of the federal requirement is met.

12.13.3 Checklist Review by Caltrans

The DLAEs will review each checklist to ensure that the LPA has completed the form in accordance with the instructions in this manual. Except as discussed below, this review will be limited to the actual checklist and will not involve a review of the PS&E package.

12.13.4 Special Provisions Review by Caltrans

The DLAE has the responsibility to confirm that the correct Special and Federal Contract Provisions are included in the contract provisions as indicated on the checklist. The DLAE should ensure that at least one set of Special and Federal Contract Provisions is reviewed per year for each LPA that submits a PS&E. Also, the DLAE will decide if additional documents will be reviewed based on past experience with the agency, the number of Federal-aid projects the agency has done, and the amount of resources the district can direct to this effort. LPAs requesting reviews will be accommodated to the extent that resources are available.

The checklist has been designed to facilitate this review by providing space for the LPA to indicate the page number of the appropriate federal provisions. This review will help the LPAs become familiar with the use of the checklist and the corresponding federal contract provisions. It will not, however, relieve the LPA of responsibility for compliance with all federal requirements.

12.13.5 DLAE Acceptance of the Checklist

The DLAE will indicate acceptance of the checklist by checking the type of review (i.e., whether the checklist review included a review of the special provisions) and signing the form. The LPA's request for authorization for the construction phase of a project will not be forwarded to the Division of Local Assistance for approval prior to acceptance by the DLAE.

12.13.6 Submittal of Plans, Specifications and Estimate (PS&E)

As a minimum, LPAs will submit the contract special provisions and the preliminary estimate with the PS&E Certification Letter. A set of plans will also be required. As soon as the project is advertised, the LPA must furnish the DLAE with one copy of the as-advertised plans and special provisions, or two copies if structures (bridges) are involved.

12.13.7 Process Review

Process reviews of a random sample of the LPA PS&E packages will be conducted as needed. The process reviews will be conducted on a post audit basis. LPAs should be aware that if deficiencies are found during a process review, it may be too late to make corrections and the loss of all or a portion of the project federal funding will result.

12.14 Projects Without Traditional PS&E

Some projects on or off the NHS, such as Congestion Mitigation and Air Quality and Active Transportation Projects, may consist of studies and other non-infrastructure type projects. Examples include Traffic Demand Management studies relating to regional air quality, ride-sharing programs, commuter incentive programs, and commuter computer centers. These projects will not have a set of plans or PS&E, but may only consist of a consultant contract agreement. The LPA must submit a request for authorization to proceed in the same manner as Non-Infrastructure Projects discussed in LAPM Chapter 3: Project Authorization. If the project is part of a regional study conducted by a Metropolitan Planning Organization, then the Local Federal-aid portion of the work plan must be segregated to show the project costs associated with each LPA.

12.15 References

The Civil Rights Act of 1964
https://www.archives.gov/education/lessons/civil-rights-act/

STAA Section 165
https://en.wikipedia.org/wiki/Surface_Transportation_Assistance_Act

23 U.S.C.106(b)(2)
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap1-sec106

23 U.S.C.112
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap1-sec112

23 U.S.C.113
https://www.gpo.gov/fdsys/granule/USCODE-2002-title23/USCODE-2002-title23-chap1-subchapI-sec113/content-detail.html

23 U.S.C.114
https://www.gpo.gov/fdsys/granule/USCODE-2010-title23/USCODE-2010-title23-chap1-sec114

23 U.S.C.140
http://www.fhwa.dot.gov/environment/environmental_justice/legislation/140.cfm

23 U.S.C.313
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap3-sec313

23 U.S.C.315
https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap3-sec315/content-detail.html

23 U.S.C.324
https://www.gpo.gov/fdsys/granule/USCODE-2010-title23/USCODE-2010-title23-chap3-sec324/content-detail.html

25 U.S.C.472a
https://www.gpo.gov/fdsys/pkg/USCODE-2011-title25/html/USCODE-2011-title25-chap14-subchapV.htm

40 U.S.C.276 (a) Davis-Bacon Act
https://www.govinfo.gov/app/details/USCODE-2001-title40/USCODE-2001-title40-chap3-sec276a

40 U.S.C.276 (c) Copeland Act
https://www.govinfo.gov/app/details/USCODE-2001-title40/USCODE-2001-title40-chap3-sec276c

40 U.S.C.333
https://www.gpo.gov/fdsys/granule/USCODE-2001-title40/USCODE-2001-title40-chap5-subchapII-sec333/content-detail.html

23 CFR 200
http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0200.htm

23 CFR 230
https://www.ecfr.gov/current/title-23/part-230

23 CFR 230 A&D
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr230_main_02.tpl

23 CFR 230.111
https://www.law.cornell.edu/cfr/text/23/230.111

23 CFR 635.410
https://www.fhwa.dot.gov/construction/contracts/831125.cfm

23 CFR 627.5
https://www.gpo.gov/fdsys/granule/CFR-2004-title23-vol1/CFR-2004-title23-vol1-sec627-5

23 CFR 630.1010(a)(2)
https://www.law.cornell.edu/cfr/text/23/630.1010

23 CFR 633
https://www.law.cornell.edu/cfr/text/23/part-633

23 CFR 635.410
https://www.law.cornell.edu/cfr/text/23/635.410

23 CFR 771.113
https://www.law.cornell.edu/cfr/text/23/771.113

25 CFR 170
https://www.gpo.gov/fdsys/granule/CFR-2012-title25-vol1/CFR-2012-title25-vol1-part170/content-detail.html

28 CFR 35
https://www.ecfr.gov/current/title-28/part-35

29 CFR 1630
https://www.law.cornell.edu/cfr/text/29/part-1630

29 CFR 1926
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1926_main_02.tpl

41 CFR 60
https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60

48 CFR 31
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title48/48cfr31_main_02.tpl

49 CFR 1.48
https://www.gpo.gov/fdsys/granule/CFR-2009-title49-vol1/CFR-2009-title49-vol1-sec1-48

49 CFR 20
https://www.law.cornell.edu/cfr/text/49/part-20/appendix-A

49 CFR 21
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr21_main_02.tpl

49 CFR 26
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

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Exhibits

Exhibit 13-A: Short Form Right of Way Certification Local Assistance Project
Exhibit 13-B: Right of Way Certification Local Assistance Project (Off State Highway System)
Exhibit 13-C: Consultant Selection Criteria and Guide
Exhibit 13-D: Uniform Relocation Act Benefits Summary
Exhibit 13-E: Preliminary Engineering Right of Way Checklist
Exhibit 13-F: Local Public Agency Real Property Services Checklist

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 13 **Right of Way**

13.1 General

The intent of this chapter is to provide Local Public Agencies (LPAs) with the basic understanding of Right of Way (R/W) procedures for locally sponsored Federal-aid transportation projects. LPAs, which will be actively involved in R/W acquisition and relocation, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended in 1987 (the Uniform Act). This law can be found in Chapter 10 of the Caltrans Right of Way Manual, Federal Highway Administration (FHWA) Project Development Guide (Appendices A and B), and 49 CFR 24.

Note: The Uniform Act must be followed on all LPA projects even if no federal funds are used for the acquisition of R/W for the project. Although substantial responsibility for the administration of LPA projects has been delegated to Caltrans (see Caltrans Role below), FHWA has retained the overall responsibility for compliance with the Uniform Act. Towards this end, FHWA periodically performs Process Reviews of LPA projects to ensure that the Uniform Act requirements are being met.

In addition, LPAs must also comply with all requirements of Title VI of the 1964 Civil Rights Act on Federal-aid projects. This is to ensure that all services and/or benefits derived from any R/W activity will be administered without regard to race, color, gender, or national origin (see FHWA Project Development Guide, Appendix C-12). Right of Way refers to the real property rights, which LPAs must possess to construct local assistance transportation projects utilizing federal funds. The provisions of this chapter apply to all local assistance projects involving federal funds off the State Highway System (SHS), whether or not these funds are expended for purchase of real property rights. When LPA projects are performed on the SHS or any portion thereof, the LPA must follow the Caltrans manuals that apply to the work being done, among them, is the Caltrans Right of Way Manual and Cooperative Agreement Manual.

Note: Cooperative Agreements are defined as any formal agreement between Caltrans and the LPA for a project on the SHS wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the R/W Certification form.

The Caltrans Right of Way Manual is used for projects on the SHS, either conventional highways or expressways and freeways. The manual has approximately 575 forms and exhibits that are extremely useful and necessary to perform all of the various R/W functions. These forms and exhibits, as well as 17 chapters of R/W processes and procedures are available to all LPAs for use in performing their R/W work. Caltrans projects may generally be larger than many LPA projects, but the R/W processes and procedures are the same as those performed by LPAs for their projects.

LPAs are encouraged to access the Caltrans Right of Way Manual at: https://dot.ca.gov/programs/right-of-way/right-of-way-manual.

The US Constitution and the Bill of Rights provide authority to acquire property by eminent domain for a public project. The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (42 U.S.C.4601 et seq.), provides the rules and processes to

exercise this authority whenever a project benefits from federal funds. Affected property owners and those displaced by the project are entitled to fair, equitable and consistent treatment and due process of law to determine compensation. These laws and regulations are also intended as a safeguard to ensure that federal funds are not unnecessarily or inappropriately expended. The information in this section has been compiled from many sources, but the underlying federal and state laws remain unchanged. This chapter should not be used as a substitute for these laws, statutes, regulations, policies, and/or procedures when conducting R/W activities using federal funds.

Note: All documents and papers related to a project must carry the Federal-aid project number for identification.

13.2 Federal-aid and the Federal/State/Local Public Agency Relationship

FHWA is the federal agency most typically involved in transportation projects undertaken with federal funding for the programs discussed in the LAPM. It has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these programs. When a project utilizes federal funding, FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans is granted major delegations of authority from FHWA under 23 U.S.C.106(c) and the FHWA/Caltrans Joint Stewardship and Oversight Agreement (S&O). Further, Caltrans has passed on these delegations to LPA partners to the greatest extent possible. With each delegation goes the responsibility for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or state oversight.

13.2.1 FHWA Role

FHWA is responsible for the following project activities, for all Federal-aid projects:

- Obligation of federal funds
- Approval of E-76 for R/W activities and utilities under the Alternate Procedure
- Approval of Early Acquisition, Protective Buying or Hardship Acquisition
- Approval of all R/W Certification Level 3/3W projects

For additional details on the FHWA/Caltrans relationship, refer to LAPM Chapter 2: Roles and Responsibilities.

13.2.2 Caltrans Role

When federal funding is used in any phase of a Local Assistance project, FHWA places overall responsibility for the acquisition of R/W and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans in turn has delegated substantial authority to LPAs. On these Federal-aid projects, all R/W activities must be conducted in accordance with the Caltrans Right of Way Manual.

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the Exhibit 14-C: FHWA Specific Authorization/ Approval Utility Agreement. More information is available in LAPM Chapter 14: Utility Relocation. These agreement forms are both part of form RW 13-15, found in Chapter 13: Utility Relocation of the Caltrans Right of Way Manual.

Caltrans is responsible for fully informing LPAs of their responsibilities accompanying Federal-aid transportation projects by ensuring that every LPA receives all current regulations and procedural instructions affecting R/W activity, and on request will provide training, guidance, and advice on R/W matters. Further information is provided in the Caltrans Right of Way Manual. FHWA's Project Development Guide and Caltrans Right of Way Manual are available to each LPA. Refer to Figure 13-1, Right of Way Procedures Flowchart, in this chapter which gives an overview of the R/W process.

When questions arise in the development of a Federal-aid project, or if it is determined that property rights will be required on the project, the Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has the overall responsibility as liaison with each LPA in that district. In addition, each district has an R/W Local Programs Coordinator who is responsible for working with each LPA whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans R/W is required to monitor LPA's procedures for R/W appraisal, acquisition, relocation assistance, property management, excess land disposal, and utility relocations on all local assistance projects for compliance with applicable state and federal laws and regulations.

The Monitoring Process

The District R/W Local Programs Coordinator may monitor R/W activities at any time during the project to ensure that such activities are performed in compliance with state and federal laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal Stewardship requirements, the FHWA Project Development Guide, and the Caltrans Right of Way Manual. All R/W functional areas are subject to review. These reviews should occur in real-time at each R/W activity, so any deficiencies discovered can be corrected, prior to moving onto the next R/W activity (e.g., Appraisals reviewed prior to start of Acquisitions, Acquisition contracts prior to offer, Administrative Settlements when appropriate, relocation assistance documents, etc.). Spot-check monitoring will normally be limited to no more than 25% of the total work performed. Additional reviews must be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see Monitoring Findings below). The reviewer must bring all violations discovered to the attention of the LPA. It is the LPA's responsibility to ensure correction. Monitoring must be at the discretion of the district based on staff availability, familiarity with the LPA, the project, and consultants which may be used, as well as the complexity of the R/W issues. Monitoring will usually use checklists or outlines to guide the review.

Note: For projects in which real-time reviews have not been performed, acceptance of Right of Way Certification will be delayed until those reviews have been completed.

<u>Monitoring Findings</u>

Ideally, the monitoring review will discover compliance with all applicable laws and regulations. Occasionally however, there may be other results with findings having different levels of seriousness.

<u>Violations of What Caltrans Considers to Be Good Business Practice</u>

These are practices of the LPA which could be improved with the result being a more efficient or effective operation and/or reduced chance that more serious violations will occur subsequently. LPAs will be advised of these observations, but there is no penalty associated with

noncompliance. LPAs are free to adopt suggested changes or not as their management judgment indicates.

Violations of Practices Where Correction is Mandatory

LPAs will be expected to change their practices to conform to Caltrans requirements. For qualified agencies, failure to do so may jeopardize their qualification status for future projects. In addition, serious violations of this nature must be corrected, particularly when it appears that a violation of property owner's rights is involved. LPAs will be advised in writing of such violations and of the corrective actions to be taken. During the time the LPA is taking the corrective actions, federal reimbursement may be withheld. Failure to complete the corrective actions within reasonable time periods may result in withdrawal of federal funding for the project.

Qualifying Local Public Agencies

Caltrans qualifies LPAs to perform their own R/W functions (see Qualification of Local Public Agencies below). Caltrans also provides training and guidance to LPAs seeking assistance on Federal-aid projects.

13.2.3 Local Public Agency Role

Certification of Projects

The LPA will certify that all Uniform Act compliance requirements have been met on Federal-aid projects.

Qualification of Local Public Agencies

Caltrans has an agreement with FHWA that allows LPAs to be qualified in advance to perform all or some R/W activities based on the LPA's qualifications, the size of their staff and their ability to perform the technical work and subsequent reviews. Caltrans District R/W staff conducts a qualification review to determine if the LPA is adequately staffed, organized, and has the necessary expertise to perform R/W work properly and timely. The agency must agree to conform to Caltrans policies and procedures in order to meet state and federal requirements. The review is necessary before the LPA can begin R/W work on a Federal-aid project. To become qualified, the LPA must first contact the District Right of Way Local Programs Coordinator**,** requesting approval of qualification status. The Coordinator will then meet with the LPA's Right of Way/Real Property Department to explain state and federal requirements and what must be done to become qualified. The Coordinator will request copies of organizational charts, staff resumes and duty statements, and will see that the agency has all needed material: the Caltrans Right of Way Manual, any necessary policy and procedure memos, and current copies of Titles 23 and 49 of the CFRs. The manuals must be in sufficient detail to adequately describe operational procedures for the functional areas to be certified so as to provide adequate instructions to Right of Way/Real Property employees on how to perform their assigned duties.

Qualification Levels

The LPA may have experienced staff but not in sufficient number to be qualified for every R/W function. The following levels of qualification can be obtained with prior Caltrans Region/District approval:

Level 1: Staff is qualified to do technical work in one or more specific functional areas. These areas will be shown in the qualification approval. As an example, some

smaller rural agencies have sought approval to perform only appraisal or acquisition functions.

Level 2: Staff is qualified to do technical work in more than one functional area, but not in all. There is sufficient staff available to perform these functions on more than one project at a time.

Level 3: Staff is large enough and qualified to do technical work in all functional areas.

Qualification Term

Level 1, 2, and 3 approvals are good for three years and require a review at the end of that time. Additional ongoing reviews will be needed if LPA staffing changes. It is the LPA's responsibility to ensure they renew their qualification with CT prior to expiration and that their qualification is active during the entire term of a project's right of way phase.

See Chapter 17: Local Programs of the Caltrans Right of Way Manual for additional information on LPA Qualifications.

Withdrawal of Qualification

It is important to note that the qualification status can be withdrawn if deficiencies are found and not corrected, or if the staffing and experience levels change so that the LPA can no longer meet the minimum requirements. At the time each agency is notified of its qualification level, the agency is told to inform Caltrans if there are any major personnel changes which would impact its ability to perform the respective R/W functions.

Appraisal Review Qualification

On Federal-aid projects, a formal review of the appraisal is necessary in order to establish the Fair Market Value for the property (49 CFR 24.104: Review of Appraisals). A consultant review appraiser must have a valid general license issued by the Department of Consumer Affairs – Bureau of Real Estate Appraisers (BREA). The review appraiser must determine that the appraisal meets applicable appraisal requirements and must, prior to acceptance, seek necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation in accordance with Section 24.103 to support an approved or recommended value. The reviewer must state the basis for the value conclusion. If the LPA receives a qualification status Level 1 or 2 without having the staff or means to perform the appraisal review function, the LPA must hire either a qualified licensed consultant (see Selection of Consultants below), or another LPA qualified to perform the appraisal review function.

Note: Only the LPA can determine the just compensation to be paid. Another agency or consultant cannot do so.

Non-Qualified Local Public Agencies – Options

LPAs that are not qualified to perform any or all of the respective R/W functions necessary for the project must either hire another LPA qualified to perform those functions, or directly hire a consultant who meets the consultant selection criteria discussed below.

Non-qualified LPAs have the following choices in hiring consultants:

- Contract with a qualified LPA

- Contract with a private consultant(s) to perform one or more R/W specialties: Appraisals, Appraisal Review, Acquisitions, or Relocation Assistance
- Contract with an R/W Project Management consultant
- Utilize a mixture of LPA staff and the resources available as mentioned in the first two items above
- Contract with a Turnkey consultant who can perform all R/W functions

Note: It is the LPA's responsibility to verify that the consultants have the necessary certificates/licenses to perform the R/W functions needed for the LPA's project.

Selection of Consultants

The authority for selection of private sector consultants to perform R/W functions on Federal-aid projects has been delegated to the LPAs. The selection process will be administered by the LPA in accordance with LAPM Chapter 10: Consultant Selection, using criteria from Exhibit 13-C: Consultant Selection Criteria and Guide prepared by Caltrans to establish recommended minimum experience levels and to evaluate the qualifications of prospective consultant firms. When substantially different R/W services are needed, it is incumbent on the LPA to repeat the consultant selection process in choosing a consultant for those different services. The District Right of Way Local Programs Coordinator can provide additional assistance if needed.

The LPA should be advised that caution must always be exercised in the choice of a consultant, particularly with regard to the firm's experience on past projects and the firm's references. Each project and each agency have unique demands and just because a prospective consultant may meet the broad qualifications contained in the Consultant Selection Criteria, it does not also mean that the consultant meets the LPA's requirements. The LPA is responsible for maintaining written documentation concerning the consultant selection process to ensure that the procedures comply with the Exhibit 13-C: Consultant Selection Criteria and Guide. This information should be made available to Caltrans as part of the Caltrans monitoring process.

LPAs are responsible and accountable for the actions of their consultants in properly executing their duties and activities in accordance with the Uniform Act. The LPA retains the ultimate responsibility for signing the R/W Certifications. Also, LPAs receiving federal funds must take affirmative steps to assure that Disadvantaged Business Enterprise (DBE) consultants have ample opportunity to compete for consultant work. Such steps include soliciting DBE firms, and when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms.

Consultant Contracts

Competitive bidding is one of the cornerstones of a financially successful project. The competitive bid process is required for new contracts and/or replacing an expired contract. LPAs must not enter into a contract or renew an expired contract without completing the competitive bid process. Seeking bids from qualified firms will ensure that the LPA is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of the consultant's work, estimating the cost of the consultant's work, determining the type of contract needed, and deciding whether to seek bids on a project-by-project or time-base method.

The project-by-project method is appropriate for use when the LPA has only one project or has an extensive project expected to last more than 36 months. Under this method the consultant

performs the tasks exclusively on the designated project until completion. All four commonly used contracts are suitable for use with the project-by-project method and include:

- Actual Cost plus Fixed Fee
- Cost per Unit of Work
- Specific Rates of Compensation
- Lump Sum

The time-base method is appropriate for LPAs with multiple projects occurring simultaneously. This method is more cost-effective as the agency is not required to complete the competitive bid process for each individual project. Under this approach the same consultant can perform R/W tasks on different projects during the contract term. The maximum contract length is 36 months. If the contract needs to be extended due to unforeseen circumstances, the LPA must complete Exhibit 12-F: Cost-Effectiveness/Public Interest Finding and submit it to the DLAE along with a written justification. The contract may be extended once with a maximum length of 12 months. Of the four types of contracts noted above, it is not appropriate to use the Lump Sum contract with the time-base method. The LPA which enters into a contract with a consultant for the performance of R/W work retains ultimate responsibility for the actions of the consultant. Caltrans has established broad criteria for use in evaluating the qualifications in the respective R/W functions, but Caltrans is in no way liable either for devising such criteria or for the performance of consultants chosen by the LPA. In the event the actions or performance of the consultant result in a loss of federal funds for the project, it is the sole responsibility of the LPA to repay these funds.

Consultants must perform R/W functions to the same standards, practices, rules, and regulations as the LPA. The District R/W Local Programs/Assistance staff will monitor the work products of the consultants using the guidelines discussed under The Monitoring Process in Section 13.2: Federal-aid and the Federal/State/Local Agency Relationship.

The LPA responsibilities also include the following in connection with project completion:

- A formal review of the appraisal (noted above) is required when federal funds are used for any portion of the project.
- An establishment of just compensation is necessary prior to negotiations with property owners. The LPA must approve the fair market value appraisal and determine what compensation is to be paid in projects involving the acquisition of real property. This is a federal requirement and cannot be delegated to the consultant**.**
- The assignment of a Contract Manager who is knowledgeable in all aspects of the project is needed to serve as the contact person during the course of the project (see Contract Administration below).
- If the LPA has any questions or concerns regarding the hiring of R/W Consultants, they are encouraged to contact the nearest District Right of Way Office for assistance or guidance.

Contract Administration

The LPA must designate a Contract Manager to act as the official representative of the agency with full authority and responsibility to manage the contract. In addition to the duties listed in

LAPM Chapter 10: Consultant Selection for the Contract Manager, R/W projects also require the following:

- Performing a functional review for each R/W activity
- Approving and coordinating all consultant activities
- Approving requests for payment (after completion of the work)
- Preparing interim/final contract completion reports and performance evaluations

13.3 Master Agreement

A master agreement is required with the LPA whenever federal funds are to be used on a local transportation project. In the master agreement, the LPA agrees to comply with all federal and state laws, regulations, policies, and procedures relative to the design, R/W acquisition, construction, and maintenance of the completed facility. It is normally processed once with the agency when it begins its first Federal-aid funded project. The Local Agency-State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

Program Supplement Agreement

The Program Supplement Agreement (PSA) supplements the Master Agreement and formalizes the financial responsibilities and provisions for each specific Federal-aid funded project. The PSA identifies the reimbursable phase(s) of work in addition to the types and amounts of federal and local funds used to finance the locally sponsored project. It is the contractual basis for the state to reimburse the LPA for work done.

Special covenants or clauses in the supplement agreement define the agency's specific responsibilities in implementing and maintaining the project. Others define state or local responsibilities for providing project funds.

13.4 Right of Way Authorization

When federal funds are to be used for R/W costs the following must be obtained before requesting authorization:

- Exhibit 7-B: Field Review Form
- Completed R/W estimate
- National Environmental Policy Act (NEPA) approval
- NEPA/CEQA Re-Validation Form (if applicable)

If Federal-aid is sought for any phase of the project, all R/W activities must conform to federal requirements. Failure to conform to these requirements will jeopardize federal funding.

Note: If any R/W activities are performed prior to authorization, those activities are normally ineligible for reimbursement later. Requests for authorization should be submitted to the DLAE. If the request is complete, the DLAE will initiate the authorization process.

13.4.1 Project Programming

The initial step in obtaining Federal-aid on a local assistance project involves selecting and programming the project into a federally approved Transportation Improvement Program. This

will require careful estimates of the costs involved for all phases of the project including preliminary and construction engineering, utility relocation, R/W (if additional property interests are required), and construction. Real property rights that are acquired for an LPA project must be sufficient for all activities necessary for the construction of the project and for the ongoing operation and maintenance of the facility when completed. It is the responsibility of the LPA to determine the property rights that will be necessary for each project and that these rights are sufficient for the project. Procedures to program projects can be found in the Local Assistance Program Guidelines (LAPG) Chapter 1: Introduction/Overview, and LAPG Chapter 2: Financing the Federal-Aid Highway Program. Questions concerning project programming should be referred to the DLAE.

13.4.2 Request for Authorization to Proceed with Right of Way

After a project is selected and programmed in a Federal Approved State Transportation Improvement Program (FSTIP), the LPA should then contact the DLAE to obtain authorization to receive federal funds. The authorization must precede any activities for which reimbursement will be requested. When the project requires the relocation of utility facilities, the request must include a listing of each affected utility company together with an estimate of the cost of relocation for each company and a request for approval of the use of the Alternate Procedure. The LPA is responsible for initiating LAPM 3-A: Project Authorization/Adjustment Request through Caltrans to FHWA. For additional details, please refer to LAPM Chapter 3: Project Authorization.

The project authorization obligates FHWA to reimburse allowable project costs and confirms that federal funds are available in the amount requested for that project. However, this is subject to the condition that acquisition of R/W may only commence after the necessary requirements have been met, including NEPA compliance. The LPA must prepare a Request for Authorization package (see LAPM Chapter 3) and certify to the accuracy of all the data on the forms. Separate work authorizations and fund obligations are normally made for preliminary engineering, R/W, and construction, if federal funds are to be used for these phases of the project. The authorization to proceed must be obtained prior to starting an item of work for which the agency will seek reimbursement.

When the DLAE determines that the project has been authorized and obligated, an Authorization to Proceed is printed which shows the authorization and obligation dates. This form is then sent to the LPA as verification that they may begin with that phase of the project and subsequently be eligible for reimbursement. If the project cannot be authorized, the LPA is informed and advised what corrective actions are necessary.

13.4.3 Authorization to Begin Right of Way Work (E-76)

Each phase (capital/support) or function (appraisal, acquisition, utility relocation, property management, or excess land sales) of R/W claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. Any work done prior to authorization will be ineligible. An E-76 may program multiple phases.

LPAs may not proceed with final design or request for authorization to proceed with R/W or construction until full compliance with the provisions of NEPA have been documented and approved by Caltrans. Failure to follow this requirement will make the project ineligible for FHWA reimbursement. Upon final environmental approval, it is incumbent upon the DLAE to

provide the LPA with immediate notification and a copy of the signed Categorical Exemption/Categorical Exclusion Determination Form or approved environmental document Finding of No Significant Impact (FONSI) or Record of Decision (ROD), so the LPA can commence with final design and/or request authorization to proceed with R/W activities. Preliminary acquisition activities, including a title search and preliminary property map preparation, necessary for the completion of the environmental process can be advanced under preliminary engineering prior to NEPA compliance while other work involving contact with affected property owners must normally be deferred until NEPA approval, except as provided in 23 CFR 710.503, for protective buying and hardship acquisition, and in 23 CFR 710.501, early acquisition. Only under these exceptional circumstances will the agency be allowed to acquire property prior to environmental approval. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship, or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of Hardship and Protection acquisitions. When making these advanced acquisitions, ensure that the intent of the Uniform Act and the NEPA are not circumvented. For additional information, please refer to Chapter 5: Hardship and Protection of the Caltrans Right of Way Manual, or contact Caltrans Right of Way Local Programs Coordinator in your area.

13.5 Preliminary Right of Way Activities

Request Authorization to Proceed with Preliminary Engineering

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), R/W (including appraisal, acquisition, relocation assistance, and utility relocation) and Construction phases, if federal funds are to be used in each of these phases.

Preliminary Studies

At this early stage in the development process, it is crucial to correctly evaluate the project requirements: namely, the limits, location (including existing utilities), scope, costs, and whether any additional R/W will be required. The LPA should establish a process for accumulating this data, which will play an integral part in successfully completing the Field Review, the Preliminary Environmental Study (PES) (Exhibit 6-A), the Preliminary Engineering Right of Way (PERW) Checklist (Exhibit 13-E), and the Plans, Specifications & Estimate (PS&E) for the project.

Field Reviews

Formal Field Reviews, which may include FHWA and Caltrans representatives are not required on LPA transportation projects off of the National Highway System (NHS). For additional details, see LAPM Chapter 7: Field Review. However, Field Reviews are suggested practice for all complex projects. A representative from FHWA and Caltrans Right of Way should be consulted on all FHWA Risk-Based Involvement (RBI) projects. All requests for FHWA participation should be coordinated through the DLAE. LPAs should complete the PES Form and the first two pages of the Field Review Form prior to requesting a Field Review. If it appears that additional R/W will be required, one of the intended results of the Field Review is to provide sufficient data to complete the R/W estimate (see Section 13.7: Project Requiring Right of Way/Property Rights, subtitle: R/W Estimate in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (see Section 13.4: Right of Way Authorization, subtitle: Request for Authorization to Proceed Right of Way).

The Field Review process brings together all interested parties in order to reach an agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of documentation required in the NEPA process, and whether a public hearing will be necessary. For R/W objectives, the Field Review may confirm the need to acquire R/W and relocate the occupants, or relocate utilities and/or railroad facilities, which can significantly affect the project development, in particular, the costs and scheduling. The review also facilitates the identification of compensable property interests plus uncovering project requirements such as the need for temporary construction easements, or permits to enter. Therefore, it is strongly encouraged that the Caltrans Right of Way Coordinators be invited to participate in the Field Reviews, as their assistance could be extremely helpful.

When the preliminary review is completed, the LPA is responsible for completing the Field Review Form. If there are R/W requirements for the project, the Division of Local Assistance Area Engineer (DLAE) should forward a copy of this form to the Right of Way Local Programs Coordinator. For NHS projects, all appropriate forms and attachments must be completed. For non-NHS projects, the two-page Field Review Summary must be completed at a minimum. Items 7 and 9 apply to R/W issues.

Preliminary Engineering Right of Way Checklist

During preliminary studies, the LPA must complete Exhibit 13-E: Preliminary Engineering Right of Way (PERW) Checklist in conjunction with Exhibit 6-A: PES and submit to the DLAE. The DLAE will forward the form to the District Right of Way Local Programs Coordinator. This form is required with or without a project field review being completed.

The purpose of the PERW Checklist is to help LPAs, their Right of Way Agents and/or Right of Way Consultants determine if there are right of way involvements such as fee or temporary right of way acquisitions, utility conflicts, relocations, etc. at the project initiation stage. It will provide the information needed to complete an accurate right of way estimate and notify the District Right of Way Local Programs Coordinator of upcoming projects with right of way involvement to allow real-time monitoring. This earlier engagement will also provide both the LPA and the District Right of Way Local Programs Coordinator the opportunity to discuss Caltrans policies and processes necessary for compliance with the Uniform Act.

13.6 National Environmental Policy Act

All LPA Federal-aid transportation projects off the SHS must comply with the provisions of the NEPA and the implementing of regulations (23 CFR 771). LPAs may not proceed with final design, R/W acquisition, or project construction until full compliance with the NEPA has been documented and approved by Caltrans.

The level of documentation required in the NEPA process will vary depending upon the NEPA Class of Action. A proposed major highway or a new highway on a different alignment, for example, will normally require an extensive study, an Environmental Impact Statement (EIS), while minor improvements to existing highways such as a roadway intersection signal installation may require only a short analysis, a Categorical Exclusion (CE). All LPA projects must demonstrate compliance with NEPA and other federal environmental laws before proceeding with R/W work or the final design of a project.

13.6.1 Preliminary Environmental Review

Exhibit 6-A: Preliminary Environmental Study (PES) is designed to identify such items as the existing conditions in the project area, environmental issues that may require further study, and the need for public hearing, or resource, or regulatory agency permit. If there are relocation impacts or R/W needs identified, see LAPM Chapter 9, Section 9.2.4: LPA Title VI Implementation.

13.6.2 Public Hearings

In general, public hearings should be held for a project if there is substantial environmental controversy, if there is widespread interest in holding the hearing, or if an agency with jurisdiction over the project requests one. The procedures for holding hearings, including the requirements for notifying the public, the contents of the notification, scheduling, and the hearing process are all discussed in LAPM Chapter 8: Public Hearings. Federal regulations require public hearings under certain circumstances. For example, projects being processed with an Environmental Assessment (EA) require a public hearing when significant amounts of R/W will be required for the project. Public hearings are also required during the circulation period of all draft EISs. Public involvement is advantageous because it can broaden the agency's knowledge of the project area. If a public hearing is to be held and additional R/W or property rights will be required for the project, R/W personnel should be involved as early as possible. A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons.

The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Project construction activities can have very serious economic and social impacts on the affected region, including adverse impacts in the traffic patterns, business operations, and the lives of its citizens. Those who are displaced must relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often emotionally impacted, apprehensive of the changes due to the project, and need detailed information on the R/W procedures and their rights. The public hearing is often their first real opportunity for information and contact with project representatives. One of the keys to a successful project may be the cooperation engendered at the first public hearing. As the project progresses, there may be a need for additional hearings devoted solely to R/W issues and impacts.

13.6.3 The Environmental Document

Depending upon the potential for impact, there are three NEPA Classes of Action under which a Federal-aid project may be processed. These include: Categorical Exclusion (CE) determination, an Environmental Assessment (EA), or Environmental Impact Statement (EIS) document. The purpose of the environmental determination or document is to disclose to the public and decision makers the proposed action, potential environmental impacts, and propose avoidance, minimization, and mitigation measures to offset adverse impacts. R/W acquisition and activities associated with the action must be considered as part of the scope of the action. The environmental investigation and environmental determination or document must also address impacts associated with R/W activities. Guidance on analyzing impacts associated with R/W acquisition and use is provided in the Standard Environmental Reference (SER).

13.7 Projects Requiring Right of Way / Property Rights

Local federally-funded projects involving the acquisition of R/W should be discussed with the District R/W Local Programs Coordinator as early as possible in the project development stage.

Exhibit 13-E: PERW Checklist has been developed as a tool used in identifying potential right of way conflicts and notifies the R/W Coordinator to monitor the project. Exhibit 13-E must be completed in conjunction with Exhibit 6-A: PES. A signed copy is sent to the DLAE who forwards it to the Right of Way Coordinator. It will alert staff of potential right-of-way acquisitions and/or utility conflicts on a proposed federal aid project. The form also alerts the LPA that they will need to hire Right of Way Consultants if they are not a qualified agency.

There are several reasons for this. As noted above, while some PE activities (i.e., ordering title reports, preparing base maps and appraisal maps, conducting project-wide comparable sales searches, gathering cost estimates and completion of the appraisal) may be conducted and subsequently reimbursed by FHWA prior to NEPA compliance, the majority of R/W activities (such as, initiation of negotiations with property owners, relocating displaced persons, and utility relocations) may not be performed on Federal-aid projects prior to NEPA compliance. This restriction minimizes the potential for predetermined project site or alignment selection.

Note: Although appraisals may be completed prior to NEPA, appraisals in an active market may be outdated in a very short time. Also offers/negotiations with property owners must occur promptly, potentially leading to unnecessary reappraisal activity, if started too early. Chapter 8 of the Caltrans Right of Way Manual defines “promptly” as, within thirty (30) days of the approval of appraisal.

While Draft and Final EAs and EISs may identify the preferred alternative, the selected alternative must not be announced until the FONSI and ROD has been completed. More detailed discussion of the pre-requisites for R/W activities are provided in Caltrans Right of Way Manual Chapters 3.08.00.00 and 7.01.06.00.

13.7.1 The Right of Way Estimate

If property rights are necessary, the next phase in the project development is the completion of the R/W Estimate. The estimate is of primary importance in the cost-efficient delivery of the project.

This process and subsequent document provide a detailed analysis of the following:

- Type of properties to be acquired
- The size and number of the parcels
- If displacement is to occur, what is the nature (e.g., residential or commercial), how many are affected, and what is the projected timing
- How much time and what personnel are needed to appraise and acquire the R/W and perform any necessary relocation work, including utilities

The estimate for any liability for utility relocations should include:

- The estimated fair market value of the properties to be acquired
- The anticipated relocation assistance payments
- The portion of the LPA’s liability to relocate utility facilities outside of the R/W

An accurate estimate of R/W costs based on current market data is essential for forecasting capital expenditures and future staffing needs. For example, overestimating may result in deferring, down-scoping, or eliminating a project; underestimating could affect the financial ability to build the project or inadequate staffing needs. The District R/W staff may assist the LPA in preparing and reviewing the estimate documents.

Rough estimates are often prepared during the preliminary phase of a project. However, these estimates should be updated prior to use in a budgeting or programming document. Maps should be available once the project scope is defined. Detailed maps are critical in preparing good R/W estimates. Additional information can be found in Chapter 4 of the Caltrans Right of Way Manual.

13.7.2 Advance Acquisition/Hardship/Protection

Hardship acquisitions are situations where unusual circumstances have befallen the owner(s) of the property and are aggravated or perpetuated because of the proposed project and cannot be solved by the owner without acquisition by the LPA.

Protection acquisitions occur when property is purchased in advance of normal acquisition to prevent development on a proposed alignment. If the purchase were deferred, the result would be higher acquisition, relocation, and/or construction costs. LPAs may acquire hardship and protection properties with their own funds prior to NEPA compliance without jeopardizing federal participation in future programmed project costs. These advance acquisitions require prior FHWA approval, and any such acquisition must comply with the Uniform Act if the LPA anticipates seeking reimbursement for the acquisition costs when the project is approved for Federal-aid. The LPA should immediately contact the District Right of Way Local Programs Coordinator regarding FHWA approval before proceeding with any acquisition. See Chapter 5 for process and procedures of the Caltrans Right of Way Manual.

13.7.3 Relocation Planning

When projects involve displacement, the successful resolution of the needs of those displaced requires careful planning. Housing resources must meet the needs of the displaced in terms of size, price, location and timely availability. Advisory services and various notices to vacate, some with specific timing requirements, must be provided. Businesses must be given assistance in relocating with minimal disruption during the move. Payments must be made to displaced persons at the time they are needed during the move to the new location. These things do not happen automatically, they require planning. FHWA has long stressed the need for relocation planning.

Congress gave new emphasis to the need for consideration of the impacts of displacement in the 1987 Amendment to the Uniform Act. 49 CFR 24.205(a), states that planning may involve a relocation survey or study which may include the following: (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable, (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted, (3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced

and the approximate number of employees that may be affected, and (4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

13.7.4 Railroad Operating Facilities

Railroad companies determine which of their facilities are operating or non-operating. The operating facilities can be affected by a construction project in several ways, each of which requires different processing. Because of the time required to reach agreement with the respective railroad companies and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible. For additional information, refer to Chapter 8: Acquisitions, (Railroad) of the Caltrans Right of Way Manual. Please see Figure 13-2: Right of Way Certification Process with Railroad Facilities for a process diagram.

13.8 Appraisals

The Uniform Act contains basic requirements for the appraisal of real property acquired for public purposes. These basic requirements apply to all Federal-aid projects. For additional details, refer to 49 CFR 24.102, 103 and 104, and Chapter 7: Appraisals of the Caltrans Right of Way Manual.

Prepare Final Right of Way Requirements/Appraisal Maps

Before commencing appraisal activities, the final R/W or appraisal maps must be completed. The appraisal report, when completed, should contain additional diagrams, sketches, or maps as necessary to understand the property valuation. Significant topography maps should be included for partial acquisitions. The appraiser is responsible for the completeness of the maps and for requesting delineation of pertinent data including, in particular, the area of the taking, and any remainder parcels.

Appraise Right of Way, Determine Fair Market Value

Prior to commencing appraisal work on parcels required for the project, the appraiser must advise the property owner of the decision to appraise the property. The notice must be in writing and covers the following:

- A specific area being considered for a particular public use, i.e., the project.
- The fact that the owner's property lies within the project area.
- All or a portion of the owner's property (which should be generally described) may be acquired for public use.

The letter must offer the owner (or the owner's representative) the opportunity to accompany the appraiser on an inspection of the property. It will give reasonable advance notice. There is no mandatory format for the notice; however, see Chapter 7, Exhibit 7-EX-17: Notice of Decision to Appraise of the Caltrans Right of Way Manual for a suggested format. The owner will also be given a written explanation of the agency's land acquisition procedures. A booklet entitled Your Property, Your Transportation Project, will satisfy this requirement. Title VI brochures should also be sent to the property owners.

All real property rights (both temporary and permanent) must be appraised, and the acquiring agency must also establish an amount it believes to be just compensation (49 CFR 24.102)

before the initiation of negotiations with the owner. Although Fair Market Value sets the basis for just compensation, the two amounts may differ because of unusual circumstances. The Code of Civil Procedure defines Market Value as: (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, or obliged to sell, and a buyer being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available, and (b) The fair market value of property taken for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Appraisal and Just Compensation for Temporary Real Property Rights

A temporary real property right, such as a temporary construction easement (TCE), is a property encumbrance and acquisition item as defined in 23 CFR 710.105 - Easement. TCE encumbrances are for a specific anticipated use over a specified time period [window of when proposed construction activity(ies) may occur]. Although actual and physical use of a property may be anticipated for a limited duration within the specified time period, the property is considered burdened and encumbered for the entire duration of when the anticipated construction activity(ies) may occur. The valuation and offer of just compensation must therefore consider and evaluate the damages to the remainder due to the TCE term, including impacts to the owner's loss of utility and enjoyment of the encumbered area, and whether the impacts are consistent throughout or varying, for the duration of the entire TCE term/window period of potential activity (EIS).

In order to comply with possession and control requirements of 23 CFR 635.309(c) the TCE commencement date must begin on or before the project's Right of Way Certification date. Should the TCE expire before the construction is complete, a revised appraisal and agreement with the property owner (including the additional calculated compensation) is required prior to the LPA's continued possession of the property. (49 CFR 24.101(C)(2), 49 CFR 24.101(d) and 49 CFR 24.103(a); please also see Right of Way Manual Chapter 7, Section 7.04.08.00).

It is not necessary to re-certify the project, but the LPA must provide copies of the revised agreements and support documentation for renewing the TCE to the Local Programs Liaison.

13.8.1 Appraisal Review

As noted above, on Federal-aid projects, a formal review of the appraisal is necessary (see 49 CFR 24.104). If the LPA is using a private sector review appraiser, the review appraiser must have a valid California license issued by the state Office of Real Estate Appraisers (OREA). If the project sponsor is a qualified agency and performing its own appraisal work, the Department of Consumer Affairs – Bureau of Real Estate Appraisers (BREA) has held that, as employees of a public agency, neither the appraiser, nor the review appraiser needs such a license. The review appraiser must determine whether the appraisal meets applicable requirements and make any necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be an approved or recommended value unless it meets the requirements of an Appraisal Waiver Valuation as discussed below. The reviewer must state the basis for the value conclusion. The Uniform Act makes it clear that the LPA must establish an amount believed to be just compensation.

Therefore, if another agency or a consultant does an appraisal review, the acquiring agency must retain the responsibility for establishing an estimate of just compensation. Another agency or a consultant cannot do so.

13.8.2 Appraisal Waiver Valuation

When the LPA determines that the valuation problem is uncomplicated and the market value is estimated at $15,000 or less based on a review of available data, the appraisal can be waived. In this case, the LPA will prepare a Waiver Valuation. The $15,000 amount includes any damages to the remainder property but excludes any non-substantial construction contract work. This information is consistent with 49 CFR 24.102(c)(2). The Waiver Valuation cannot be used as a basis for deposit when obtaining an Order for Possession. If condemnation is needed, an appraisal must be completed.

13.8.3 Separation of Appraisal and Acquisition Functions

LPAs should maintain a separation of the appraisal and acquisition functions, except that the same person can appraise and acquire a parcel if the total valuation excluding non-substantial construction contract work is $15,000 or less; for additional details, refer to CFR 21.102(n)(3). This dollar limit also applies to appraisal revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Waiver Valuation.

When the same person prepares the appraisal and does the acquisition, the appraisal should contain a statement substantially as follows: I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this report, but this has not affected my professional judgment or influenced my opinion of value.

All railroad properties should be valued in the full, narrative format. The Non-complex Valuation of $15,000 or less and the Determination of Just Compensation (waiver of appraisal) formats must not be used. Railroad parcels are not eligible for the one-agent appraise/acquire process. This also includes the appraisal and acquisition of a temporary construction easement from the railroad. For additional details refer to Section 7: Appraisals of the Caltrans Right of Way Manual.

13.8.4 Dual Appraisal Report

Caltrans policy no longer requires dual appraisal reports. LPAs may determine that a dual report is needed to ensure the owner receives a fair market value offer. Dual appraisal reports should be considered for unusually large or complicated parcels or parcels exceeding $500,000 in value. This amount includes improvements pertaining to realty, severance damages, and construction contract work.

Consider the following when determining which parcels require dual appraisal reports:

- There is a serious question as to highest and best use.
- Market data is inconclusive because of its scarcity and/or absence of established patterns and value conclusions must, therefore be based primarily on opinion.
- There are substantial improvements not compatible with the highest and best use of the land. In other words, there is a high degree of economic obsolescence.
- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.

- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

Dual appraisals must be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer. The appraisers and the LPA management are responsible for maintaining the fact, spirit, and appearance of this independence.

13.8.5 Owner Initiated Appraisals – Appraisal Cost Reimbursement Agreement

Pursuant to Code of Civil Procedure Section 1263.025(a), a public entity must offer, in writing, to pay the reasonable costs, not to exceed $5,000, of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal must be conducted by an appraiser licensed by the Bureau of Real Estate Appraisers (BREA).

13.9 Right of Way Acquisition

The Uniform Act contains basic requirements for the acquisition of real property, which apply to all projects. For additional details, refer to 49 CFR 24 and to the Chapter 8: Acquisition of the Caltrans Right of Way Manual.

Prior to initiating negotiations for the acquisition of real property, the agency must establish an amount it believes to be just compensation and must make a written offer to the owner(s) to acquire the property for the full amount so established. All LPAs are encouraged to establish a Nominal (minimal) dollar amount of Just Compensation for any private property right needed to complete a project. Thus, estimated or appraised property rights acquired, rented, or used for a project would be consistent from project to project. In no event, shall such amount be less than the agency's approved appraisal of the fair market value of the property. The agency should make every effort to acquire the property by negotiation. Any increase or decrease in the value of the property to be acquired prior to the date of valuation caused by the transportation project must be disregarded in determining the compensation for the property. All property owners must be provided a copy of the approved appraisal and Appraisal Summary Statement or Valuation Summary Statement.

The acquisition agent is responsible for securing all property rights necessary to certify the project (See Right of Way Certifications in this chapter).

Note: If a private sector consultant is used in the acquisition phase, the consultant must have a valid California Real Estate Broker's license, or Salesperson's license if supervised by a licensed Real Estate Broker. All R/W Contracts must be approved for content and signed or initialed by the Real Estate Broker or Principal of the Company.

By signing the R/W Contract, the Broker or Principal of the Company acknowledges responsibility for a complete file; see Exhibit 13-C: Consultant Selection Criteria and Guide.

The general Uniform Act requirements are as follows:

- All real property rights (both temporary and permanent) must be appraised, and the acquiring agency must also establish an amount it believes to be just compensation (49 CFR 24.102) before the initiation of negotiations with the owner.

- The written offer must be made promptly in the full amount of the appraisal and contain a summary for its basis.
- At least a 90-day written notice must be given to all lawful occupants per 49 CFR 24.203(c).
- The owner's incidental escrow cost must be paid.
- A written (parcel) diary must be maintained.

Title VI of the Civil Rights Act of 1964

LPAs must comply with all the requirements of Title VI of the Civil Rights Act of 1964 on Federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, or national origin (23 CFR 200 and 710, Subparts B and E).

Documentation of these Title VI activities, including providing language interpretation or translation services, must be documented with an appropriate R/W diary entry.

In addition, USDOT Order 1050.2A introduced language required in R/W contracts, deeds, permits to enter and other real property documents, as applicable, to ensure compliance with Title VI. Refer to LAPM Chapter 9, Section 9.2 for additional Title VI requirements, including specific Title VI contract language to include in federal-funded contracts.

The below referenced two clauses must be included in R/W contracts and are to be standalone separate clauses:

- "The parties to this contract shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21 and 28 CFR Section 50.3."

- "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this contract."

13.9.1 Permit to Enter and Construct (PTE&C) or Equivalent Document

The only appropriate scenario for use of a Permit to Enter and Construct (PTE&C) or LPA equivalent document, for access/use of a grantor's property to accommodate construction work/activity is one for which all of the following conditions must exist: 1) the subject property is located within the project area; however, the work identified is not within the construction project scope, 2) Access to subject property is not required in order to construct the project, 3) The access is to the grantor's benefit and not the benefit of the project, 4) Construction of the project can be completed without the need to condemn for subject access. Consult with your District Right of Way Coordinator(s) if you have any questions regarding use of a PTE&C, or its equivalent, versus a Temporary Construction Easement (TCE) for access/use of a grantor's property to accommodate construction work/activity.

13.9.2 Permit to Enter (PTE) for Environmental or Geological Studies

Written permission from a grantor via a Permit to Enter or equivalent document must be obtained to allow access for the purpose of Environmental Studies or Geological Studies. Subject permit may be non-compensable or compensable, depending on resulting property impacts, if any. Contact your District Right of Way Local Programs Liaison for any additional guidance, if needed.

13.9.3 Condemnation/Eminent Domain

Eminent Domain is the inherent power of government to acquire property for public use. The Fifth and Fourteenth Amendments to the U.S. Constitution and Article I of the California Constitution provide that such private property must not be taken without just compensation. Condemnation is the legal proceeding by which the power of eminent domain is exercised. Public agencies may condemn private property provided that the governing body of the condemning agency (e.g., the Board of Supervisors or City Council) adopts a Resolution of Necessity at a public hearing. The owner(s) must be provided advance notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at the hearing and contest the adoption of the Resolution of Necessity. Great care must be taken in the exercise of the power of eminent domain. The process is discussed in detail in Chapter 9 of the Caltrans Right of Way Manual.

13.9.4 Relocation Assistance

The Uniform Act also contains basic requirements when displacement occurs as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D and E. The relocation procedures are also discussed in detail in the Caltrans Right of Way Manual, Chapter 10: Relocation Assistance. The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons, so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but also to the progress of the entire highway project. While the LPA needs information about any displacement, which will occur because of the project, the displaced persons have an equal or greater need for information about the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the events these benefits are denied. FHWA has prepared a broadly written brochure entitled Your Rights and Benefits as a Displaced Person. The brochure explains these matters and is intended to be used by relocation agents and at public hearings. Copies are available from the District R/W Local Programs Coordinator. In addition, FHWA has also prepared a more specific explanation of these benefits and the requirements to obtain them. This summary should minimize any disruption caused by the move and maximize the likelihood of a successful relocation. A copy of this summary is provided as Exhibit 13-D: Uniform Relocation Act Benefits Summary.

General Requirements

The relocation agents and any private sector consultants should meet the selection criteria found in Exhibit 13-C: Consultant Selection Criteria and Guide.

The relocation activities should be coordinated with both the appraisal and acquisition functions.

It is crucial to ensure that:

- Timely calls are made

- Proper entitlements and advisory services are provided
- Relocation Assistance Program (RAP) payments are timely and properly calculated
- The appeal process is communicated to the displaced
- Diaries are maintained
- All notices (Eligibility, Vacate, or Entitlement) are timely

13.9.5 Property Management

Property management includes the administration of property acquired for transportation projects. FHWA regulations for the property management function are found in 23 CFR 710.

These policies and procedures apply to all real property acquired by LPAs in connection with projects where federal funds participate in any phase of the project. Federal funds may be used to cover the net costs incurred in leasing, rental, maintenance, disposal of improvements, and the clearance of the property. LPAs must refer to Chapter 11: Property Management of the Caltrans Right of Way Manual for guidelines on inventory and management of properties purchased for construction. Upon acquisition, Exhibit 13-F: Local Public Agency Real Property Services Checklist must be completed and kept in the file.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the R/W
- An accounting of the property management expenses and the rental payments received
- An accounting of the disposition of improvements and the salvage payments received

Special Requirements

If a private consultant provides property management services, the firm must have a valid California Real Estate Broker's license and a minimum of two (2) years' experience at the working level in management of rental properties.

See Chapter 17: Local Programs, Exhibit 17-EX 13: Consultant Selection Criteria and Guide of the Caltrans Right of Way Manual for more information. Former owners and tenants subject to termination by the LPA on short notice will not be charged more than fair market rents.

13.9.6 Excess Lands (Acquisition and Disposal)

Excess land consists of real property rights/title to which is vested in the LPA's name, and which is determined and certified to not be required for rights of way or other roadway purposes of the agency. Excess land may be created in several ways. Landlocked or uneconomic remnants not required for the project may have been acquired. Down-scoped projects, superseded highway segments, route rescissions, and lands decertified at the request of adjoining owners may also create excess.

Federal funds cannot be used for the purchase of any property not incorporated into the project, with the exception of purchases of an uneconomic remnant as determined by the appraiser.

Properties purchased for a project must be inventoried, with excess identified with a plan for disposition. LPAs are directed to follow the Caltrans Right of Way Manual Chapter 16 for disposal procedures which include appraisal requirements and types of disposals.

The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710 and 771. FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. LPAs must use these funds for subsequent Title 23 U.S.C. eligible projects. LPAs may consider creating a dedicated Title 23 (highway) account where proceeds from the sale of excess will be deposited and only used for Title 23 projects. See 23 CFR 710.403(e).

Per Caltrans DLA policy, excess exchange or sale transaction must occur within two years after opening the roadway to traffic, or within two years after submitting the final voucher to the FHWA (whichever is earlier).

13.10 Right of Way Certification

When the LPA performs R/W activities on a federally assisted local project, the LPA prepares the R/W Certification. Prior to submission, a valid NEPA document is required. If it is over 3 years old, a re-evaluation is necessary (23 CFR 771.129 and LAPM Chapter 6, Section 6.3).

The R/W Certification is necessary prior to authorization for construction and must be consistent with the project's approved PS&E (23 CFR 635.309). The purpose of the R/W Certification is to document that any interests necessary for the project have been, or are being secured, and physical obstructions including buildings, utilities, and railroads have been, or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed facility. The R/W Certification also documents that R/W activities, including the relocation of any displaced persons, are conducted in accordance with applicable state and federal laws and regulations.

The R/W Certification (Exhibit 13-A: Short Form Right of Way Certification Local Assistance Project or Exhibit 13-B: Right of Way Certification Local Assistance (Off-State Highway System)) must be submitted for review and acceptance with the signature of the person authorized to sign for the submitting LPA. Signing authority is granted by a Resolution passed by the City Council, or by the County Board of Supervisors. The Resolution will name the person, or the position of the person authorized to sign the certification document on behalf of the LPA. A copy of the Resolution is to be submitted to Caltrans Local Assistance R/W staff along with the signed Certification document.

Note: For projects requiring CTC allocation approval, see LAPG Chapter 25: State Programs for Local Agency Projects.

For 100% state funded projects and for direct recipient funding, LPAs are to self-certify. LPAs may follow Exhibits 13-A and Exhibit B as sample certification formats.

Certification Forms

A separate R/W Certification must be completed by LPAs for each local assistance project even if no R/W is required for the project. All Certifications for Federal-aid off-system projects can be prepared using forms specified by Caltrans (see Exhibit 13-A and Exhibit 13-B). The format of the R/W Certification form contains specific wording required by FHWA. Changes made in wording could invalidate the certification and must be pre-approved be District/HQ RW. Also, do not delete any of the numbered sections. However, within the numbered sections, the LPA should use only the portions applicable to the project being certified. Data supporting all the project right of way activities (e.g., acquisitions, relocation assistance, railroad, and utility

improvements, etc.) are also required at the time of submittal and must be consistent with the final project plans. See list of support documents at: https://dot.ca.gov/programs/right-of-way/local-programs.

Note: Exhibit 13-A is intended for projects that do not require R/W acquisition, relocation assistance, have no railroad involvement, and the only utility relocation involvement is limited to utility cover adjustments.

Utility Relocation

LPA transportation projects often involve utility relocation. For utility relocation details refer to LAPM Chapter 14: Utility Relocation and Chapter 13: Utility Relocation in the Caltrans Right of Way Manual.

Project Certification – Right of Way Required

When additional property rights are required for a Local Federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act. All LPAs will certify their own projects, but it is of crucial importance to adhere to the CFRs and the Caltrans Right of Way Manual that incorporate these federal regulations so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified LPAs in the selection of qualified consultants or in contracting with a qualified LPA to perform the respective R/W functions for them.

13.10.1 Levels of Certification

There are four levels of R/W Certification, which are discussed below.

Certification No. 1

This level of certification documents the following:

- All the work is within existing R/W acquired for a previous construction project and all new work will be within that existing R/W.

OR

- Acquisitions are complete (escrow's closed and/or Final Orders of Condemnation recorded).

AND/OR

- There are effective Orders for Possession on all remaining un-acquired parcels.

AND

- All occupants have vacated the lands and improvements.
- Relocation Assistance and payment requirements have been met.
- All necessary material and/or disposal sites have been secured.
- All encroachment and/or construction permits have been obtained.

AND

- All Rights of Way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

Certification No. 2

This level of certification documents the following:

All the requirements for R/W Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or an Agreement for Possession and Use. Similar documents, such as a permit, license, or an approved R/W Contract with an effective right of possession date, also require the use of a Certification No. 2. See limitations on use of Rights of Entry contained in Section 13.11 - Rights of Entry.

Conditional Certification No. 3

This level of certification documents the following:

All requirements are the same as for Certification No. 1, except legal possession or right of occupancy and use of a few remaining parcels are not complete. A Certification No. 3 may only be used in an exceptional circumstance, on a very limited basis, and must be accompanied by a full written justification.

At a minimum, the justification must include the following:

1. An outline of the very unusual circumstances that require early advertisement.
2. A statement how and/or why it is believed to be in the public's interest.
3. A statement that a Resolution of Necessity has been approved on all parcels yet to be acquired.
4. The reason why a Certification No. 1 or No. 2 is not possible.
5. Anticipated actual dates when legal possession and physical occupancy and use will be obtained and substantiation that such dates can be met (a copy of the executed Order of Possession or Right of Entry can be attached to satisfy this requirement).
6. A statement that all remaining residential occupants have had replacement housing made available to them. For additional information, see Chapter 10: Relocation Assistance of the Caltrans Right of Way Manual.
7. A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the R/W are protected against unnecessary inconvenience and disproportionate injury, or any action coercive in nature.
8. Identification of each parcel on which legal possession and/or right of occupancy and use has not been obtained.
9. Bids cannot be opened until the Conditional Certification No. 3 is upgraded to a Certification No. 1 or 2.

Note: Per CTC guidelines, a Conditional Certification No. 3 is not acceptable for seeking a funds vote from the CTC.

Special Certification No. 3 with a Work-Around (3W)

This special R/W Certification 3W may be used only in the most extraordinary circumstances. The LPA must show that there is a critical need to advertise and award the project and describe in detail the extraordinary circumstances. If federal funds are involved in any portion of the project, including construction, as required by the current Stewardship and Oversight

Agreement (S&O), approval of the work-around must be obtained from Caltrans HQ Right of Way & Land Surveys (HQ RW&LS) and FHWA in advance of certifying the project for advertising. This certification will allow physical construction of a project to commence while occupants of businesses, farms, or nonprofit organizations remain within the R/W. All occupants of residences must have had replacement housing made available to them in accordance with the Uniform Act. The certification must be completed in a timely manner, with proper and complete documentation and justification. Should the LPA anticipate a need to certify the R/W for a project under this type of certification, the District R/W Coordinator should be contacted as soon as the circumstances are confirmed during the PS&E stage.

13.10.2 Time Requirements for Right of Way Certifications

Under ideal conditions, a Certification No.1 would be completed for each project at the PS&E stage. Because this is not always possible, the lower levels of certification allow projects to proceed within limitations while the remaining necessary rights are acquired. The LPA must transmit all certifications to the DLAE for all Federal-aid projects along with the Request for Authorization. All certifications must be reviewed and accepted by Caltrans Division of Right of Way. Certification No's. 1 and 2 are accepted at the district level. A Conditional Certification No. 3 and Special Certification No. 3 with a Work-Around (3W) require approval by Caltrans HQ RW&LS and FHWA.

In those cases when a project advances to advertising with a Conditional Certification No. 3, an upgraded Certification No. 1 or No. 2 must be received by the DLAE a minimum of 15 working days prior to bid opening date. In rare cases where a Special Certification No. 3W is used, an Updated Special Certification No. 3W must be provided to the DLAE no later than 15 working days prior to bid opening. The Special Certification No. 3W does not need to be raised to a Certification No. 1 or No. 2, but must be updated to provide any progress pertaining to the work-around parcel(s).

For a full discussion on R/W Certification and their usage, see Chapter 14: Right of Way Certification and 17.08.06.00 of the Caltrans Right of Way Manual.

13.10.3 Age of Right of Way Certifications

Right of Way Certifications must be updated:

- When the Certification is one year old and the project it was prepared for has yet to be advertised
- At the request of the Project Manager or Project Engineer
- When dates or anticipated actions are no longer consistent with the current date of the Certification
- When there are any changes in project scope or R/W requirements
- When the project description is no longer consistent with the PS&E

Additionally, the NEPA must be re-evaluated if older than 3 years from the time the LPA submits the RW Certification.

13.11 Emergency Relief Project Certification

Emergency Opening Phase

Emergencies require rapid response. A R/W Certification for Emergency Opening (EO) work is not required until after the roadway is opened. Upon FHWA approval of the Damage Assessment Form (DAF), actions to advertise, award and administer Emergency Relief (ER) projects may proceed without going through the usual R/W steps. EO work performed outside existing LPA right of way is extremely rare. If R/W acquisition is required for EO work, immediately contact your District Right of Way Local Programs Liaison for guidance. See LAPG Chapter 11: Emergency Relief for further discussion.

After the facility has been reopened, the emergency actions must be reviewed for R/W implications. If either persons or properties were affected during the emergency repair phase, even temporarily, appropriate steps must be taken to ensure compliance with the Uniform Act. This may include appraisal and purchase of the real property rights, or relocation assistance, required to perform the ER construction activities.

Following the review, and any required subsequent actions necessary to comply with the Uniform Act have been completed, a R/W Certification meeting the Level 1 requirements detailing the R/W activities required must be prepared for each project that has been completed using a PS&E (generally a non-force account project) and submitted to the DLAE or District R/W Local Programs Coordinator. See LAPG Chapter 11 for further discussion. All Permanent Restoration (PR) work follows the standard Federal-aid process and therefore requires complete R/W certification prior to processing the construction E-76.

Permanent Restoration Phase

Once the facility has been reopened and the emergency is over, any further work to restore or improve the facility is no longer exempted from the requirements for certification prior to advertising or obtaining bids. Restoration projects must follow the procedures outlined in this chapter. See LAPG Chapter 11: Emergency Relief, for further discussion.

Right of Way Certification Form - Discussion

In order to assist the LPA in completing the certification form, the following explanations are provided for each of the items, which appear on the certification. For additional information, see Chapter 14: Right of Way Certification of the Caltrans Right of Way Manual.

Status of Required Right of Way

All new property rights required for a project must be included in the R/W Certification. This includes any interests in real property that lie outside of the existing R/W boundary lines, as well as regular parcels acquired by deed, Final Orders of Condemnation, and Orders for Possession. It also includes temporary interests such as Rights of Entry (see Rights of Entry below), construction or access easements, permits to enter during construction (including any Caltrans encroachment permits), or licenses. It is important to include the expiration date of any temporary rights in the certification, so that they may be evaluated in terms of the construction schedule.

Rights of Entry

The use of Rights of Entry is limited to emergency and exceptional situations only and require approval from the Region/District R/W Local Programs Coordinator with the facts justifying the proposed action.

In accordance with Caltrans policy and 49 CFR 24.102(j), funds must be made available to the property owner for their withdrawal and use prior to the owner surrendering possession of their property. Owners must acknowledge they have been advised of their right to receive immediate compensation and have waived that right, agreeing to be compensated at a later date with interest. LPAs must also deposit funds into escrow prior to obtaining possession. A Right of Entry allows an agency representative to enter someone's property for a specific purpose at a specified time. Only in emergency and/or exceptional situations when the LPA would normally acquire the needed interest, but the owner cannot or will not provide an executed R/W contract, shall use of a right of entry be considered. An acceptable form/format for Right of Entry is the state's Agreement for Possession and Use, Exhibit 8-EX-25 of the Caltrans Right of Way Manual Exhibits. The Right of Entry will not be utilized if the project will displace people or impact improvements of a significant nature.

Status of Access Control

Access to the project must be adequate to meet the needs during construction. At the same time, access rights for persons whose property abuts on the project boundaries cannot be denied or unreasonably restricted, unless other access is available or provided to the owner during construction. If no access can be provided, the owner is entitled to compensation during the course of construction.

Status of Affected Railroad Operating Facilities

The LPA must confirm that all arrangements have been made with the railroad. If railroad-operating R/W is not within the project limits or ends two feet of the rail crossing, then none would be noted on the certification form. Railroads are considered clear for advertising when all arrangements have been made with the railroad for entry on to their property and/or for working on or near the tracks. Types of agreements that may be required include acquisition contracts for fee, easement (permanent or temporary) or Right of Entry, construction and maintenance agreements, or service contracts. Contact the railroad for specific requirements.

Railroad Involvement and Project Deliverables:

Clearance of construction projects that involve railroads consists of the following three distinct and mandatory project deliverables:

1. California Public Utilities Commission (CPUC) Application Approval of Project Railroad Plans for Final Project PS&E:

   Pursuant to Public Utilities Code sections 1201-1220, the California Public Utilities Commission (CPUC) has jurisdictional authority over all railroad crossings, including the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad, …of each crossing of a public or publicly used road or highway by a railroad or street railroad, of a street by a railroad or of a railroad by a street.

   CPUC Rule 3.9 requires submittal of an application to construct a railroad across a public road, highway or street.

2. Identification and Acquisition of Railroad Real Property Rights:

   Real property rights consist of any additional area from the railroads whether above, at, or below-grade and/or subsurface, whether temporary, permanent or otherwise, in fee, easement, or temporary construction easement. These are R/W acquisition items

separate and distinct from the agreement for physical project construction requiring compliance.

3. Obtaining an Agreement with the Railroad for Physical Construction of the Project:

   Railroad owners typically require the railroad construction activities be performed by their own forces at project cost. Therefore, an agreement to memorialize the performance of work, liability, cost, and future maintenance with the completed highway facility (such as a Construction and Maintenance Agreement) must be fully executed prior to commencement of construction. Railroad companies determine which of their facilities are operating or non-operating. The operating facilities can be affected by a construction project in several ways, each requiring different processes. Because of the time required to reach an agreement with the respective railroad companies, and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible.

   Early discussions should take place with the District Right of Way Local Programs Coordinator on the specific project requirements necessary to successfully process an R/W Certification. Please refer to Chapter 8, Section 8.69.00 of the Caltrans Right of Way Manual (Acquisitions – Railroads) for a detailed discussion on this topic.

Material and Disposal Sites

When projects involve the excavation or importation of soils and other materials to or from a material and/or disposal site, separate agreements providing for the use of the sites, the owner's name, and the duration of the agreement must be listed.

Note: Typically, on LPA projects, there is excess material, which the contractor disposes of as part of the contract. The disposal site is not a project need. Under these circumstances, in completing the R/W Certification, "no" should be the response. Only when a separate disposal site is necessary as a part of the project should the "yes" answer be given.

Utility Relocation

It is the LPA's responsibility to provide for the relocation, protection, or removal of all private and public utility facilities which conflict with the construction of the proposed project. It is necessary to reach agreement concerning: (1) the date by which the relocation will be completed, (2) the financial liability for the relocation costs with each of the utility companies having facilities within the project area or that are affected in some way by the project, and (3) who will perform the utility relocation work.

Note: 23 CFR 635.309(b) requires utility arrangements to be completed prior to project construction except where it is determined such work is not feasible or practical. Federal participation in the utility relocation costs is a R/W issue and not a construction matter, even if the relocation will occur during construction. A separate Authorization Approval must be received prior to any utility relocation. LAPM Chapter 14: Utility Relocation provides a detailed discussion of the specific authorization requirements and approval process.

Right of Way Clearance

The preliminary investigations included in the field review will reveal the presence of any improvements or physical obstructions that must be removed prior to construction. Care should

be taken in arranging for the removal of these items in order to properly coordinate with the construction schedule.

Airspace Agreements

Airspace right of way use agreements are revenue-producing agreements for parcels within (above or below) the operating R/W. When subsequent projects are proposed, which affect the airspace areas or pose a problem for the Lessee's use of the site, the agreement must be terminated, modified, suspended, or cancelled, according to the subject area's specific agreement terms. Care must be taken in drafting an airspace agreement to ensure there is language in the lease addressing lease termination, modification, suspension, and/or cancellation due to either temporary or permanent project impacts. It is recommended that Lessor negotiate a lease where Lessee-incurred costs due to temporary or permanent project impacts are the responsibility of the Lessee. Any Lessee-incurred costs paid by Lessor due to agreement termination, modification, suspension, or cancellation because of temporary or permanent project impacts shall not be federally reimbursable. Any arrangements for the Lessee's relocation must be coordinated according to the agreement terms prior to certifying the project.

Compliance with the Relocation Assistance Program

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects which are funded in whole or in part with federal money. Among the benefits the Uniform Act provides are relocation payments for residential displaced persons and for businesses, farms, and nonprofit organizations. The Uniform Act also provides certain protections, such as requiring the availability of replacement housing for residential displaced persons, minimum standards for such housing, and assurances that displaced persons have sufficient time in which to choose their replacement properties. Finally, the Uniform Act provides for certain advisory services for displaced persons. Each of these legal requirements must be satisfied and then addressed in the R/W Certification.

Environmental Mitigation

When an approved NEPA document includes mitigation commitments involving the acquisition of property, a list of those commitments along with the date each parcel is expected to be acquired, must be listed on the R/W Certification. While wetland and floodplain mitigation is mainly the responsibility of the project engineer and their environmental staff and/or consultant, the mitigation measures involving the acquisition of property to accommodate replacement wetlands is the responsibility of the LPA. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the LPA project engineer, District Right of Way Engineer, and District Environmental staff collaborate closely on the acquisition of mitigation parcels and the subsequent implementation of mitigation measures.

Acceptance of Right of Way Certification

When there are R/W issues involved, the LPA will certify that the issues have been resolved. Because LPAs are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the certification must be certain that the proper R/W procedures have been followed and that the requirements of the Uniform Act have been met. All LPAs may certify their own projects but it is of crucial importance to adhere to state and federal standards, so that the federal funds for the project will not be jeopardized. This emphasizes the gravity for non-qualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the various R/W functions. Upon receipt, the District Right of Way

Local Programs Coordinator will review the certification to see that each item has been completed in compliance with federal and state laws and regulations and if applicable, the date by which the R/W will be cleared.

If all of the R/W issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted, and a signed original copy will be returned to the LPA. If there are irregularities in the certification and it cannot be accepted as submitted, the Right of Way Local Programs Coordinator will return the certification to the LPA with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications No. 1 and 2 will be accepted in the district. Conditional Certifications No. 3 and Special Certification No. 3W will be forwarded to Caltrans HQ RW&LS for review and will require FHWA approval.

13.12 Reimbursement/Fiscal Policy

This section contains critical requirements and basic principles relating to the eligibility of R/W transactions for federal reimbursement. From this overview, the LPA should be able to understand the overall federal and state requirements. Detailed procedures are found in LAPM Chapter 5: Invoicing.

Reimbursement Process Overview – Caltrans

Caltrans receives federal funds on a reimbursement basis. This means Caltrans must first obtain an Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

a. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, Approval to Proceed which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.

b. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the federal funding limit shown on previous agreements.

c. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.

d. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans has billed FHWA for all expenses, it sends vouchering documents to FHWA and closes out the project.

Project costs incurred prior to approval of the E-76 are ineligible for federal reimbursement. Charges incurred for eligible costs after the E-76 is signed are federally reimbursable. Actual federal reimbursement is not made until an E-76 is approved and executed. If there is no Program Supplement or an award package for construction, no reimbursement will be given even if the E-76 is approved and executed. Progress payments can be made during the R/W phase. Upon completion of a project, Caltrans may audit the charges and close out the project. If the LPA wants federal participation for a Hardship or Protection parcel, federal approval must

be obtained in advance of the NEPA compliance. If approval is not obtained, the LPA should be aware that the acquisition must still comply with the Uniform Act in order to be eligible for federal reimbursement for other project costs.

Reporting Costs

FHWA has approved the Caltrans Cost Accounting and Cost Coding Systems. FHWA has agreed as to which Caltrans activities and expenditures are eligible for reimbursement for each phase of work. These agreements are incorporated into the Caltrans accounting system, coding instructions, and manuals to serve as a model for LPAs.

The LPA must be able to separate all costs, and code them as eligible or ineligible. Caltrans will review this breakdown to ensure only eligible costs are reimbursed.

R/W costs are recorded in the Caltrans Accounting System in the following two categories:

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those R/W costs necessary to acquire and clear R/W for the construction of the project. All Capital Outlay costs must be charged to a specific project. In order to meet the FHWA requirements, Capital R/W costs must be documented in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits and income and expense relating to sale of improvements.

Incidental costs include personnel and operating expenses of the R/W functions, which produce the Capital Outlay payments. The term Incidental Cost is used by FHWA, and Support Cost is used by Caltrans. A federal project number is assigned to each project and must be noted on all project documents.

Progress Payments

Procedures for submitting invoices for payment are discussed at considerable length in LAPM Chapter 5: Invoicing. Reference should be made to that chapter for an explanation of these procedures and sample invoice forms.

Reimbursement of Local Public Agency's Expenditures

Reimbursement of LPA's costs on Federal-aid projects follows the same requirements as for Caltrans, State-funded projects. The major difference between State-funded and local assistance funded projects is that project expenditures for local projects are not entered initially into the Caltrans mainline accounting system. Local projects are accounted for and maintained within the LPA's project and fiscal system. The LPA is responsible for correctly identifying and segregating reimbursable costs as prescribed by federal and state requirements.

LPAs submit individual project claims to Caltrans periodically. Caltrans is responsible for obtaining reimbursement from FHWA for the LPAs. This is accomplished through the Caltrans Current Billing and Reporting System (CBARS). Project claims are entered into the Caltrans Accounting System and become part of the Current Bill submitted to FHWA. Caltrans makes payment of the funds to the LPA from the highway account, and Caltrans then receives reimbursement from FHWA through the Current Bill. Whenever possible, reimbursement for final R/W costs should be claimed at the time they are known rather than waiting for the final project costs.

Reimbursement Invoices/Progress Payment Request

Procedures for submitting invoices for payment are discussed at considerable length in LAPM Chapter 5: Invoicing; refer to LAPM Chapter 5 for an explanation of these procedures and sample invoice forms.

Salaries and Wages

Generally, salaries, wages, and related costs, (e.g., travel and per diem) are eligible for federal reimbursement when incurred by employees who directly or indirectly are working on project related activities. Reimbursable activities for the acquisition of Rights of Way are:

- Preparation of R/W maps and deeds
- Surveying pertaining to R/W engineering needs only
- Making economic studies and other related preliminary work
- Appraisal for parcel acquisition
- Review of appraisals
- Parcel negotiations
- Preparation for the trial of condemnation cases
- Management and disposition of properties acquired
- Negotiations for utility relocation
- Relocation advisory assistance activities

Operating Expenses – Project Related

Title and escrow costs are project-related capital expenses that are eligible for federal reimbursement. Direct payment to title and escrow companies should be recorded against capital outlay support EA (Phase 2). Escrow closing statements and title company billings should be retained in the project file to support costs claimed on a Progress Payment Request.

Cost Accumulation Centers

Cost accumulation centers may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was performed during the accounting period. These are small items of costs that affect several projects and may be eligible for reimbursement, but will result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

Costs of Management

The costs of management, general supervision, and other administrative support activities above the first level are usually eligible for reimbursement as indirect costs.

Final Payment/Project Completion

When the project is complete, the final request for payment must be submitted to the DLAE as part of the Final Report of Expenditures. The procedures for submitting the final invoice and other supporting documents are discussed in detail in LAPM Chapter 17: Project Completion. Included in LAPM Chapter 17 are samples of each document. The final invoice will be reviewed in the district by the DLAE prior to payment. The final invoice for R/W costs should be submitted as soon as these costs are known in order to expedite the audit of the claim and

reimbursement. The Final Report should contain final R/W maps for the project, a list of the parcels acquired for the project, and a breakdown of the R/W costs incurred.

After the final invoice is received, the Caltrans Audit Branch in Sacramento may perform an audit. An audit is done to verify that the expenses claimed for reimbursement were actually incurred, were eligible, and sufficiently documented. If exceptions are found, the LPA will be asked to justify or support the costs. Any costs which cannot be justified or supported must be declared ineligible for federal reimbursement and the LPA will be required to repay these funds.

Final Cost Adjustments

Generally, the R/W boundary lines determine the eligibility of R/W costs. Only those parcels within the R/W lines are eligible. This eligibility determination is made parcel by parcel at the time of acquisition and again when the As Built lines are known. Adjustment of eligibility of costs is necessary when the As Built lines are different from the lines at the time of acquisition. It is recommended that the LPA prepare a Parcel List (see discussion below and Exhibit 17-K, Attachment 1 - Sample Final Report) to be used as a control to assure that the accounting is complete and accurate as related to the final lines. The Parcel List will show which parcels need costs adjusted to the final R/W lines.

13.12.1 The Final Report of Right of Way Expenditures

Procedures to be followed at the completion of the project are discussed in LAPM Chapter 17: Project Completion. The discussion includes sample documents and the supporting documents to be submitted when final payment is sought, and a project is being closed out. When the project is complete, a summary of the progress payments is submitted on a Final Report of Right of Way Expenditures, Form FM 1592A (see Exhibit 17-K: Sample Report of Completion of Right of Way Expenditures). This claim should be submitted when final R/W costs are known in order to expedite the audit of the claim and reimbursement. This report is due within six months of completion of acquisition. The final Report must also include the following:

- Preparation of R/W maps and deeds
- Surveying pertaining to R/W engineering needs only
- Making economic studies and other related preliminary work
- Appraisal for parcel acquisition
- Review of appraisals
- Parcel negotiations
- Preparation for the trial of condemnation cases
- Management and disposition of properties acquired
- Negotiations for utility relocation
- Relocation advisory assistance activities

The total participating costs should equal the Participating Costs to Date as shown on the Final Progress Payment Request (Form FM 1592A).

Final Vouchering

The last phase of a Federal-aid participating project is the final vouchering and closing of the project. This step is very important. After the project has been completed, a final voucher must

be prepared and submitted to FHWA as an E-76 by the Division of Accounting. The final voucher is a segregated summary of the project's total costs and a determination of the final federal share. Caltrans Division of Accounting uses the LPA's Final Report as the basis for the final voucher. The Final Report of R/W Expenditures must follow the Detail Estimate submitted to FHWA.

Record Retention

Per 23 CFR 710.201(e), the acquiring agency must maintain adequate records of its acquisition and property management activities.

1. Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR 24. These records shall be retained at least 3 years from the later of either:
    i. The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or
    ii. The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under Section 710.501.
2. Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized R/W use agreements for real property acquired with Title 23 funds or incorporated into a program or project that received Title 23 funding.

Note: All documents and papers related to the project must carry the Federal-aid project number for identification. Additionally, since these records are subject to Public Records Act requests at any time, it is highly recommended and prudent to keep these records digitally or otherwise beyond the 3-year minimum. Per 2 CFR 200.334(c), records must be kept until agency disposal of the facility.

13.12.2 Federal Policies Specifically Related to the Reimbursement of R/W Costs

The R/W lines determine the eligibility of R/W acquisition costs. Generally, costs for parcels inside the R/W lines are eligible; those outside are ineligible. However, there are some exceptions to the general rule that must be dealt with on an individual basis (e.g., an improvement which needs to be removed would be eligible for reimbursement). The following are current federal policies that are to be used for claiming R/W costs for federal reimbursement.

Acquisitions

Federal participation in R/W costs requires prior authorization from FHWA. In order to obtain this authorization, it is necessary to identify the acquisition costs, and the phase for which authorization is being requested. Costs to be reimbursed with federal funds for eligible parcel acquisition reimbursement, initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by FHWA. 23 CFR 710.203(a)(3) provides specific preliminary acquisition activities that can occur under the preliminary engineering phase.

The following describes the three basic parcel types as related to the proposed R/W line:

- A Core Parcel is one which is acquired in its entirety (full acquisition) whether or not the parcel lies entirely within the proposed R/W lines.

- An Excess Parcel is that portion of a property not within the R/W lines that is acquired, even though it is not needed for construction or maintenance of the highway facility. In some cases, the acquisition costs for excess parcels may be eligible for reimbursement (23 CFR 710.203(b)(7)).
- A Non-Core Parcel is one which is not required in its entirety (partial acquisition) leaving the grantor with ownership of an adjacent remainder.

Federal-aid authorization/agreement is required for both Full Acquisition and Partial Acquisition.

Acquisition of Uneconomic Remnants

If prior FHWA approval has been secured, federal funds can participate in the acquisition costs of uneconomic remnants.

Acquisition of Property Specifically for Exchange

Acquisition of property specifically for exchange occurs where the agency agrees to obtain property for the grantor in exchange for the required R/W. This occurs primarily in connection with public utilities or other public agencies where substitute property is acquired by the LPA to replace property required for the project. Both properties must be appraised. The costs of such acquisition are chargeable directly to the R/W Capital Outlay EA. This type of acquisition is treated as acquisition of replacement property. Without prior federal approval, reimbursement cannot be obtained.

Functional Replacement

This involves the replacement of real property in public ownership, either lands or facilities, or both, acquired for a highway project with other lands or facilities which will provide equivalent utility. FHWA has specific procedures, which must be followed, and requirements, which must be met if the costs for a functional replacement property are to be reimbursed. These procedures are discussed in 23 CFR 710.509. For additional information, see Chapter 7: Appraisals and Chapter 8: Acquisitions of the Caltrans Right of Way Manual.

Condemnation Deposits and Interest Thereon

The amounts deposited in court in connection with the condemnation of a parcel are reimbursable. Subsequent progress billings must account for differences between the original amount deposited and the amount of the final settlement or award.

When settlements include interest, such interest payments can only be claimed for federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days, if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of an award in excess of the original deposit from the date of the original deposit until date of settlement or award. If court procedures prevent immediate delivery of the excess amount due following settlement or award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the LPA has appealed an award. Federal participation is not allowed in interest costs based on appraised fair market value of the property, when a Right of Entry has been secured except in cases of unusual circumstances and with prior approval of the FHWA.

Interest on amount of award over the deposit is an eligible expense with certain limits. Interest is not eligible for federal reimbursement for nonparticipating costs such as acquired excess land, goodwill awards, or awarded defendant court costs.

Klopping

Klopping Damages (frustrated development rights) are always ineligible costs. The only damages that are eligible are those created by the before and after values to the remaining property.

Goodwill

Awards or settlements involving loss of goodwill, interest on goodwill, and defendant's costs in a goodwill action are all now eligible for federal reimbursement. Costs to appraise goodwill and/or try a goodwill action are also eligible for reimbursement.

Personal Property

As a general rule, costs for the purchase of personal property are ineligible for federal reimbursement. An exception would be where it is necessary to acquire the furniture of a furnished apartment.

Defendant's Costs in Connection with Condemnation Action

Federal participation is not allowed when the LPA, found to be noncompliant, is ordered to pay for the costs of a property owner's attorney fees, appraiser fees, expert witness fees or similar costs which are incurred by the property owner in connection with acquisition of R/W, through condemnation proceedings or awarded as court costs in litigated cases.

Utility Relocation

The following must exist for reimbursement of utility relocation costs and/or to be eligible for reimbursement:

- An E-76 for Preliminary Engineering – Utility must be approved before any preliminary utility design work is commenced.
- An E-76 for Utility Alternate Procedure together with a list of every utility company's facility to be adjusted and the best available estimate of the cost involved must be approved before any relocation work can commence for any of the affected utility facilities. See 23 CFR, 645.119(e)(2).
- An FHWA Specific Authorization (Exhibit 14-C) must be approved by Caltrans for each utility relocation listed on the E-76 before any relocation construction work can commence. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner (NTO) and other documentation as outlined in Chapter 13: Utility Relocation of the Caltrans Right of Way Manual and LAPM Chapter 14: Utility Relocation.
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from FHWA.
- Immediately after Caltrans approves the Utility Agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the LPA with fully itemized billings.

- Costs must be identified in each Utility Agreement.

Demolition and Clearance

The federal government will participate in demolition costs of improvements on or within the R/W lines, provided the improvements involved are demolished subsequent to the authorization date of the project. This can occur regardless of whether or not the federal government participated in the cost of acquisition of the improvements. If federal funds did not participate in acquisition, then demolition must be separately authorized. The federal government may also participate in clearance and demolition costs on improvements on a parcel outside the R/W lines as long as the parcel was acquired solely for an exchange and is eligible for federal participation. When a demolition contract includes improvements not eligible for participation, a separate bid item should be established in the bid proposal for the ineligible improvements so that the costs may be segregated. When improvements purchased with federal participation are sold for salvage, federal funds are to be credited with the proceeds of the sale. It should be stressed that whenever possible, improvements should be sold with the excess land rather than demolished to provide an income rather than incur an expense.

Relocation Assistance Program

Federal and state laws require that relocation assistance be provided to any person, household, business, farm, or nonprofit organization displaced because of the acquisition of real property by a public entity for public use. Basically, there are two programs:

- The Relocation Advisory Assistance Program, which aids in locating suitable replacement properties.
- The Relocation Payments Program, which provides payments for certain costs in relocating.

LPAs must comply where federal funds are to be used for the acquisition or construction for the proposed project. The Relocation Assistance Program (RAP) is a complex program and will not be covered here. Chapter 10 of the Caltrans Right of Way Manual provides detailed instructions on eligibility.

Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of R/W that lies outside the established R/W line and is not needed for the construction or maintenance of the highway facility. The only exceptions are the acquisition of property for replacement housing purposes according to 49 CFR 24.404(c)(1)(vi), and the acquisition of property specifically for the purpose of exchange with another governmental agency to establish uniform right of way lines or utility company to relocate outside out of the right of way lines. LPAs should talk with their Right of Way Liaison regarding following the provisions for last resort housing purposes in replacement housing situations and must assure that the situation had been addressed in the project NEPA document.

The disposal of excess land is accomplished in the following number of ways: competitive bid sales, direct sales to adjoining owners for properties not appropriate for public auction, fair market value exchanges, or incorporation into the R/W, or inclusion into the right of way under a new project. Federal funds cannot be used for the purchase of any property not incorporated into the project, with the exception of purchases of uneconomic remnant as determined by the appraiser.

Sales of Excess - Damages

Federal regulations require that sales of excess properties shall be at fair market value. FHWA prior approval is required for all disposals of right of way within the interstate. Further, disposals of any property with Federal-aid at less than fair market rate must be approved by FHWA. Disposals at less than fair market for other public uses, such as parks, must include a reversionary clause in the deed if the property is used for any other such purposes other than what it what originally sold for (23 CFR 710.409(d)).

LPAs will not request federal reimbursement moneys on the acquisition of excess parcels, but in the rare instances where federal participation is involved in excess acquisition (such as the purchase of an uneconomic remnant), the subsequent sale or disposal of the parcel may not require the LPA to return a portion of the proceeds to FHWA. However, the proceeds of the sale must be used for subsequent Title 23 U.S.C eligible projects. The LPA's accounting procedures must be able to track these Title 23 funds.

On Federal-aid projects, damages (actual and reasonable selling or fix-up expenses) may be claimed by the LPA to FHWA for reimbursement under the following conditions:

- Excess must have been acquired in connection with the project and with federal participation in R/W costs authorized for the parcel.
- Per Caltrans DLA policy, excess exchange or sale transaction must occur within two years after opening the roadway to traffic, or within two years after submitting the final voucher to the FHWA (whichever is earlier).
- Excess exchange or sale transaction must involve the complete disposal of the entire parcel. Interim transactions, such as sale or exchange of a portion of the parcel or sale of improvements should be noted for ultimate determination of total gain or loss.
- LPA receives less than the fair market value of the excess when the excess is sold or exchanged (such as property being converted to a park or an eminent domain action), as approved by FHWA prior to disposal.

Exchange Transactions

When LPA-owned land is exchanged for other land to be incorporated into the R/W of a Federal-aid project, all lands exchanged shall be at fair market value as determined by a qualified appraiser and confirmed by review appraisal in conformance with the Uniform Act policies and procedures. The value of the exchanged agency owned land may be applied toward the non-federal match share on the project. However, federal participation will not exceed the federal share of the fair market value of the land being acquired.

Note: FHWA involvement will be during the acquisition of an exchanged parcel and the disposal of the exchanged parcel.

The accounting requirements to record the exchange transaction involve consideration of the following:

- The Phase 9 or R/W EA is charged for the market value of the R/W acquired.
- Damages on the exchange of the excess may be claimed if the LPA receives less than the exchanged land's fair market value, such as a property being used as a public park or through eminent domain action.

- Federal reimbursement for the market value of exchanged, cash, and construction features may not exceed the total market value of the R/W parcel being purchased.

Excess Parcels need not have been acquired on a Federal-aid project to allow reimbursement of market value. However, in order to receive severance damages reimbursement (including selling costs), LPAs may only claim the costs of the sale on parcels that federal aid was used to acquire.

Right of Way Sales Credits

Excess Land sales credits are due to FHWA when R/W bought with federal funds are sold on the rare occasion where there is an alignment change and property may be declared to be excess. The following time limits apply:

If excess R/W results from an alignment change:

- Excess should be disposed of before final vouchering of the project or no later than two years from the time the highway is opened to traffic, whichever is earlier.
- An extension of time limits can be granted by the FHWA.
- If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.
- If within ten years of the modification or termination action the resulting excess property is neither sold, nor reused on another federal project, then the FHWA must receive credit for the market value of the property at the end of ten years. If the parcel is on a terminated project, prior federal approval is required for disposal (CCP §1245.245).
- When crediting federal funds is required, the cost of the disposition may be offset against the sales price.
- Except for parcels on the Interstate program, the disposal of excess resulting from a project's termination is treated the same as any other disposal. The parcel can then be used for another highway project without giving a credit to FHWA.
- The net proceeds of the sales credit should be shown on the Progress Payment requests as credit to the project's capital costs. This procedure reduces acquisition costs and payment due to the LPA.

Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction may be available for rent. FHWA participates in rental income and property management expenses if the property was acquired with federal funds.

Rental account records must be maintained to record income and direct expenses identifiable to a parcel. Eligible property management costs include costs such as repairs to a rental unit, activities of a rental agent, or advertising. Any rental income or expense apportioned to a property's excess portion is ineligible for federal participation. The federal share of net rental

income should be shown on the Progress Payment Requests as a credit to the project, or a deduction from any payment due to the LPA. The LPA should separate costs incurred to collect rent on a parcel-by-parcel basis, and then offset the costs against the actual rent collected.

Accounting records must be maintained for the disposition of improvements. Net income from the sale of improvements, except those on excess land, is shown as a credit to the project. In

rare instances, improvements on right of way are disposed through the excess disposal process. Cost of the sale of improvements within the R/W is considered an expense that is a debit item and may be applied to gross sales proceeds. These credits are considered an acquisition expense and not a property management/disposal expense.

13.13 Terms and Definitions

Access Rights – The right of ingress and/or egress to and from a property which abuts on an existing street or highway. Access rights cannot be denied or unreasonably be restricted, unless other access is available. If it is not, compensation is paid for this restriction of access.

Advanced Acquisition – The acquisition of property by the LPA temporarily using their own funds prior to NEPA approval of the environmental document. To be eligible for future federal reimbursement, R/W activities must have been performed in accordance with all federal/state guidelines and the property acquired must be included in the R/W for the project. The two types of Advance Acquisition are Hardship and Protection.

Bundle of Rights – Ownership of real property includes many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, and the right of transfer by contract for a specific period of time. It is also referred to as the benefits to be derived by the occupancy and use of the real estate.

Damages – The loss in the value of the remainder in a partial acquisition of a property.

Dedication – Pursuant to the police power of government, this involves the setting aside of property for public use without compensation as a condition precedent to the granting of a permit, license, or zoning variance by a local governmental agency. The property owner must initiate contact with the LPA for a request to develop before the LPA can proceed with dedication requirements.

Donation – The voluntary conveyance of real property without compensation which may be utilized for an improvement project. Donations of future R/W can only be accepted if the offer to donate is done voluntarily by the property owner who is advised of the right to receive an appraisal but signs a written waiver of the right to be compensated. R/W that is donated for Federal-aid transportation projects must also comply with the provisions of NEPA, even if no other R/W or rights in real property are required for the project.

Easement – The right or privilege to use real property (including access rights) is distinct from the ownership of real property.

Eminent Domain – The inherent power reserved by government to acquire private property rights by due process of law when the necessity arises. When exercising this right, two basic requirements must be met: the use must be public, and just compensation must be paid to the owner prior to taking possession of the property.

Environmental Mitigation – Measure necessary to mitigate adverse impacts resulting from a Federal-aid transportation project. Mitigation must represent a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. Mitigation measures typically assist in compliance with federal statutes (example: Federal Endangered Species Act), Executive Orders (example: E.O. 11990 Protection of Wetlands, E.O. 11998 Protection of Floodplains) or Administrative regulation or policy. In some instances mitigation will require the acquisition of alternate sites to replace wildlife habitat or wetlands, or by building sound walls for noise attenuation.

Excess – Property acquired for a project but which is in excess of the R/W requirements. Excess is created when there is a design change or when additional property was acquired to avoid an uneconomic remnant. Whenever there is federal participation in R/W acquisition, any subsequent decertification and ensuing disposal (sale or trade) of the newly created excess land requires FHWA's prior approval.

Fee Simple – An absolute ownership without limitations or restrictions but subject to the inherent powers of government; namely, eminent domain, escheat, police power, and taxation.

Hardship – A situation where unusual personal circumstances not shared by others (example; financial, or health) accrue to an owner of property and are aggravated or perpetuated by the pending project and can only be resolved by early acquisition of the property by the agency.

Protection – A situation where substantial building activity or appreciation of vacant land value is likely to occur and early acquisition by the agency is needed to prevent development of the site and avoid higher acquisition, relocation, or construction costs in the future.

Note: Hardship and Protection acquisitions must comply with the Uniform Act, Title VI of the Civil Rights Act, and 49 CFR 24. LPAs must ensure all R/W activities comply with these criteria to avoid jeopardizing federal participation in subsequent project costs.

Hazardous Materials/Waste – A material is hazardous if it poses a threat to human health or the environment. The term hazardous waste is applicable to storage, deposit, or contamination, involving a hazardous material which has escaped or has been abandoned. It can be defined in general terms as any of the following:

- Flammable
- Reactive (subject to spontaneous explosion or fire) substances
- Corrosive/Toxic

Regulations require all toxic substances be removed in accordance with applicable environmental laws prior to a public project proceeding to construction.

Highway Easement – A right or rights granted or acquired for the construction, maintenance, and operation of a highway, which does not transfer fee title.

Inverse Condemnation – The legal process initiated by a property owner to claim compensation for the taking of, or damages to, his property as a result of a public project.

Just Compensation – The offer amount an agency establishes prior to the initiation of negotiations. The amount must not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

Market Value – The California Code of Civil Procedure Section 1263.320 defines Fair Market Value of property acquired as:

a. The highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and a buyer being ready, willing and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is adaptable and available.

b. The fair market value for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Negotiation – The process of communication whereby an agreement is arrived at for the voluntary transfer of ownership at terms mutually acceptable to all parties of interest.

Partial Acquisition – The taking of only a part of a property for public use under the power of eminent domain and for which just compensation must be paid, offsetting the damages and/or special benefits to the remaining property.

Permit to Enter and Construct/Construction Permit – Used when temporary rights are needed to perform work solely for the owner's benefit. These documents provide no permanent rights to the LPA (and the rights would not be condemned). Permits to Enter would also be used to collect data for hazardous waste or soil analysis and for environmental analysis. It is possible to make payment for a Permit to Enter, when appropriate.

Real Estate – Refers to the physical land and appurtenances including structures affixed thereto.

Relocation Assistance – The process by which a government agency meets the legal requirements for providing relocation services, moving cost payments, increased costs to find and acquire replacement property for all eligible individuals, families, and business displaced by a project. (Not to be confused with relocation of utilities).

Remainder – Property remaining in possession of the owner after a partial acquisition.

Required Right of Way – Any interests in real property required for the project that lay outside the existing R/W line. Includes any requirements from state or LPA-owned excess land, land purchased for other projects, and land purchased by other agencies.

Right of Entry – A document used to obtain permission to enter and perform some activity prior to the effective date of an R/W Contract or an Order for Possession. It must not be used to certify control of R/W for the project, except in emergency situations only. Solicitation of Rights of Entry prior to the appraisal process should be restricted to circumstances, which are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. In all instances when a Right of Entry is secured, the document must explain the provisions for use, disposal, amount, and the time period (see Rights of Entry in Section 13.11: Right of Way Certification Form Discussion). Rights of Entry should not be confused with Temporary (Construction) Easement.

Right of Way Certification – A written statement prepared by the LPA summarizing the status of all R/W related matters with respect to a proposed construction project. An authorized Caltrans R/W representative will accept the R/W Certification.

Slope, Drainage, or Utility Easements – Easements for these purposes, covering areas which will either remain permanently under the acquiring agency control, or be relinquished, or conveyed to a utility owner by agreement.

Temporary Easement – A property right which is required for only a limited time period. On a specific date, all of the acquiring agency's interest in the area is terminated. An example is a Temporary (Construction) Easement that is used when the agency must enter a property for temporary use during construction of the project. There must be a specified time period for

which the temporary right exists which is sufficient to allow for delays in advertisement of the project and for the anticipated construction order of work.

Turnkey Consultant – A consulting firm that would be considered a Multifunctional Organization. A firm that provides the expertise in all areas of R/W (Appraisal, Acquisition, Relocation Assistance, Utilities, Property Management, Excess Lands).

Uneconomic Remnant – A remainder of land so small or irregular that it has little or no value or utility to the owner.

13.14 References

23 Code of Federal Regulations, Part 710 and 771
https://www.fhwa.dot.gov/real_estate/uniform_act/program_administration/lpa_guide/ch20.cfm

49 Code of Federal Regulations, Part 24
https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=ed0244e664c6a24e7f62848547de88f9&tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl

23 Code of Federal Regulations, 635.309
https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-C/section-635.309

Caltrans Right of Way Manual
https://dot.ca.gov/programs/right-of-way/right-of-way-manual

Standard Environmental Reference (SER)
https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser

Title VI of the 1964 Civil Rights Act
https://www.justice.gov/crt/fcs/TitleVI

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
http://www.fhwa.dot.gov/real_estate/publications/act.cfm

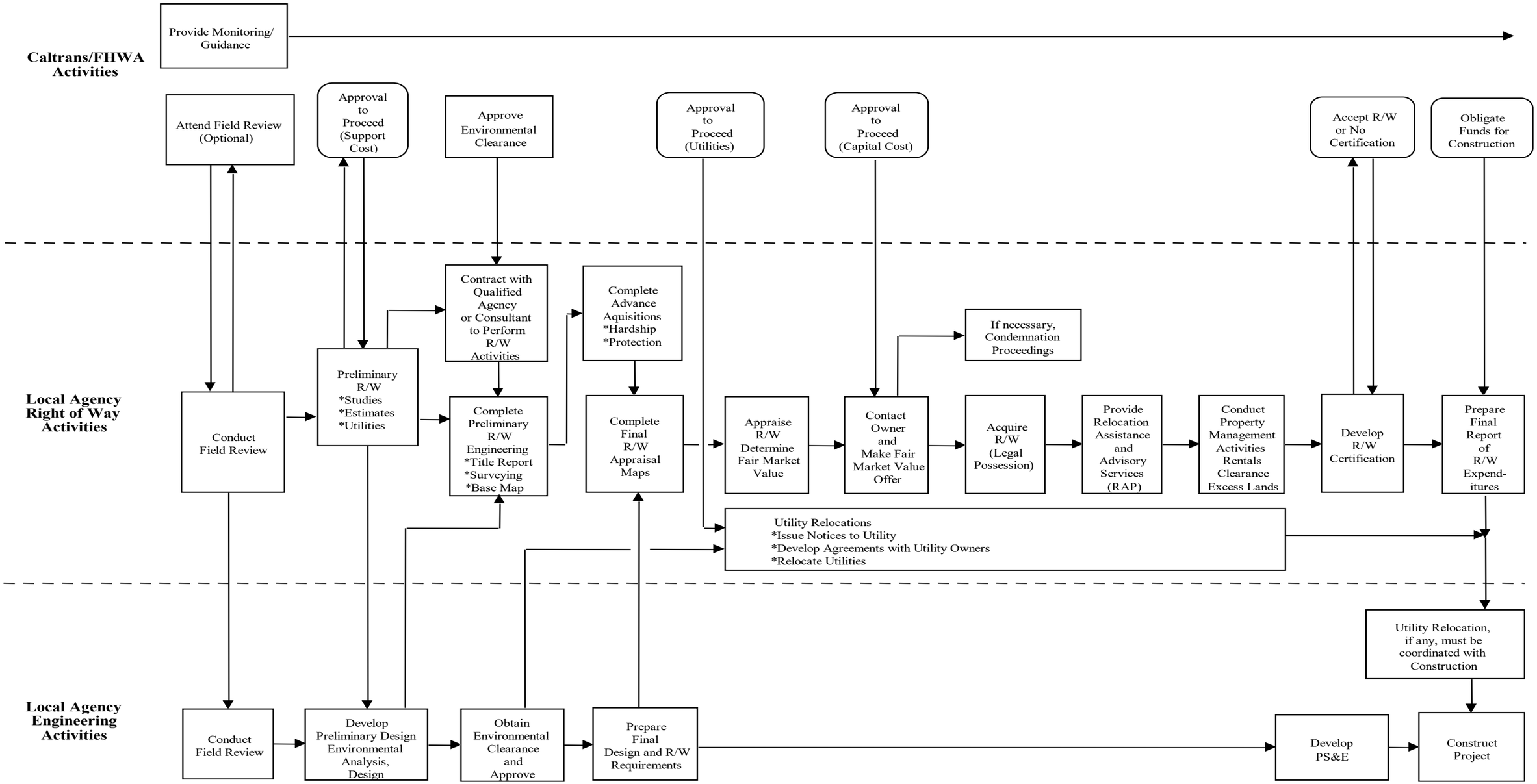


Figure 13-1: Right of Way Procedures Flowchart

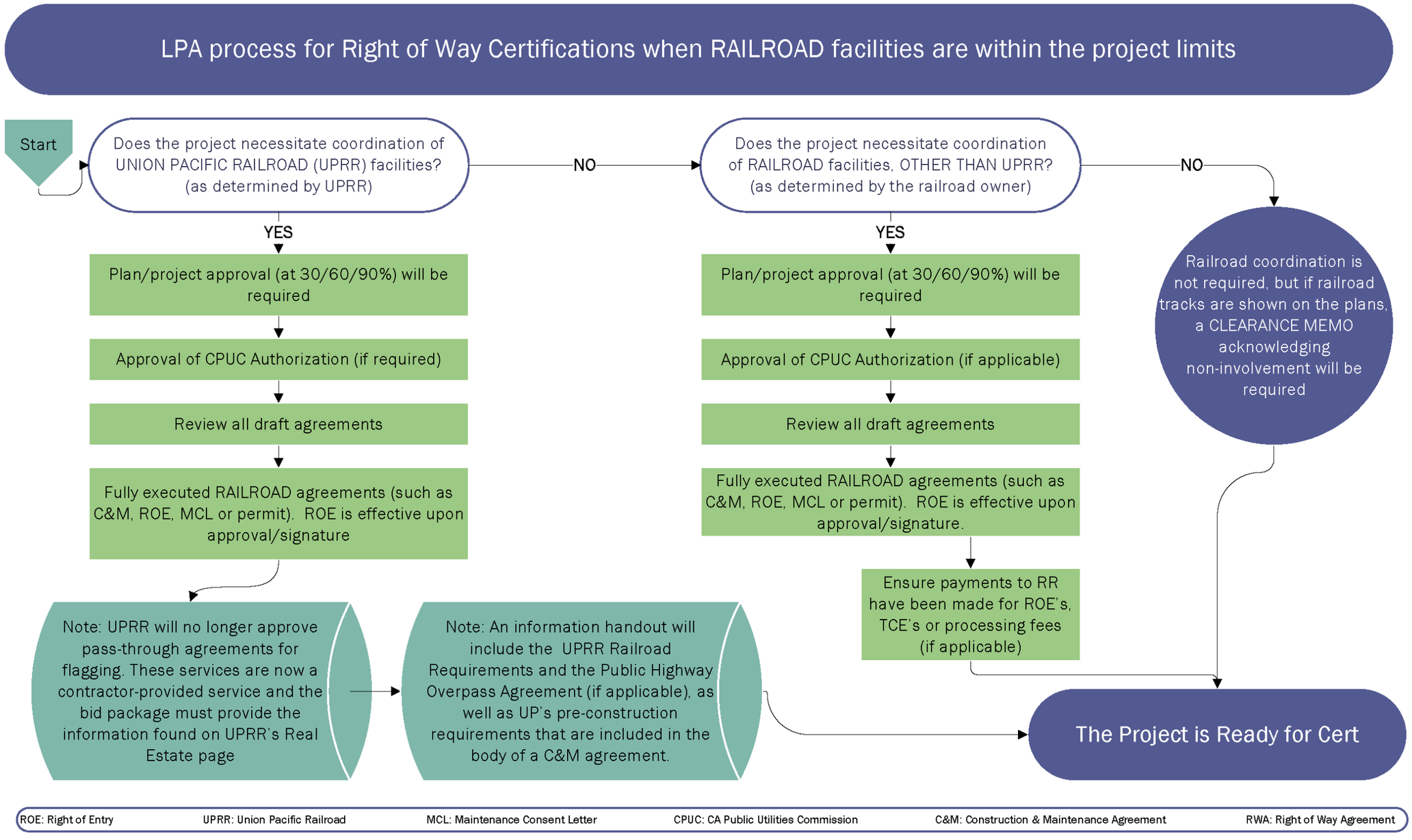


Figure 13-2: Right of Way Certifications with Railroad Facilities

Chapter 14 **Utility Relocation**

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Utility Relocation Procedures 2
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14.5 Audit Requirements 9
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Exhibit 14-A: Local Agency Submittal Requirements for Federal Participation in Utility Relocations
Exhibit 14-B: Local Agency Utility Agreement Provisions for Federal Participation
Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement
LAPM 14-D: Notice to Owner
LAPM 14-D-REV: Revised Notice to Owner
Exhibit 14-E: Report of Investigation
Exhibit 14-F: Utility Agreements
Exhibit 14-G: Utility Agreement Clauses
Exhibit 14-H: Stages of R/W Utilities through Stages of Project Development
Exhibit 14-I: Local Agency/Utility Owner Special Agreement

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

EXECUTIVE SUMMARY

A. Introduction

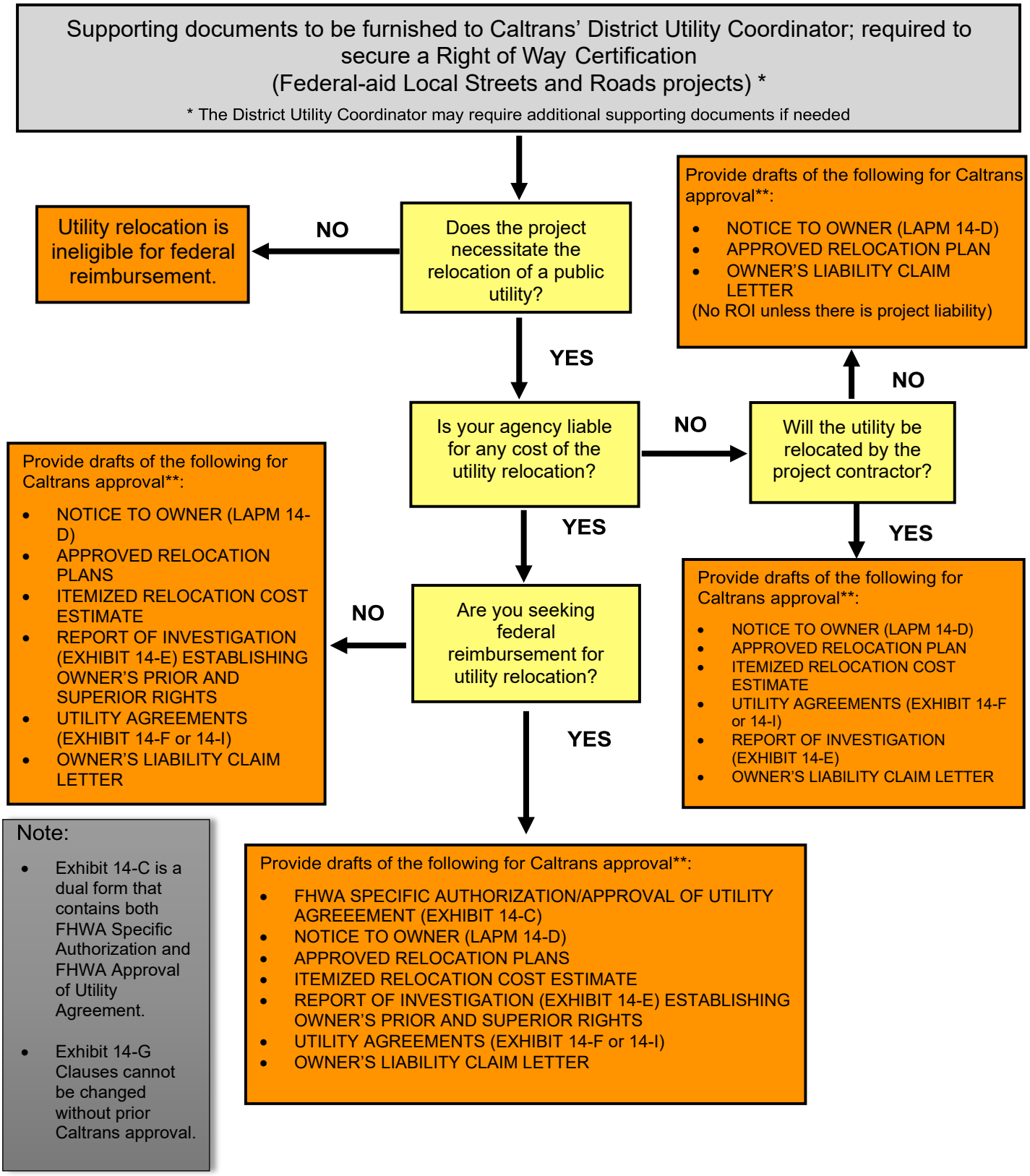
After the environmental document (NEPA) has been approved by Caltrans or FHWA, the administering agency may request an RFA for R/W and/or Utility Relocations. Utility relocations are required on most transportation projects. A conflict exists when a utility must be relocated, adjusted, protected-in-place, or abandoned as a direct result of the project. The draft (unsigned) utility package must be reviewed and approved by the District Utility Coordinator before it is furnished to the utility owner for execution.

Utility relocation work can happen before, concurrent with, or in rare circumstances after construction. The scope of work can be authorized in either the R/W phase (required if a third-party utility owner is paid) **or** when the work is performed exclusively by the project contractor, as part of the construction phase. In some cases, the reimbursable expenditure must match the project's FTIP programming. If this work is to be authorized at the construction phase, certain guidelines and conditions must be met, please contact your DLAE for details.

B. Purpose and Objective

A flowchart has been developed to assist Local Public Agencies (LPAs) successfully navigate the utility relocation process. This process must be used on all utility relocations that are performed at project expense or by the project contractor. This is the case even when no federal reimbursement is being sought for the relocation. Waiving federal reimbursement does not eliminate the need for compliance.

Although Caltrans is always available to provide guidance and support, it is the sole responsibility of the administering agency to understand and comply with federally mandated utility relocation requirements. More in-depth utility relocation guidance is outlined in the remainder of this chapter.



** All submitted documents are in draft format except for the approved relocation plans

Figure 14-1: Utility Relocation Document Submission Process

Chapter 14 **Utility Relocation**

14.1 Introduction

The procedures in this chapter have been designed to comply with Federal Highway Administration (FHWA) regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the Local Public Agency (LPA) when performing R/W utility relocations on projects outside of the State Highway System (SHS) and financed with federal funds.

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through R/W Acquisition under Cost to Cure (23 CFR 710.203), and Uniform Act (49 CFR 24: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted Programs).

Forms and exhibits referenced in this chapter are to provide the LPA with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The LPA has the option to modify the format of these forms or to use its own forms. However, the LPA's own forms must satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require review and approval by Caltrans Headquarters Utilities Relocation office and Caltrans Headquarters Legal Department on a case-by-case basis. For convenience, the Exhibits referenced within may be utilized for off or on-system projects.

Any Federal-aid project that involves any R/W utility relocations must be accomplished in accordance with the Utility and Buy America Procedures described in the Caltrans Right of Way Manual, Chapter 13.

Adjustment of utility covers (manhole cover, water valve cover, and box lids) to grade are considered utility relocations and said work must be compliant with all terms and conditions including Buy America requirements.

The following manuals are available online at:

- Right of Way Manual: https://dot.ca.gov/programs/right-of-way/right-of-way-manual
- Encroachment Permits Manual: https://dot.ca.gov/programs/traffic-operations/ep/ep-manual

14.2 Terms and Definitions

Public Utility Facilities – Publicly and privately owned utility facilities, which serve the public.

Impacted Utility Facility – A public utility facility that has been identified in conflict with the proposed activity of a transportation project.

Utility Relocation – Any adjustment to the impacted utility facility required by the proposed transportation project.

Owner – Utility company, municipal utility department, who owns the impacted facility.

Utility Coordinator – LPA's person who acts as a liaison with owners.

District R/W Utility Coordinator – District Right of Way Utility Coordinator assigned to this project.

Conflict Resolution Plan (Relocation Plan) – Plan from owner to resolve the conflict with activity of a transportation project. This plan should clearly define scope of work and the duration of construction.

Claim Letter – Owner's liability determination along with supporting documentations. It is the owner's responsibility to support their claim.

Unanticipated Utility Relocation – Unforeseen, or discovery utility relocation as a result of accident or incomplete utility verification/conflict identification.

Prior Rights – The LPA will bear relocation costs for facilities installed within an easement area. The LPA must determine that the utility facility existing in the deed is, in fact, in the area of the recorded easement area by comparing the facility location with easement deed description. A replacement easement deed will need to be prepared and recorded by the LPA.

Utility Relocation Procedures

The following steps have been modeled after the Caltrans Right of Way Utility Relocation procedures. These activities are performed in different stages of project development (see Exhibit 14-H: Stages of R/W Utilities through Stages of Project Development) to ensure proper and complete utility clearance prior to R/W Certification.

This procedure is designed to identify utility conflicts early in the design stage. It provides the Project Engineer with an opportunity to evaluate the proposed plan and make adjustments to avoid or lessen the impact on existing utility facilities. Thus, it reduces utility relocation cost, saves time, and prevents discovery conflicts during construction.

Note: It is strongly recommended that each LPA adopt and follow these procedures:

Utility Verification

- In the early phase of the Design process, the Utility Coordinator sends a proposed project plan to owner and request for owners' facility map(s) of any facility located within project limits.
- Utility Coordinator forwards owners' map(s) to the Project Engineer. The Project Engineer plots all existing facilities onto UTILITY SHEET (Refer to Caltrans Design's Standard Plan or American Society of Civil Engineers, Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data).

Identifying Conflict

- Project Engineer identifies all impacted utility and potholing facilities within project limits.
- Provide conflict maps for each impacted facility to the Utility Coordinator.

Requesting Conflict Resolution Plan

(This step would be done only after National Environmental Policy Act approval).

- Utility Coordinator contacts and informs the owner(s) of the conflict(s), requests conflict resolution plan(s), detail cost estimate(s), and owner's liability determination.
- When the above items are received from owner(s), the Utility Coordinator will forward the plan(s) to the Project Engineer for approval.

Liability Determination

After the conflict resolution plan(s) is approved by the Project Engineer, a liability determination must be made to determine whether the LPA is legally liable for any portion or all of the relocation cost(s). See Chapter 13: Utility Relocation, Section 13.04.00 of the Caltrans Right of Way Manual for guidance.

- Liability can be determined by property rights, franchise rights/ agreements, state and local statutes/ordinances, permits, or finding by the LPA's counsel.
- Complete Exhibit 14-E: Report of Investigation (ROI). The ROI is a document that determines the LPA's liability for relocation costs.
- The cost of relocating such facilities is eligible for federal participation:
  a. Only when the relocation is made necessary by the proposed construction.
  b. Only when the LPA is legally liable to pay for any portion of the relocation.

The Utility Coordinator must send a proposed copy of the ROI, Notice to Owner (NTO), and Utility Agreement to the District Local Assistance Engineer (DLAE) and District Right of Way Utility Coordinator for review and approval, prior to sending out to owner.

Note: For state highway projects, the LPA must ensure that all utility relocations and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department of Transportation (Caltrans) and a utility owner will also obligate the LPA in such circumstances.

Notifying Owner

- After the conflict resolution plan is approved and liability is determined, the Utility Coordinator must seek concurrence from the owner in case the liability determination is different from owner's claim letter.
- Once the owner concurs with the liability (this is referred to as Meeting of the Minds), the Utility Coordinator will issue a written NTO (see LAPM 14-D: Notice to Owner) to the owner. The LPA must make all necessary arrangements with owners of the affected utility facilities for their relocations.
- The NTO will clearly define the impacted facility, owner's conflict resolution plan number and date, estimated completion date, and liabilities.
- The LPA must provide all other necessary permit(s) related to the relocation to the owner prior to the commencing of work**.** Only when any ordered work is located within the SHS, a Caltrans Encroachment Permit is required. The Utility Coordinator can request the permit through the District Right of Way Utility Coordinator.
- If the LPA is liable for any portion of the relocation, a Utility Agreement (see Exhibit 14-F: Utility Agreements and Exhibit 14-G: Utility Agreement Clauses) will also be prepared and sent to the owner along with the NTO. Utility Agreements are required for all projects with LPA liability.
- The LPA's liability portion and authority to pay for the relocation must be clearly cited in its Utility Agreement and in the liability section of the NTO.

Note: For freeway projects, state policy and procedure take precedence for cost liability determination even where relocation work to support or accommodate the project may take place outside of the State's R/W.

Right of Way Utility Clearance Memo

- Once all utility conflicts have been resolved, the Project Engineer and the Utility Coordinator will issue a Utility Clearance Memo that clearly lists all conflicts, locations, the NTO numbers and issued date, liability, and estimated completion date.
- The information on this memo will be incorporated into the R/W Certification.

Managing the Physical Relocation

- Prior to any physical relocation work being commenced, the Project Engineer and Utility Coordinator must make sure all agreements have been executed, Specific Authorization/Approval of Utility Agreement has been approved (if federal funding is sought), and funding has been secured.
- The Project Engineer and Utility Coordinator must monitor the progress and verify that the relocation has been carried out according to the conflict resolution plan and schedule.

Managing Relocation Invoices

- The Utility Coordinator will process utility relocation invoices for reimbursement in accordance with the procedures described in LAPM Chapter 5: Invoicing.
- The Project Engineer and Utility Coordinator must make sure the owner provides credit when applicable, for salvage value, betterment, and all supporting documents are attached to the invoice.

Utility Records Keeping

The Utility Coordinator will create a Utility File for each impacted facility. These records will be retained by the LPA as required by FHWA regulations.

Section 23 CFR 645.119(c)(1)(iv), Alternate Procedure Approval requires documentation of actions taken in compliance with State and federal policies. All engineering decisions affecting the utility relocation from the beginning of planning to the completion of the relocation and billing, should be documented in the LPA's Utility File diary.

It is essential that documented field verification of the progress and completion of all reimbursable utility work be provided by the LPA. This required documentation is met by the use of detailed inspector's diaries or their equivalent.

If the LPA wishes not to request federal participation for the utility relocation work on projects off the SHS, even though they will be requesting federal participation in other R/W activities and/or the construction phases of the project, they must comply with FHWA's regulations. Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan must follow all Code of Federal Regulations as well as 23 CFR 645. The LPA must provide the proposed utility relocation plan to the DLAE for forwarding to the District R/W Utility Coordinator for review so that proper R/W certification on utility relocation matters may be given prior to construction.

14.3 Federal Reimbursement

Federal regulations governing utility relocation are described extensively in 23 CFR 645. LPAs should be familiar with these regulations. The following procedures are based on the above-mentioned and other federal regulations, which must be followed when the LPA requests federal participation in a utility relocation:

Under the current federal transportation funding act and the FHWA Alternate Procedure process (23 CFR 645.119), E-76 utility relocation work has been delegated to Caltrans on Delegated projects for full review oversight requirements by FHWA (see LAPM Chapter 2: Roles and Responsibilities). Caltrans also has approval authority for Specific Authorization and Approval of the Utility Agreement.

The Utility Coordinator will send all submissions to the District Right of Way Utility Coordinator for review and approval.

The following items must be included in the request for review and approval by Caltrans:

1. Copy of draft and final Notice to Owner
2. Draft and final fully executed Utility Agreement
3. Draft and final approved owner's conflict resolution plan showing the necessary relocations
4. The completed Report of Investigation and any supporting documents
5. An itemized estimate of the LPA's relocation costs

Such review typically takes three weeks. Submission must be sent in advance of the proposed R/W Certification date. The DLAE is not responsible for delays due to an incomplete or erroneous relocation package. All documents must be approved by Caltrans.

Note: If federal funds are not participating in utility relocation, then items 1 through 5 above **still apply**. However, neither Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement nor an E-76 is needed for said utility relocation, since the LPA is not seeking federal reimbursement.

Anticipated Utility Relocation

To apply and qualify for federal reimbursement, the following steps must be followed:

Authorization to Proceed (E-76)

Prior to the start of any physical utility relocation work, the LPA must complete LAPM 3-A: Project Authorization/Adjustment Request where all anticipated utility facilities requiring relocation will be listed with an estimated cost to relocate each facility.

The E-76 request must be submitted to the DLAE, who will forward the request to the District Right of Way Utility Coordinator for review and comment. The E-76 request form will then be processed by the DLAE.

Specific Authorization to Relocate Utilities

In addition to LAPM 3-A: Project Authorization/Adjustment Request, and prior to commencement of any physical relocation, the LPA must also request and receive Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement form (for each utility relocation). Exhibit 14-C must also be attached to the R/W certification whether the utility relocation

happens before or during construction or if done by the utility owner/utility owner's contractor or the LPA's highway contractor. Either the utility owner or the construction contractor may perform all or portions of the utility facility relocation for which Specific Authorization approval is requested.

Note: Exhibit 14-C is a dual form, containing both the FHWA Specific Authorization to Relocate Utilities and FHWA Approval of Utility Agreement.

1. Work by Utility Owner or Owner's Contractor

If the relocations are to be performed by the utility owner and federal participation is requested, Exhibit 7-B: Field Review Form should include the item with sufficient detail to allow programming of the work in the R/W phase for approval by FHWA under a Utility Agreement.

Note: Prevailing Wages are required for any work performed by Owner's contractor (Labor Code Section 1720).

2. Work by Local Public Agency's Highway Contractor

If the relocations are to be performed during the construction phase by the LPA's highway contractor, the work should be included in the Plans, Specifications and Estimate (PS&E). The LPA must also add the following statement to the Remarks section of Exhibit 14-C:

> "The proposed adjustment of utility facilities to be performed by the LPA's highway contractor is approved. Payment for the utility adjustment will be vouchered through the construction phase. Therefore, the authorization date for this work will be the date that the FHWA approves the construction project."

The LPA must attach a copy of the approved Specific Authorization to the R/W Certification submittal. Utility relocation costs may be included in the highway contract as a bid item, as supplemental work, or as a contract change order, and financed from funds in the construction work authorization.

In the event a major change in scope of work and/or relocation cost is found to be necessary, a revised Specific Authorization to Relocate Utilities must be immediately submitted for authorization prior to the new work being commenced.

Any minor change that does not include changes in scope of the work, addition or deletion of the proposed conflict resolution plan, may be submitted in a letter to Caltrans describing the change including revised maps and estimate, and requesting that the change be included under the original authorization.

Approval of Utility Agreement

The LPA must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. This approval authority has been delegated to the Caltrans Division of Right of Way and Land Surveys by FHWA. Such review and approval typically takes three weeks if the LPA used the pre-approved utility clause from Exhibit 14-G: Utility Agreement Clause. For LPA-owned utilities, the appropriate agreement and clauses for the LPA to use are found in Exhibit 14-I: Local Agency/Utility Owner Special Agreement.

Upon approval, Caltrans will provide the LPA with Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement for each Utility Agreement. Any exceptions to the approval will be noted in writing on the Remarks section of the form, and the LPA will be

requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that an agreement will be reached on all such items prior to any physical work commencement to avoid the loss of eligibility.

It is strongly recommended that the standard Exhibit 14-G: Utility Agreement Clauses should be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Office of Utilities and Caltrans Headquarters Legal review and recommendation before the Utility Agreement can be executed; non-standard language request form is available in the Caltrans Right of Way Manual, Chapter 13. When applicable, the following items should be shown in the itemized estimate(s) of the relocation costs.

Credits

- FHWA Regulations (23 CFR 645.117(h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.
- FHWA Regulations (23 CFR 645.117(h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

  Note: For projects on the State Highway System, state law (Section 705 of the California Streets and Highways Code) requires that utility owners itemize, estimate, and invoice for utility relocation to show a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the LPA, they must be properly listed on the invoice and deducted from the total Federal-aid reimbursement amount.

Removal Only

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as a R/W clearance item and invoicing for federal reimbursement in that fashion. If processed as a R/W clearance activity, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- The LPA must enter into an agreement with the owner providing for the removal of the facility. In support of the invoice for federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost-effective than the LPA buying the facilities and having them removed by some other method.
- Where legitimate removal without replacement charges is included in a utility owner's invoice and the LPA has not arranged to receive a credit for salvage (see above), the charges may be invoiced for federal reimbursement only when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner's records available for audit as noted in the Utility Agreement (48 CFR 31).

Using Right of Way Clearance Contract

Where utility relocation work is performed by the LPA under an R/W clearance contract, a conformed copy of the executed contract must be forwarded to the DLAE before submitting an invoice for federal reimbursement.

Using Consultants

When the LPA or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation, and federal participation is involved, the procedures in LAPM Chapter 10: Consultant Selection must apply. The consultant agreement must satisfy the criteria specified in Chapter 13, Section 14 of the Caltrans Right of Way Manual, including a completed pre-award evaluation, if applicable. These steps must be performed by the LPA early in the process to avoid loss of eligibility.

Non-reimbursable

FHWA regulations prohibit federal reimbursement for costs of interest during construction or interest on funds borrowed by the owner for performing the relocation.

Unanticipated Utility Relocation

After the normal period to apply for Specific Authorization to Relocate Utilities has expired and an unanticipated utility relocation is encountered, the Utility Coordinator must immediately notify the DLAE and request a Special Authorization to Relocate Utilities. The approved environmental documents may also need to be re-evaluated depending on the scope of the utility relocation. The Special Authorization to Relocate Utilities is reserved for those cases where required work could not be identified in time to secure normal authorization, or when the contractor's operations will be delayed. The LPA must provide a statement with full explanation of the special circumstances for the request. Requests for Special Authorization to Relocate Utilities must be based on substantial reasons.

Special Authorization to Relocate Utilities for discovered work must be upgraded by the LPA to full Specific Authorization status before the LPA submits an invoice for reimbursement.

Special Authorizations

There are two types of Special Authorization to Relocate Utilities: 1) written and 2) verbal. Both written and verbal Special Authorization to Relocate Utilities are Preliminary Authorization. The request will be reviewed and approved on a case-by-case basis. No utility work may begin before Special Authorization to Relocate Utilities is obtained or risk the eligibility for reimbursement.

The submittal for either written or verbal Special Authorization to Relocate Utilities request must contain:

- Reason for special Preliminary Authorization
- Name of the owner, type of facility, as they are listed in the E-76
- Best available liability determination, including documentation such as an ROI
- Best available itemized cost and estimate
- Breakdown of time, material, and equipment costs
- Relocation plan showing the R/W, access control, existing and proposed utility facility
- The name of the entity who will perform the work (if the utility owner's contractor will be performing the work, explain how the contractor was selected)

Written Authorization

If a written Special Authorization to Relocate Utilities is obtained, a complete request package (Exhibit 14-A: Local Agency Submittal Requirements for Federal Participation in Utility Relocations) must be submitted to the DLAE within 30 days. The DLAE will forward the request package to the District Right of Way Utility Coordinator for review and approval.

The approval should contain a statement that the District Right of Way Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring Special Authorization to Relocate Utilities.

Verbal Authorization

Verbal Special Authorization to Proceed may be requested, if during construction a previously unknown utility conflict is discovered that will delay the contractor. Verbal Special Authorization to Proceed may be obtained from the District Right of Way Utility Coordinator (via the DLAE) by telephone or fax. The District Right of Way Utility Coordinator will confirm each verbal authorization via letter to the LPA's Project Engineer. Such confirmation letters must be issued within five working days or sooner, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

If Verbal Special Authorization to Proceed is obtained, the LPA must furnish a written submittal to the DLAE confirming the information and containing a fully documented relocation plan. This must be accomplished within 30 days. An appropriate diary of decisions and discussions must be maintained.

14.4 Utility Facilities

The Caltrans Encroachments and Utilities Policy requires all high priority facilities located within project limits be positively identified and shown on project plans within highway R/W.

For federally funded participating projects off the SHS, compliance with the state's Encroachments and Utilities Policy is not mandatory. This policy must be followed to ensure the maximum safety during construction of the project.

Note: For projects on the SHS: All LPA projects on the SHS must conform to the state's Encroachments and Utilities Policy within Highway R/W. See Caltrans Project Development Procedures Manual (PDPM), Chapter 17. A copy of the policy may be obtained from Caltrans Division of Design. It is also available at: https://dot.ca.gov/-/media/dot-media/programs/design/documents/pdpm-chapters.pdf#page=489.

When performing R/W Utility Relocation on a state highway project, the LPA's Project Engineer must complete the Project Engineer's Certification of Utility Facilities and submit it as an attachment to the project certification, as required by the policy.

14.5 Audit Requirements

The Utility Coordinator is responsible for submitting a request for any applicable audits as described in LAPM Chapter 5: Invoicing (Section 5.8).

Note: For projects on the SHS, refer to Chapter 13 of the Caltrans Right of Way Manual, and discuss with the District Right of Way Utility Coordinator.

14.6 References

23 Code of Federal Regulations (CFR) 645
http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0645a.htm

48 Code of Federal Regulations (CFR), Chapter 1, Part 31
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title48/48cfr31_main_02.tpl

California Streets and Highways Code, Sections 702, 703, 705, and 706
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=SHC&division=1.&title=&part=&chapter=3.&article=2.5.

Caltrans Encroachment Permits Manual
https://dot.ca.gov/programs/traffic-operations/ep/ep-manual

Caltrans Project Development Procedures Manual, Appendix LL, Utilities
https://dot.ca.gov/programs/design/manual-project-development-procedures-manual-pdpm

Caltrans Right of Way Manual
https://dot.ca.gov/programs/right-of-way/right-of-way-manual

Code of Civil Procedure, Section 1268.350
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=7.&part=3.&chapter=11.&article=4.

Government Code, Section 53630
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=4.&article=2.

Water Code Sections 7034 and 7035
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=WAT&division=4.&title=&part=&chapter=3.&article=

Chapter 15 **Advertise and Award Project**

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Exhibit 15-H: DBE Information - Good Faith Efforts
Exhibit 15-I: Local Agency Bid Opening Checklist
Exhibit 15-L: Contract Award Checklist
Exhibit 15-M: Detail Estimate

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 15 **Advertise and Award Project**

15.1 Introduction

LAPM Chapter 15, LAPM Chapter 16: Administer Construction Contract, and LAPM Chapter 17: Project Completion are for use by Local Public Agencies (LPAs) who administer Federal-aid construction projects under an Administering Agency-State Agreement. When a locally sponsored project is within the State Right of Way (R/W) and the State (Caltrans) is the administering agency, the State's Construction Manual is used.

This chapter covers the activities beginning with advertising of a construction contract and continuing through the bid opening, award, and detail estimate procedures. It has been prepared mainly as a guide for administration of Federal-aid contracts by LPAs. Each LPA Resident Engineer (RE) should be familiar with the contents of this chapter, LAPM Chapter 16: Administer Construction Contract, and LAPM Chapter 17: Project Completion before administering such contracts.

This step can only start once the Environmental, Design, and R/W work for the Federal-aid project is complete and the LPA is ready to hire a contractor.

15.2 Approval for LPA to Administer Projects

15.2.1 Significant NHS Projects

Caltrans must approve the LPA's construction administration procedures before the LPA can advertise the construction of a federally financed significant NHS project; see LAPM Chapter 7: Field Review for the determination by the District Local Assistant Engineer (DLAE) of which NHS projects will be considered significant. The procedures should be discussed in general at the field review and detailed written procedures must be approved by the DLAE before the LPA will be allowed to administer any construction contracts for the project. Additionally, the LPA must not advertise the project until it has received in writing an Authorization to Proceed with construction from Caltrans (see LAPM Chapter 3: Project Authorization).

The written construction administration procedures should cover the following items:

- Construction Management personnel and procedures
- Consultant use and selection
- Employee in Responsible Charge
- Project advertisement, bid opening and award procedures
- Pre-Construction procedures
- Subcontracting
- Traffic Safety procedures
- Materials Testing
- Change order review and approval procedures
- Oversight procedures if a state highway is involved
- Maintenance of records and access
- Estimates and Progress Payment

The DLAE will consult with HQ DLA for assistance with the review and approval of the LPA procedures.

15.2.2 All Other Projects

Approval by Caltrans of the LPA's construction administration procedures will not be required for all other projects. However, each LPA that administers a Federal-aid construction project will be required to complete Exhibit 15-A: Local Agency Construction Contract Administration Checklist before their Request for Authorization to Proceed with Construction will be approved. The LPA must not advertise a project until it has received in writing an Authorization to Proceed with construction from Caltrans (see LAPM Chapter 3: Project Authorization).

15.3 Project Advertisement

One of the most basic tenets of Federal-aid contracting is that construction contracts are to be awarded competitively to the contractor which submits the lowest responsive bid. Project advertisement is the process used in soliciting such competitive bids from contractors. This federal mandate is set forth in 23 U.S.C.112 and reinforced by 23 CFR 635.114(a) which states: "Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA." These principles are the basis for federal assistance to the state highway construction programs.

On locally administered projects, the construction engineering is performed by LPA personnel, unless arrangements are made to hire a consultant. If a consultant is used, the LPA must still designate an employee of the agency as the person in responsible charge of the project.

Construction engineering for locally administered projects must be performed in accordance with the requirements found in LAPM Chapter 16: Administer Construction Contract.

The LPA and all of its contractors, subcontractors, and vendors must take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts and provide language access to Limited English Proficiency (LEP) individuals under Title VI of the Civil Rights Acts of 1964 prohibiting discrimination based on national origin (see LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises).

WARNING

Projects must not be advertised for bids, nor any project work (by contract or other than contract) be undertaken, and no materials be purchased on any Federal-aid project, prior to issuance of Authorization to Proceed by FHWA. Violation of this requirement will result in the project being ineligible for federal funding.

The only exception to this requirement is for emergency relief projects involving emergency repair/opening of a facility. For more information on emergency relief projects see LAPG Chapter 11: Emergency Relief.

Advertising and award costs may be charged to the preliminary engineering or construction engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

15.3.1 Prequalification of Contractors

The Federal Highway Administration (FHWA) permits the use of a prequalified list of Prime Contractors developed by the LPA, in accordance with 23 CFR 635.110(a). The use of a prequalification list and process is optional and not required. Prequalification should not be used to restrict competition or discourage otherwise responsible bidders from submitting a bid.

If the LPA wishes to utilize such a prequalification process on Federal-aid projects, advance approval must be granted by the FHWA Division Administrator (California Division) for use on Federal-aid projects. As such, the LPA would submit a package to their DLAE that would include an overview of their proposed process with timelines, the typical Responsibility Statement and Questionnaire that prospective Contractors would be submitting, and the criteria by which prospective Contractors would be evaluated for inclusion on the prequalified list.

Per 23 CFR 635.110(b), no procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors must be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the State or locally designated area wherein the work is to be performed.

It is particularly important that if a prequalification process is used on a given project, enough time is allowed between the initial advertising and the bid opening to allow a prospective bidder a reasonable opportunity to attain their prequalification (if not already prequalified).

Nationwide, the use of a contractor prequalification process typically consists of one of two basic methods:

1. Contractors are prequalified on a project-by-project basis. In such a case, LPAs may set their own threshold for when (which projects) the prequalification process is used – for example a project over a certain dollar amount, or for a project that is particularly time sensitive, etc.
2. Contractors are prequalified on a programmatic basis, in which a prospective Contractor may apply to become prequalified for a finite time period – usually one or two years – with provisions for renewal (of that prequalification) before or after that time period has elapsed. Once prequalified, such Contractors would be eligible to bid on any project for that LPA during that active period in which they are deemed prequalified.

The administration of a project-specific (Item 1 above) Contractor prequalification process is eligible for federal participation, as long as it can be directly attributed to a specific federal project or projects for which the prequalification process will be utilized. This work would be invoiced against either the Preliminary Engineering (PE) phase, or if occurring on a specific project after the Federal authorization (E-76) is received for Construction/Construction Engineering, the Construction Engineering (CE) phase of work. LPAs should consult with their DLAE staff regarding federal participation for contractor prequalification.

For further information and discussion on prequalification of bidders, see the AASHTO publication on Suggested Guidelines for Strengthening Bidding and Contract Procedures.

15.3.2 Procedures

Upon receipt of Authorization to Proceed for construction from Caltrans, the LPA can proceed to advertise the project. LPAs should complete and retain Exhibit 15-C: Project Advertising Checklist in the project files prior to advertisement.

During the advertising period, the LPA must notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of Federal-aid contracts, the LPA is required to certify that all bidders certify receipt of all addenda. The LPA must ensure free and open competition. The advertisement period is determined by the LPA. A minimum advertisement period of three weeks is required for all Federal-aid projects. Caltrans DLAE may approve shorter periods in special cases where justified with a LPA's Exhibit 12-F: Cost – Effectiveness/Public Interest Finding. The advertising period begins with publication of a Notice to Contractors. Advertisement in a newspaper receiving wide local circulation, technical publications of widespread circulation, contractor/professional associations and societies, recognized DBE organizations, web hosting or clearinghouses known for posting government contract solicitations such as BidSync, and/or posting on the LPA's or other widely used social media/websites are all acceptable methods of solicitation. The Notice must identify the DBE goal. The LPA is responsible to approve and issue all addenda to the PS&E during the advertising period.

The LPA must assure that all updated estimates are fundable from available local or federal resources.

Upon advertising of the project, the LPA must furnish the DLAE with an electronic copy of the as-advertised construction contract (including plans and special provisions).

15.3.3 Federal Wage Rate Determinations

For contracts entered pursuant to competitive bidding procedures, LPAs must monitor the federal wage rate determinations to determine if federal prevailing wage rates have been modified from the time of initial advertisement to 10 calendar days prior to bid opening. If federal prevailing wage rates are modified, LPAs are required to issue an addendum to incorporate the modified version of the federal prevailing wage rates into the contract.

LPAs are also required to monitor federal wage rate determinations up until bid opening. If federal prevailing wage rates are modified, LPAs are required to either issue an addendum to incorporate the modified version of the federal prevailing wage rates to the contract or document in the project files that there is not a reasonable time still available before bid opening to notify bidders of the revision.

The federal prevailing wage rates must be physically attached to the executed contract signed by the LPA and the contractor on all Federal-aid construction projects exceeding $2,000 and to all related subcontracts (regardless of tier or subcontract size). Projects located on roads classified as local roads or rural minor collectors may be exempt from this requirement.

If the contract is not awarded within 90 calendar days of bid opening, the LPA must insert the most current federal prevailing wage rates into the contract.

15.4 Contract Bid Opening

The contract bid opening is a public forum for the announcement of all bids and is that point in time where the bids are opened and read aloud. It is also the last moment that bids can be accepted. No bids can be accepted during or after bids are opened. Normally the

advertisement/bid documents will state a final time in which bids can be accepted. For bidders, the reading of the bids confirms whether their bid is successful. For the LPA and the general public, this forum establishes the cost to build the project. The bid opening requirements as outlined below apply to all Federal-aid highway construction projects.

15.4.1 Requirements

FHWA policy requires all bids to be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced. The LPA may also post the bids in a timely manner at a location accessible to the general public, such as on the LPA's web page while noting the reason for not reading them aloud.

Reasons for not reading a bid include the bid itself being nonresponsive, often called irregular or the bidder is determined to be unreliable. Responsive bid and responsible bidder are defined as:

> A Responsive bid is one that meets all the requirements of the advertisement and proposal, meaning all bid-related paperwork or electronic forms are completed and signed. A Responsible bidder is one who is physically organized and equipped with the financial ability to undertake and complete the contract. A Responsible bidder is also one that is not suspended or debarred, or whose business ethics have not been otherwise determined to be inadequate.

Among the reasons a bid may be considered non-responsive and be precluded from reading are:

- Failure to sign the bid, not signing the bid in ink, or not supplying a valid electronic signature where electronic bidding is used.
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a completed addenda certification statement
- Failure to submit a non-collusion affidavit
- Failure to commit to the achievement of the DBE contract goals or demonstrate good faith efforts to do so
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially and mathematically unbalanced bid
- Not meeting specified prequalification, or bonding and insurance requirements

The above examples do not include all possible bidding irregularities. The LPA's standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the LPA's bidding documents should clearly identify those requirements with which the bidder must comply to make the bid responsive.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the LPA's qualification requirements, or because of state or federal suspension/debarment action. The LPA should check to see if a contractor is suspended or debarred from federal contracts and

document in the project file that the LPA has verified that the low bidder and subcontractors have not been suspended or debarred. A publication titled "A Listing of Parties Excluded from Federal Procurement and Non-procurement Programs" is available at www.sam.gov.

Note: Contractor's Debarment and Suspension Certification is part of Exhibit 12-H: Sample Bid.

In summary, a successful bid opening should identify the responsible bidder submitting the lowest responsive bid.

15.4.2 Procedures

The LPA must follow its own procedures for bid opening, provided such procedures include:

- As bids are received, they must be logged in and stamped with the time and date.
- The bids must be retained in a secure place until the designated time and place for public opening.
- All bids received in accordance with the terms of the advertisement must be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud or posted at a location accessible to the general public, the name of the bidder and the reason for not reading the bid aloud must be publicly announced or noted at the bid opening.
- Negotiation with contractors, during the period following the opening of bids and before the award of the contract, must not be permitted.

The LPA's bidding procedures must not discriminate against any qualified bidder regardless of political boundaries. No bidder must be required to obtain a license before submitting a bid or before the bid is considered for award of a contract, which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The LPA may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with state laws. The LPA must not bid in competition with or enter into a subcontract with private contractors. As bids are received, they must be logged in and stamped with the time and date. The bids must be retained in a secure place until the designated time and place for public opening.

The LPA must retain the following completed documents for the successful bidder in the project file:

- Exhibit 15-G: Construction Contract DBE Commitment
- A list of bidders and total amounts bid with an item-by-item breakdown (see Exhibit 15-D: Bid Tabulation Summary Sheet (Sample)) of the three lowest bidders
- The Non-collusion Affidavit (see Exhibit 12-H: Sample Bid)
- Exhibit 15-I: Local Agency Bid Opening Checklist

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See Section 15.5.1: Contract Award (Bid Analysis Process) and FHWA's Guidelines on Preparing Engineer's Estimate, Bid Review and Evaluation.

The LPA must assure that all bids submitted include a completed addenda certification statement. The addenda certification statement is as follows:

Addenda – This bid is submitted with respect to the changes to the contract included in addendum number/s_ (Fill in number/s if addenda have been received).

Warning – If an addendum or addenda have been issued by the LPA and not noted above as being received by the bidder, this Bid may be rejected.

15.5 Contract Award

WARNING

Federal Authorization to Proceed must be issued prior to advertising for bids, starting any project work (by contract or other than contract), or purchasing of materials on any Federal-aid project. Violation of this requirement will result in the loss of federal funding.

The contract award is a critical milestone for all Federal-aid projects. At this point, the LPA must have a complete financial package assuring adequate funding for the project. The LPA must award Federal-aid contracts on the basis of the lowest responsive and responsible bidder. It is the LPA's responsibility to assure that all successful bidders are licensed contractors upon award of any contract incorporating state or Federal-aid funds.

15.5.1 Bid Analysis Process

The LPA should conduct a bid analysis for each project. The bid analysis is required for projects on the National Highway System (NHS). The bid analysis is the process performed to justify the award or rejection of the bids and should assure that good competition and the lowest possible cost were received. A proper bid analysis better ensures that funds are being used in the most effective manner. A bid analysis also assists the agency in preparing accurate engineering estimates on future projects.

The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of prices, other factors that a bid analysis may consider include:

- Number of bids
- Distribution or range of the bids
- Identity and geographic location of the bidders
- Urgency of the project
- Unbalancing of bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences
- Other factors as warranted

The Caltrans Contract Cost Database is available to assist LPAs in preparing accurate engineers estimates: https://sv08data.dot.ca.gov/contractcost/.

Not all the factors above need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an

unreasonable amount, a more thorough analysis should be undertaken to determine if the bids should be rejected or a justification for award of the contract can be made. To justify award of a contract under these circumstances, the following criteria should be examined:

- Was competition good?
- Is the project essential and deferral would be contrary to public interest?
- Would re-advertisement result in higher bids?
- Is there an error in the engineer's estimate?
- Is the increase within the amount programmed in the FTIP?

For NHS projects, written justification must be included in the project file for projects where the lowest responsible bidder exceeds the engineer's estimate by 10% or more. The justification should explain the reasons for the difference between the engineer's estimate and bid amount, and why it was decided to award the contract.

Regarding the adequacy of competition, FHWA's Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation outlines recommended procedures for preparing engineer's estimates and or reviewing bids prior to award. Location and availability of bidders should also be considered when determining adequacy of competition. Some projects may be so essential that deferral, even for 60 days, would not be in the public's interest. Examples of such projects might include:

- Safety projects to correct an extremely hazardous condition where the traveling public is in danger
- Emergency repairs or replacement of damaged facilities
- Projects to close substantial gaps in otherwise completed facilities to allow opening to traffic
- Projects that are critical to staged or phased construction and delay would significantly impact the completion of the whole project

Unbalanced bids are one of the factors to review in a bid analysis. The two types of unbalanced bids are as follows:

- A mathematically unbalanced bid is a bid that contains lump sum or unit bid items that do not reasonably reflect the actual costs (plus reasonable profit, overhead costs, and other indirect costs) to construct the item, and
- A materially unbalanced bid is a bid that generates reasonable doubt that award to that bidder would result in the lowest ultimate cost to the government.

To detect mathematical unbalancing, the unit bid items should be evaluated for reasonable conformance with the engineer's estimate and compared with the other bids received. There are no definitive parameters (e.g., an amount or percent of variance from the engineer's estimate) that constitute an unbalanced bid. The degree of unbalancing of a bid may depend on the reason for the unbalancing. Mathematically unbalanced bids, although not desirable, may be acceptable.

The determination of mathematically unbalanced bids may be aided by the use of one of the several computer software packages now available. However, the final decision should not preclude the use of engineering judgment. Care must also be exercised to ensure that unit bids for mobilization do not mask unbalancing. Also, token bids (i.e., bids with large variations from

the engineer's estimate) should be considered as mathematically unbalanced bids and further evaluation and other appropriate steps should be taken to protect the public interest.

There may be situations where the quantity of an item could vary due to inaccuracies in the estimating, errors in the plans, changes in site conditions or design, etc. In such situations, the bids should be further evaluated to determine if the low bidder will ultimately yield the lowest cost. If unbalancing creates reasonable doubt that award would result in the lowest ultimate cost, the bid is materially unbalanced and should be rejected or other steps should be taken to protect the public interest.

15.5.2 Award Procedures

The LPA must follow its normal procedures for award of the project and is delegated the authority to determine the lowest responsive/responsible bidder without concurrence to award by Caltrans or FHWA. Written justification must be included in the project file for all projects that are not awarded to the lowest bidder. The LPA must follow its normal procedures for award of the contract and assure that all federal requirements are followed. A bid analysis is not a requirement but is recommended. The LPA must retain the executed contract, document the award date, and the preconstruction conference minutes. The State must not participate in resolving disputes between the LPA and its bidders.

It is the responsibility of the LPA to verify with the DLAE and RTPA/MPO that the appropriate amount of federal funds is authorized before the project is awarded. Once awarded, notify the DLAE that the 'Notice to Proceed' has been given.

15.5.3 Post-Award Reviews

The LPA should conduct post-award bid evaluations to assure against bid rigging. An adequate number of projects awarded over a sufficient time period should be evaluated. A period of approximately 5 years should be selected for an initial evaluation to determine if any abnormal competitive bid patterns exist. The following information should be considered in a post-award review for abnormal bid patterns:

- Number of contract awards to a specific firm
- Project bid tabulations
- Firms that submitted a bid and later become a subcontractor on the same project
- Rotation of firms being the successful bidder
- Consistent percentage differential in the bids
- Consistent percentage of the available work in a geographic area to one firm or to several firms over a period of time
- Consistent percentage differential between the successful bid and the engineer's estimate
- Location of the successful bidder's plant versus location of the other bidders' plants
- Variations in unit bid prices submitted by a bidder on different projects in the same bid opening
- Type of work involved
- Number of plans and proposal taken out versus the number of bids submitted
- Any other items that indicate noncompetitive bidding

- On re-advertised projects, if the eventual successful bidder was also low bidder on the first letting

15.5.4 Termination of Contracts

a. All NHS contracts exceeding $10,000 must contain suitable provisions for termination by the LPA, including the manner by which the termination will be affected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor. References: 2 CFR 200 Subpart D and Appendix II; 23 CFR 635.125; 49 CFR 18

b. Prior to termination of a Federal-aid contract that is subject to FHWA Full Oversight, the LPA must consult with and receive the concurrence of the Caltrans DLAE. In addition, for all other Federal-aid contracts the LPA must notify the DLAE of the termination. The extent of Federal-aid participation in contract termination costs, including final settlement, depends on the merits of the individual case. However, under no circumstances shall federal funds participate in anticipated profit for work not performed.

c. Except as provided for in paragraph (e) of this section, normal LPA Federal-aid plans, specifications, estimates, advertising, and award procedures are to be followed when the LPA awards the contract for completion of a terminated Federal-aid contract.

d. When the LPA awards the contract for completion of a federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

   I. The amount representing the payments made under the original contract plus payments made under the new contract, or

   II. The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

e. If the surety awards a contract for completion of a defaulted Federal-aid contract, or completes it by some other acceptable means, FHWA considers the terms of the original contract in effect and that the work be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action is therefore needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

15.6 Award Package

Prior to submitting the first invoice for the construction phase, and within sixty (60) days of contract award, the LPA must forward the following information as one package to the DLAE:

- Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist
- Exhibit 15-G: Construction Contract DBE Commitment
- Exhibit 15-L: Contract Award Checklist
- Exhibit 15-M: Detail Estimate (based on award) or LAPM 3-A: Project Authorization/Adjustment Request

The DLAE will review the documents for completeness and accuracy. In addition, the DLAE will provide the project's construction contract award date and Exhibit 15-B to the Construction Oversight Engineer (COE).

The LPA's RE assigned to the project must complete and sign the Exhibit 15-B. The purpose of this checklist is to assure that the RE is familiar with the federal requirements before the construction begins. Deficiencies in contract administration procedures that cannot be corrected may result in withdrawal of federal and/or state funds from the project. If the RE is a consultant, the LPA Employee in Responsible Charge must sign the Exhibit 15-B. Exhibit 15-M or LAPM 3-A must be prepared outlining all project costs by Improvement Type Code. If the award amount is more, or significantly less than the amount estimated at the time of construction authorization, the Award Package submitted to the DLAE will be used to update the project agreements. The Authorization to Proceed (E-76) and state-issued Finance Letter will be revised to reflect updated project costs. If additional federal funds for the project's construction phase are needed, the LPA must submit written approval from the MPO/RTPA (for STBG, CMAQ, etc.) or pertinent DLA Office (for HSIP, HBP, ATP etc.) as part of the Award Package.

Note: Per 23 CFR 630.106(f)(2), the federal pro rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the LPA's estimated cost of the project (Preliminary Cost Estimate) at the time of construction authorization, provided that federal funds are available. FHWA has interpreted the term 'shortly after contract award' to be no more than 90 calendar days after the contract award date.

For future invoices involving the construction phase, the LPA must maintain the federal pro rata share as originally authorized for the construction phase, if not adjusted at award.

15.7 References

23 CFR 630
https://ecfr.io/Title-23/cfr630_main

23 CFR 635
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr635_main_02.tpl

23 U.S.C.112
https://www.govinfo.gov/app/details/USCODE-2011-title23/USCODE-2011-title23-chap1-sec112

23 U.S.C.114(a)
https://www.fhwa.dot.gov/map21/docs/title23usc.pdf

49 CFR 26
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

California Public Contract Code, Chapter 6, Section 6100
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=6100

California Public Contract Code Section 7106
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=7106

FHWA 1997 Contract Administration Core Curriculum
https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm

FHWA Final Report Process Review on Competition in Bidding and Engineer's Estimate Review
https://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm

US DOT/US Dept. of Justice, Suggestions for the Detection and Prevention of Construction Contract Bid Rigging
https://www.fhwa.dot.gov/programadmin/contracts/dotjbid.cfm

Chapter 16 **Administer Construction Contracts**

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All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 16 **Administer Construction Contracts**

16.1 Introduction

This chapter provides the procedures and guidelines Local Public Agencies (LPAs) must follow when administering the construction of Federal-aid projects. Projects with state funding may utilize this chapter where applicable. Contract administration is the comprised actions taken after a contract is awarded to obtain and document compliance with contract requirements, such as timely delivery, proper construction, dispute resolution, acceptance, payment, and closing of contract. These actions may include technical administrative and managerial support.

16.1.1 Contract Administration Delegated to Local Public Agencies

For delegated projects, the Federal Highway Administration (FHWA) has assigned the responsibility of contract administration, including construction inspection, to Caltrans. This responsibility is conveyed by Caltrans to the LPA through an E-76, which is the Authorization to Proceed executed for each Federal-aid project. For all locally administered Federal-aid projects, further delegation of responsibility is made by Caltrans to the LPA through a state/local agreement called a Master Agreement (specific to each LPA) and the program supplements (specific to each project). Delegation to the LPA is based on the following conditions:

- An employee of the LPA is in responsible charge of the project and that person is a full-time employee of the LPA
- All federal requirements are met in performance of the work
- The LPA adequately staffs and equips the project team to properly administer the contract

Such delegation does not relieve Caltrans of overall project responsibility. Caltrans will perform periodic process reviews and oversight to assure compliance.

16.1.2 LPA Procedures when Administering a Federal–Aid Construction Contract

For projects off the State Highway System (SHS), the LPA must follow the Local Assistance Procedures Manual (LAPM), most notably LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprise, LAPM Chapter 15: Advertise and Award Project, LAPM Chapter 16: Administer Construction Contracts, and LAPM Chapter 17: Project Completion.

For projects on the SHS (projects constructing permanent improvement within the State Right of Way), the LPA must follow the procedures found in the following four manuals:

- Local Agency Resident Engineer Construction Manual Supplement
- Caltrans Construction Manual (CTCM)
- Local Assistance Structure Representative Guidelines
- Bridge Construction Records and Procedures Manual, Volumes 1 and 2

Keep in mind these manuals are not contract documents; they are procedures and guidelines. In case of conflicts, the contract documents and the agency-state agreements prevail. However, if mandated Federal-aid requirements were inadvertently omitted from the contract, the LPA must amend the contracts via change order to correct the omissions.

16.1.3 Available Training for Federal-aid Construction Administration

The following courses are offered to LPA Resident Engineers (REs) and other staff through the California Local Technical Assistance Program:

- Resident Engineer Academy
- Federal-aid Series, Day 5: Federal Rules for Construction Contract Administration and Project Completion

The RE Academy introduces students to the roles and responsibilities of an RE and to the requirement of the Federal-aid program, while Day 5 of the Federal-aid Series explains the Federal-aid requirements in this chapter and LAPM Chapter 17: Project Completion. For more information visit HQ Local Assistance Training.

16.1.4 Other Available Resources

The RE has many resources to consult or request assistance in addition to the LAPM, including:

- District Local Assistance Engineer (DLAE)
- Construction Oversight Engineer (COE)
- HQ Division of Local Assistance
- Federal-aid Essentials for Local Public Agencies
- Caltrans Manuals and Guides

The CTCM is a great resource for REs, Office Engineers (OE), field inspectors, and lab testers, covering topics from change order writing, labor compliance, as well as sampling and testing; Chapter 4: Construction Details is especially helpful to those inspecting roadwork operations, providing specific activities to be completed before, during, and after construction. For structure work, the Bridge Construction Procedures Manual should be consulted.

16.1.5 Contract Administration Costs Eligible for Reimbursement

Construction engineering (CE) costs including the work of project advertising, contract administration, supervision and inspection of contract activities, measurement and payments, preparation of as-built plans, and final estimates are eligible for Federal-aid reimbursement if identified and programmed in the Authorization to Proceed. A CE cost limitation of fifteen percent (15%) of the Engineer's Estimate is highly recommended for the Federal-aid program although it is recognized that the limitation may be inappropriate for some smaller or more complex projects. Although approval is not guaranteed, support documentation including, but not limited to, a project cost breakdown, must be submitted to the DLAE for justifying project funding requests that exceed the recommended CE limitation. During the course of construction and subject to the availability of federal funding, any requests from the LPA for additional CE funds that would result in exceeding the recommended limitation must be submitted to the DLAE for review and approval. For more information on programming construction engineering see: LAPM Chapter 3: Project Authorization.

16.2 Project Supervision and Inspection

Federal statutes require that the LPA must provide a full-time employee of the LPA who is accountable for the project. This individual is the person in responsible charge of the project. For projects administered by an LPA, the person in responsible charge does not need to be an engineer. The regulations allow one employee to have responsible charge over multiple projects at the same time.

The person designated responsible in charge must be a public employee. This requirement applies even in the following cases:

- A consultant is performing the construction engineering services
- A consultant has been hired as the City Engineer or Public Works Director

16.2.1 Person in Responsible Charge Duties

The person in responsible charge performs the following duties:

- Administers inherently governmental project activities including those dealing with cost, time, adherence to contract requirements, construction quality, and scope
- Maintains familiarity of the day-to-day project operations, including project safety issues
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project
- Reviews financial processes, transactions, and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse
- Directs LPA staff and/or consultants to carry out project administration and contract oversight, including proper documentation
- Maintains awareness of the qualification assignments and on-the-job performance of LPAs and consultant staff at all stages of the project

16.2.2 Provide Adequate Project Staff

The LPA must designate a qualified engineer who is empowered to administer the construction contract, known as the Resident Engineer (RE). For projects off the SHS, the RE is not required to be registered, however, if not registered, they must be working under the supervision of a registered engineer. The LPA must furnish sufficient qualified support staff to assist the RE in, but not limited to, construction surveys, soils and foundation tests, measurement, and computation of quantities, testing of construction materials, checking shop drawings, and preparation of progress payments and reports. Additional RE responsibilities include the preparation of As-Built drawings, filing of documentation, and other inspection and staff services necessary to assure that the construction is being performed in accordance with the project plans and specifications, state, and federal laws, and with this manual. For projects with structures, a structures representative may be necessary. The LPA may employ a consultant to provide construction engineering services such as RE's, inspectors, lab testers or surveyors, however, the LPA must provide a full-time public employee to be the person who is in responsible charge.

16.2.3 Document Project Staff

List the names, titles, and contact number of all staff (LPA and hired consultants) assigned to the project performing contract administration duties, including engineers, inspectors, lab testers, office help, or others. This list should not include any contractors' staff or consultants hired by the prime contractor. Place a copy in the project files. This documentation is essential for auditors to determine the adequacy of the LPA's staffing.

16.2.4 Obtain the Designation of the Contractor's Authorized Representative

Prime contractors, including those operating in joint venture, must be required by the project specifications to designate in writing a person authorized to supervise the work and to act for the contractor on the project. The representative must be present at the jobsite while work is in progress. Both the Caltrans Standard Specifications, as well as the Greenbook, includes this requirement. Place a copy of the authorization in the project file, providing the address and after-hours contact information of the person authorized to supervise.

16.3 Maintaining Project Records

The LPA must establish a separate record file for each Federal-aid highway project. The project file must contain all data pertinent to the work and to the requirements of the specifications.

In general, project records must support the adequacy of the field supervision, inspection, and testing, conformance to contract specifications, and payments to the contractor. Generally, whenever the LPA is unable to produce requested records, it must be assumed by reviewing personnel that the required actions were never performed. Organized project files can minimize these negative assumptions.

During the construction phase, Caltrans COEs periodically perform reviews and inspection of the LPA project files for compliance with federal and state requirements. Organization and content of the project file is one indicator of the effective and efficient management of the project by the RE. It also minimizes resources necessary for conducting process reviews.

16.3.1 Organization of Project Records

The LPA must develop or adopt a filing index to be used on all Federal-aid projects administered by the LPA off the SHS. The LPA is only required to use the CT filing index for projects on the SHS. The files must be complete and well organized and should include, at a minimum, even on relatively simple projects, the topics indicated below.

Project Record Filing System - Locally Administered Federal-aid Projects

1. Award Package
   a. Exhibit 15-A: Local Agency Construction Contract Administration Checklist
   b. Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist
   c. Exhibit 15-M: Detail Estimate
   d. LAPM 3-A: Project Authorization/Adjustment Request
2. Project Personnel
   a. LPA Project Personnel Sheet (names, titles, and phone number)
   b. LPA and Contractor's Emergency Contact Information Sheet
   c. Contractor's letter designating representative authorized to act for the contractor

3. Correspondence
   a. To contractor
   b. From contractor
   c. General
4. LAPM 16-A: Weekly Statement of Working Days
5. Quality Assurance:
   a. Copy of Quality Assurance Plan
   b. Independent Assurance
      i. Certificates of Proficiency
      ii. Certification of Accreditation of Testing Lab
      iii. Equipment Calibration Verifications (Nuclear Gauge)
   c. Notice of Materials to be Used (or similar)
   d. Acceptance Testing Results with the following sub-categories for each material:
      i. Test Result Summary Log
      ii. Test Results
   e. Certificates of Compliance (Buy America certification requirements as applicable)
   f. Source Inspection records and reports
6. Engineer's Daily Reports
   a. Resident Engineer's Daily Report (LAPM 16-C2 or similar)
   b. Assistant Engineer's Daily Report (LAPM 16-C1 or similar)
   c. Structures Engineer
7. Photographs
8. Contract Item Pay Quantity Documents
   a. Quantity Calculation Sheet (or similar)
9. Change Orders (CO)
   a. CO 1
      i. Approved CO or equivalent (LPAs may use their own form or use State form CEM-4900)
      ii. CO Memorandum/Transmittal Letter or equivalent (LPAs may use their own form or use State form CEM-4903)
      iii. Written Prior Approval to Proceed
      iv. Independent Supporting Force Account Cost Calculations (if Agreed Price)
      v. Justification of time extension
      vi. Extra Work Reports
   b. CO 2, etc.

10. Progress Pay Estimates and Status of Funds
11. Labor Compliance and Equal Employment Opportunity (EEO) records
    a. Certified Payrolls
    b. LAPM 16-B: Subcontracting Request
    c. Photo Documentation of all required posters: www.fhwa.dot.gov/programadmin/contracts/poster.cfm
    d. Labor Compliance Interviews
    e. Form FHWA-1391: Federal-aid Highway Construction Contractors Annual EEO Report
12. Disadvantaged Business Enterprise (DBE) Records
    a. Exhibit 15-G: Construction Contract DBE Commitment
    b. Exhibit 15-H: DBE Information - Good Faith Efforts
    c. Exhibit 16-Z1: Monthly DBE Trucking Verification
    d. DBE termination and replacement supporting documentation (if applicable)
    e. DBE Monthly Payment documentation (Exhibit 9-F or Exhibit 9-P depending on project award date)
    f. Exhibit 17-F: Final Report - Utilization of DBE and First –Tier Subcontractor
    g. LAPM 9-J: DBE Commercially Useful Function
13. Environmental-related documents
14. Project Complete Documents
    a. LAPM 16-E: Final Materials Certification
    b. LAPM 16-F: Final Inspection Form
    c. Contract acceptance related documents and correspondence

Other sections of this chapter explain the content of the above listed file categories.

A large and complex project usually requires a more detailed record-keeping system. The record-keeping system described in Caltrans Construction Manual, Section 5-102: Organization of Project Documents, is suggested for large projects.

16.3.2 Availability of Records for Review or Audit

The record retention period is three (3) years and begins when the final voucher is submitted by Caltrans to FHWA. The files must be available at a single location for these reviews and audits. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and minimizes negative findings. Good records of all construction activities clearly demonstrate to those concerned that project supervision and control were attained on the project.

16.4 Pre-Construction Conference

For all construction projects, the LPA must schedule a pre-construction conference with the contractor.

Required Attendees

- LPA Representative
- Resident Engineer (if this is not the same person as above)
- Contractor

Possible/Recommended Attendees

- DLAE
- LPA Labor Compliance Officer
- LPA Safety Officer
- Other affected agencies (Fish and Wildlife, Parks and Rec, etc.)
- Emergency Services (Fire, Police, Ambulance, etc.)
- Public Utilities (if relocation or temporary shutdowns are required)
- FHWA Project Oversight Manager

The size, duration, and complexity of the project should be considered when determining who to invite. When an invitation is extended to Caltrans, representation will be up to the DLAE as resources allow. The LPA representatives should discuss important contract issues, submittals, as well as sanctions for non-compliance with local, state, and federal requirements.

Required Topics

- Safety
- Equal Employment Opportunity
- Labor Compliance
- Subcontracting (including required submittal of LAPM 16-B: Subcontracting Request)
- DBE
- NEPA, Permits and Environmental Mitigation Commitment requirements
- Potential Traffic or Pedestrian Handling Issues

Recommended Topics

- Progress Schedule
- Work Plans
- Quality Control/Quality Assurance
- Materials Requiring Certificates of Compliance
- Materials to be Used identified
- Materials Requiring Buy America Certificates
- Buy America De Minimis Cost requests and required documentation

- Contract Training (Apprentice) Goals
- Change Order Process
- Dispute Process
- Potential Utility Conflicts

Additional meetings may be advisable where considerable effort and time is required to cover specific areas. A written record of attendance and items discussed should be made by the administering LPA and should be kept in the project files.

16.5 Partnering

Partnering is a relationship between the LPA and the contractor, formed to effectively complete the contract to the benefit of both parties. Through trust, cooperation, and teamwork, the goal is to resolve conflicts at the lowest possible level.

Partnering is not a requirement of the Federal-aid program, but it is eligible for participation as part of the construction engineering cost. Generally, the costs are shared between the contractor and the LPA. When formal partnering is desired, the Partnering with Caltrans website is available to assist in providing specifications for the process. Informal partnering may also be beneficial and does not require contract provisions to be implemented. Keep in mind, partnering is not a substitute for a contract dispute resolution process.

16.6 Tracking Contract Time

Contract time is the maximum time allowed in the contract for completion of all work contained in the contract documents. The LPA must maintain a written record of contract time, often called the Weekly Statement of Working Days (WSWD) or Weekly Project Progress Record. The LPA is responsible for reviewing the contract time requirements, determining the controlling operation, determining if each day is a working day or non-working day, and supporting time extensions.

Documentation similar to LAPM 16-A: Weekly Statement of Working Days is an acceptable record of project progress. However, the LPA may use their own form, if the required information is recorded. Whichever form is used, as soon as possible and no later than the end of the following week, forward the original statement to the contractor and retain a copy in the project file. Most contracts give the contractor 15 days in which to protest the determinations shown on the form.

16.6.1 "Calendar" Days vs. Working Days

Contract time is specified in days or working days. In both the Greenbook and the Caltrans Specifications, a day is generally defined as every day on the calendar, regardless of weekends, holidays, or weather. Because of this, days are frequently called "calendar days." Calendar days are somewhat rare, and usually reserved for emergency projects or those projects for which weekend and holiday work is desired, for example, repairing damage from a natural disaster. For calendar day projects, the RE must still record the controlling operation and record each day as a working day. Non-working days, unless defined elsewhere in the contract, do not exist on calendar day projects and any change in the completion date requires a CO.

The definition of a working day may vary from one project to another. For example, the Caltrans Standard Specifications and the Greenbook each offer slightly different definitions of working day. In addition, project special provisions may modify any of these definitions. Therefore, before determining a day to be a working day or non-working day, it is important to understand and apply the specifications for your project, and not just assume they are the same as those from a previous project.

16.6.2 Determining the Controlling Activity

The Greenbook and the Caltrans Standard Specifications both define a working day as any day except Saturday, Sunday, and holidays, but their definitions differ when the contractor is prevented from working due to events such as weather, labor strikes, material shortages, traffic control restrictions, etc. The most significant difference is the Caltrans Standard Specifications grant a non-working day only if the controlling activity was affected.

For contracts using the Caltrans Standard Specifications, before one can determine if a day was a working day or non-working day one must know what is the controlling activity. The controlling activity is the construction activity that will extend the scheduled completion date if delayed. It is determined from the project schedule critical path. The critical path is the longest continuous chain of activities for the project that has the least amount of total float of all chains. If the progress schedule does not accurately represent current conditions, request the contractor update the progress schedule.

Note, when completing a WSWD, it is important to record the controlling activity (determined by the current schedule), not what work was performed that week (determined by the contractor), as they are not always the same.

16.6.3 Working Day vs. Non-Working Day

For contracts using the Caltrans Standard Specifications, once the controlling activity is known, the RE can make the determination if a given day should be recorded as a working day or non-working day. The WSWD must indicate the factors that affected the work, such as weather conditions, lane closure restrictions, or strikes. Based on these factors and the contract specifications, each day must be recorded as a working day or a non-working day.

It can be helpful to have a column, Working Day No Work Done on Controlling Operation, to record any working day on which no work is done on the project or on the controlling activities. If the reasons are known, note them in the Remarks. This information is useful in disputes regarding in adequate time. Further discussion of tracking contract progress and the use of LAPM 16-A: Weekly Statement of Working Days is contained in Section 3-804 of the Caltrans Construction Manual.

16.6.4 The Effects of Inclement Weather

Do not just assume that rain equals a non-working day and sun equals a working day. For projects using the Caltrans Standard Specifications, if the controlling activity is not dependent upon weather, such as concrete curing or an embankment settlement period, a working day must be charged during inclement weather.

When determining non-working days, loss of time because of inclement weather may extend beyond the period of actual inclement weather. Situations occur where no progress on the controlling activity is possible though the full crew might have worked the entire day. This may

be due to the grade being too wet to work, access to the work needing to be reestablished, or saturated material needing to be removed from the tops of slopes.

Inclement weather can be other than wet or cold weather. For instance, it may be too hot to produce concrete that meets specified temperatures. If all specified precautions have been complied and the concrete work is the controlling activity, a weather nonworking day should be granted.

16.6.5 Contract Time Extensions

Contract time extensions must have written approval by the administering agency. Generally, the approval is made by a change order for a specified number of working days. Be sure to provide justification of any time extensions in the project files, such as a Time Impact Analysis, or a detailed narrative. Failure to do so can result in loss of federal funds. Record time adjustments on the WSWD upon approval of the change order (see Section 16.10: Change Orders for more information regarding Adjustment to Time of Contract Completion).

Events which do not warrant a time extension since they are generally considered to be under the contractor's control are:

- Maintenance shutdowns
- Breakdowns
- Suspensions or stop work orders due to safety, permit, or pollution violations
- Shutdowns due to construction accidents
- Material delays

16.6.6 Liquidated Damages

If the contractor exceeds the number of construction days (working days or calendar days) specified in the contract (plus those added by CO), liquidated damages in the dollar amount specified in the contract must be deducted from monies owed to the Contractor. Failure to do so may result in loss of federal funds.

16.7 Subcontractors

Contractors can use subcontractors on their projects, provided the subcontractor and the prime contractor complies with contract requirements, state and federal laws, and regulations. All subcontracts should be in the form of a written agreement and contain all pertinent provisions and requirements of the prime contract, including all the required Federal-aid contract language. Refer to LAPM Chapter 12: Plans Specifications & Estimate for specific details of these requirements.

When projects use subcontractors, the RE must focus on:

- Knowing which subcontractors are working on the project and on which specific items they are working.
- Ensuring that the prime is using the subcontractors listed in the bid documents.
- Ensuring that the prime is performing at least 30% of the total contract work, or the % specified in the Special Provisions, whichever is greater.

- Ensuring the subcontractors listed in the bid documents are used for the work specified in the bid documents, and are not removed or replaced without prior written authorization from the RE.
- Ensuring the prime contractor does not subcontract work they are required to perform using their own forces that exceeds the threshold (more than half a percent of the total bid or $10,000 whichever is greater).

16.7.1 Approval of Subcontractors Prior to Starting Subcontracted Work

The RE has the responsibility of approving subcontractors on Federal-aid projects. In general, approval is necessary for only first-tier subcontractors. Before subcontracted work starts, the contractor must submit LAPM 16-B: Subcontracting Request for approval. This form is the first step to ensure all rules and regulations related to subcontracting on Federal-aid projects are met.

Caltrans Standard Specifications (CTSS) Section 5-1.13: Subcontracting requires the contractor to submit this form, and Section 3.3: Status of Subcontractor of the Greenbook requires this form or a facsimile. When the contract is awarded, provide the contractor blank Subcontracting Request forms. The contractor may submit them for approval any time prior to the start of a particular subcontracted item of work; there is no need to submit all subcontractors at one time. The last page of the form contains instructions for completing the form.

Upon receipt of the form, and before approving the contractor's request, complete the following:

1. Compare the Subcontracting Request to Exhibit 12-B: Bidder's List of Subcontractors (DBE & Non-DBE).
2. Compare the Subcontracting Request to Exhibit 15-G: Construction Contract DBE Commitment.
3. Confirm the prime contractor has not subcontracted work they are required to do with their own forces.
4. Verify the subcontractors are not on the Department of Industrial Relation's (DIR) debarred contractors list available at: http://www.dir.ca.gov/dlse/debar.html.

More information regarding steps one through four can be found below. Upon completing steps one to four, if the Subcontracting Request meets all the requirements, sign, and date the form and provide a copy to the contractor.

Place a copy in the project file. If the request does not meet all the requirements, request corrections or explanations and ask the contractor to resubmit.

STEP 1: Compare Subcontracting Request to the Bidder's List of Subcontractors

Requirements of the Fair Practices Act in the Bidding Process

Sections 4100 through 4114 of the Public Contract Code are called the Subletting and Subcontracting Fair Practices Act (Act) and applies to California's construction projects. The Act is designed to prevent prime contractors from bid shopping for subcontractors after bids are opened and the low bidder is known.

The Act requires that subcontracted work in excess of one-half of one percent (0.5%) of the contractor's total bid amount or $10,000, whichever is greater, must be listed in the prime contractor's bid proposal. This is accomplished when the contractor submits Exhibit 12-B.

Reviewing the Forms

Compare the Subcontractor Request submitted by the contractor with the Bidder's List of Subcontractors, looking for potential violations. Confirm that the subcontractors and the work percentages are correct.

Verify the following:

- Any subcontractor listed on the request to perform more than one-half of one percent (0.5%) of the contract or $10,000, whichever is greater, is also shown on the List of Subcontractors.
- No subcontractor is listed on the request to perform work that is shown on the List of Subcontractors to be performed by another company.

When a prime contractor fails to list a subcontractor in its bid, the law requires the prime contractor must perform the work with its own forces. The prime contractor may not add an unlisted subcontractor by requesting a substitution. Exceptions to this requirement are discussed in Public Contract Code 4107(c) and Public Contract Code 4109. Ensure the listed subcontractor performs the work, or the contractor complies with the substitution procedures in the Act.

Request the contractor make corrections and resubmit the form for approval if there are any conflicts.

Common Violations of the Subletting and Subcontracting Fair Practices Act

The following are examples of common violations of the Act by a prime contractor:

- Subcontracting additional work to a listed subcontractor where the work was not originally listed as subcontracted work, and is in excess of the threshold requirements
- Using a subcontractor not listed at bid time whose dollar value of work is in excess of the threshold
- Substituting subcontractors without the LPA's written consent
- Performing work with their own forces that the bid documents designated a subcontractor to perform

If the Prime Contractor is found to be in Violation of the Fair Practice Act

If these or any other violations occur during the work:

- The contractor must be assessed a penalty of up to 10 percent of the value of the work as defined by contract item unit prices.
- The penalty is taken as an administrative deduction.

Discuss the issue with the LPA's Labor Compliance Officer and consult Section 3-507C (4), Violations of the Subletting and Subcontracting Fair Practices Act of the Caltrans Construction Manual for direction on how to proceed. Consult the COE for additional guidance, if needed.

Substitution of a Listed Subcontractor

To replace, or substitute, a subcontractor listed in the bid documents per the Fair Practices Act, the prime contractor must submit a written request based on the reasons identified in Public Contract Code Section 4107. Examples of acceptable substitution reasons listed in the code are

insolvency, failure to furnish bonds, unlicensed, failure to pay prevailing wages, and failure to execute a subcontract.

When the prime contractor requests a substitution, review the code to determine if the reason provided by the contractor is eligible for substitution. If yes, follow the process outlined in your contract documents, or if not provided, consult Section 3-507C (2) of the Caltrans Construction Manual. The process generally requires written notice to the subcontractor by certified mail and five business days to submit a written objection to the substitution. Follow the process carefully and maintain documentation in the project files.

Hearing Process when the Subcontractor Objects to being Substituted

The intent of the substitution hearing is to give both parties the opportunity to explain to the hearing officer why a substitution should or should not occur. For details on the hearing process see CTCM Section 3-507C (3).

Accidental Listing of a Subcontractor not Required to be Listed

Occasionally, the contractor will include subcontractors on the Bidder's List of Subcontractors that the Act does not require to be listed (those doing less than the greater value of 0.5% of the contract or $10,000). In this instance, update the Subcontracting Request to identify the new subcontractor. If the subcontractor is a DBE, refer to Section 16.9 of this chapter for additional requirements.

STEP 2: Compare Subcontracting Request to the Bidder DBE Commitment Form

Code of Federal Regulations (CFR) DBE Requirements in the Bidding Process

49 CFR 26 requires that contractors take necessary and reasonable steps to ensure that DBEs have opportunity to participate in Federal-aid contracts. The contractor must make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Thus, the Required Federal-aid Contract Language stipulates that the contractor must meet the DBE goal shown in the project special provisions, or demonstrate that adequate good faith efforts were made to meet the goal. This is accomplished by the contractor's submittal of Exhibit 15-G: Construction Contract DBE Commitment, at bid time. Regardless of how the contractor's DBE commitment compares to the project's DBE goal (as documented on Exhibit 15-G) the contractor is bound to utilize all listed DBE subcontractors or suppliers. Any exceptions to this would require the contractor to pursue a substitution approval.

Common Violations of the DBE Commitment Process

The following are examples of common DBE violations by a prime contractor:

- Substituting DBE subcontractors without the LPA's written consent
- Performing work with their own forces that the bid documents designated a DBE subcontractor to perform

Compare the Subcontracting Request submitted by the contractor with the certified Bidder DBE Commitment form looking for potential violations. Verify no subcontractors are listed to perform work that should be performed by a DBE. Request the contractor make corrections and resubmit the form for approval if there are any conflicts.

If the prime contractor is found to be in violation of the DBE commitment requirements:

- The LPA does not pay for work listed on Exhibit 15-G, unless it is performed or supplied by the listed DBE or a substitute authorized in writing
- When the LPA does not pay for the work listed, the value of that work is determined by the contract bid prices, not amount of the subcontract between the prime and the sub
- The penalty is taken as an administrative deduction

If these or any other violations actually occur during the work, discuss the issue with your LPA's Labor Compliance Officer and consult Exhibit 12-G: Required Federal-aid Contract Language and Section 8-304A (2) of the Caltrans Construction Manual. You may also consult your COE for additional guidance, if needed.

Substitution of a DBE Subcontractor

To replace, also known as substitute, a DBE subcontractor, the prime contractor must submit a written request based on one or more of the 11 reasons identified in Exhibit 12-G. Examples of acceptable reasons are: insolvency, failure to furnish bonds, unlicensed, failure to execute a subcontract, failure to have a valid contractor's license, owner's death, debarment, and failure or refusal to perform.

When requesting a substitution, the prime contractor must include:

- One or more of the reasons listed in Exhibit 12-G
- A copy of the five-day notice from the prime contractor to the DBE regarding the request
- A copy of the response to the five-day notice from the DBE to the prime contractor regarding the request
- If applicable, the contractor's good faith effort documentation

The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal. Refer to Part 1e of Exhibit 12-G for the detailed substitution process. Also consult CTCM Section 8-304B (2): Disadvantaged Business Enterprise Substitutions; follow the process carefully and maintain documentation in the project files.

STEP 3: Confirm Validity of Subcontracted Work

Limits on the Amount of Work Subcontracted

CFR 635.116 requires the prime contractor perform at least 30 percent of work using the contractor's own organization. The LPA is allowed to increase this percentage through their contract specifications. A contractor's own organization includes only workers employed and paid directly by the prime contractor and who only utilize equipment owned or rented by the prime contractor, with or without operators.

Calculating the Amount of Work Subcontracted

The contractor must state on the Subcontracting Request what percentage and dollar amount of an item will be subcontracted. The RE must verify the amount. Any rational method of estimating the amount will be acceptable, for example:

- The percentage of an area, volume, or length
- The portion applicable to material cost

- The portion of labor and equipment cost

When an entire item is subcontracted, use the prime contractor's item bid price as the dollar amount for the form. When a portion of an item is subcontracted, apply the percentage of the bid item subcontracted to the prime contractor's item bid price as the dollar amount for the form.

Limits on the Work the Prime Contractor can do with their Own Forces

See steps one and two, above, for limits imposed by the Fair Practices Act and DBE Commitments, respectively.

STEP 4: Verify Subcontractors are not Debarred

Visit the Department of Industrial Relation's Debarred Contracts list and confirm that the subcontract is not on the list and has been debarred.

16.8 Engineer's Daily Reports

The LPA must write daily reports to document the work in progress. These daily reports may be written by the construction inspector, the Assistant RE, and/or the RE, as project and staffing needs dictate.

16.8.1 Assistant Resident Engineer

The Assistant RE's daily report must document what work was performed, where and how it was performed, and who performed it. The details must be sufficient so that someone not familiar with the project could re-create the events that occurred and review of the contractor's costs to perform the work in a manner similar to force account. The report should also document significant events or conversations, and activities performed to ensure contract compliance (see LAPM 16-C1: Assistant Engineer's Daily Report).

The Assistant Engineer's Daily Reports should record the following:

- General Information
  - The date
  - A brief description of the weather
  - The printed name and signature of the author
- For each person working on the project:
  - The full name
  - The labor classification
  - The employer
  - The hours worked, broken down by contract item and/or Contract Change (CO) work
- For each piece of equipment working on the project:
  - The make and model (or contractor's ID number)
  - The hours worked, broken down by contract item and/or CO work

Equipment should be identified sufficiently to enable determination of the applicable rental rates and operator's minimum wage. Consider in the design of your daily report form that it is important to know who operated what equipment, as this may affect the wage rate. In some

cases, it may be desirable to record dates of arrivals or departures of equipment, as well as idle time for breakdown or other reasons.

The narrative portion of the report should include:

- A description of the contractor's operation
- The location where the work was performed (stations, off sets, depths, etc.)
- Statements made by the contractor or LPA personnel, which are pertinent to the work
- Activities performed by LPA staff to ensure the materials and workmanship complies with the contract specifications
- Sampling
- Acceptance Testing
- Measuring
- Collection of Certificates of Compliance
- Contract Item Quantity supporting information (measurements, tonnage, waste)

The description of the work performed must be sufficient to determine proper labor classification, such as differentiating work performed by a laborer versus work performed by an electrician. Workers must be classified and paid according to the work they actually perform, regardless of union affiliation, other titles, or designations.

16.8.2 Resident Engineer

In addition, the RE must record project activities separately (see LAPM 16-C2: Resident Engineer's Daily Report). The RE may choose to report project activities on a daily or weekly basis at their discretion. The RE report should include discussions and agreements with contractors or others and should not duplicate information from the inspector daily reports. This report is not required when the RE is also acting as the field inspector on the project.

Include any information that may be pertinent even though no activity may have occurred. For example, such information could include support for determining working or nonworking days. Include the following in the daily report:

1. Important discussions and agreements with the contractor. Record these on the day discussed. Give the names of specific persons to whom instructions were given or with whom agreements were made.
2. A general statement about the type of work done. Include the controlling operation and any facts concerning the work's progress.
3. Weather conditions such as maximum and minimum temperatures and precipitation, among other items. Expand on exceptional weather conditions.
4. Statements of any other important facts pertaining to the contract that are not specifically covered elsewhere in the contract records.

Keep the report concise yet include any important information. The report should not contain routine matters, such as quantities placed, that can be found in the assistant engineer's daily reports or other records.

16.9 Employment Practice: Labor Compliance, EEO, DBE

16.9.1 Labor Compliance

Labor compliance is the LPA's effort to ensure the contractor is complying with all the applicable labor laws, acts, and statutes detailed in the contract provisions. This section presents the guidelines for performing labor compliance. These guidelines apply to all state or federally-funded projects.

The basis for these labor compliance procedures and the legal authority for LPAs to enforce labor compliance provisions derive from the California Labor Code, the Code of Federal Regulations, FHWA regulations, the California Code of Regulations, and the United States Department of Labor.

State and federal laws require contractors working on public works contracts to pay prevailing wages to their employees. Prevailing wages are predetermined hourly rates for each craft that are set by both the United States Department of Labor and the California Department of Industrial Relations. The prevailing hourly wage rate is composed of the basic hourly wage rate plus fringe benefits.

In addition, these laws:

- Define overtime and overtime pay
- Establish a workday and a workweek
- Require substantiation of wages via certified payrolls
- Determine covered work, (work requiring the payment of prevailing wages), vs. non-covered work

The Federal-Aid Highway Acts established that laborers and mechanics employed on Federal-aid projects are paid at wage rates generally prevailing for the same type of work on similar construction in the immediate locality. The federal wage rate determinations are included in the contract. The California Department of Industrial Relations determines the general prevailing state wage rates, and those rates must be referenced in the contract.

Role of the Local Public Agency Labor Compliance Officer

Annually, each LPA must designate a Labor Compliance Officer. The Labor Compliance Officer has the responsibility of overseeing the LPA's labor compliance program. The duties include:

- Providing appropriate labor compliance training for LPA personnel
- Ensuring labor compliance requirements are performed and documented for all state and federally-funded projects
- Assisting the RE in determining appropriate deductions or penalties

Many Labor Compliance Officers also perform duties listed below under Role of the Resident Engineer.

Role of the RE

The RE has the responsibility of enforcing the labor compliance provisions of the contract at the project level. To fulfill this responsibility, the RE and support staff must have a working

knowledge of the requirements. A good place to start is a complete review of Form FHWA-1273, Required Federal-aid Contract Language, found in your special provisions.

Early oversight and enforcement of the labor compliance requirements is preferable to investigations of violations and withholding penalties. In order to accomplish this, the RE must perform or delegate the following tasks:

Task 1: Review the Labor Provisions of the Contract with the Contractor

Include Labor Compliance Requirements as a topic on the pre-construction meeting agenda. The Federal-aid Contract Prejob Checklist found on the Caltrans Labor Compliance website is a helpful tool for developing a discussion outline. Portions of the checklist require modification to conform to your contract provisions, form numbers, and LPA policies.

Task 2: Prepare Daily Reports

Reference Section 16.8: Engineer's Daily Reports for the information needed to document the presence of the contractor's employees and owner-operators at the job site, and the work performed.

Task 3: Obtain Certified Payrolls and Owner Operator Listings

A payroll is a record of all payments a contractor made to employees working on the project. A certified payroll is one that contains the signed declaration required in Part IV-3, Payrolls and Records, of Form FHWA-1273. The provisions require the contractor and all subcontractors to:

a. Submit payrolls weekly
b. Sign a Statement of Compliance with each payroll submitted

The required weekly payroll information may be submitted in any form desired, however, Form WH-347, Payroll, is available for the convenience of contractors. An executed certification on the reverse side of optional Form WH-347 satisfies the requirement for submission of a statement of compliance. The prime contractor is responsible for the submission of all copies of payrolls by all subcontractors.

By signing the Statement of Compliance, the contractor or subcontractor is certifying that the following statements for the pay period are correct:

a. The information required under 29 CFR 5.5(a)(3)(ii) and 29 CFR 5.5(a)(3)(i) is being maintained and is correct and complete.
b. Each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract has been paid the full weekly wages earned, without rebate, either directly or indirectly, and no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3.
c. Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits, or cash equivalents, for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

Develop a system to track the submission of payrolls. Prior to making the monthly progress payment to the contractor, be sure all certified payrolls, owner operator listings, and statements of compliance have been submitted for the previous month. If documents are missing, see Discrepant, Delinquent, or Inadequate Payrolls later in this section.

Task 4: Check all Certified Payrolls

Review payrolls to verify that each laborer or mechanic has been paid not less than the prevailing hourly wage applicable for the classification of work performed as specified in the contract. When state and federal wage rates differ, the contractor is required to pay the higher of the two.

Overtime must be paid:

a. For all hours worked in excess of eight (8) in any workday
b. For all hours worked in excess of 40 in any workweek
c. For the first eight hours worked on the seventh consecutive day of work in a workweek
d. As at least 1.5 times the regular hourly wage plus fringe benefits

For additional information on checking payrolls, owner-operator listings, calculating wage rates, fringe benefits and overtime, see the Labor Compliance section of the CTCM.

When checking payrolls against the prevailing wage rates, it is recommended that you place checkmarks adjacent to those wage rates verified and initial the pages. It is also recommended that you tab the payrolls that you have checked so you can refer to them quickly during a review or audit. File all payrolls and listings in the project records.

Task 5: Conduct Employee Interviews

Interview contractor employees using LAPM 16-N: Employee Interview: Labor Compliance EEO, or the Spanish version of this form (LAPM 16-N ESP: ENTREVISTA DE EMPLEADO: CUMPLIMIENTO LABORAL / EEO). During the interview, the employee is asked questions regarding wage rates, hours of work, and type of work performed. The interview is used to check the validity of information shown on the certified payroll records. See Task 7 below for information on cross checking interviews and payrolls.

Interview a minimum of two employees per contract, per month, including at least one interview from the prime contractor and each subcontractor until such time as the contract is accepted or all employees on the project have been interviewed. The number of interviews taken must constitute a representative sample of workers employed on the project, including a variety of crafts and trades.

The contract provisions allow you to interview employees during work hours on the job per Part IV-3c, Payrolls and Basic Records of Form FHWA-1273. However, try to conduct the interviews at times that minimize disruption to the contractor's operation. Assure the interviewees that their statements will be confidential. Interview employees individually and away from supervisory personnel and other contractor staff. Do not disclose to the employer the identity of the employee without the employee's consent. Be sure the interviewer and the RE sign the form and file a copy in the project records.

Task 6: Maintain Written Evidence of Apprentices Employed on the Project

An apprentice is a contractor's employee who is registered in a formal training program governed by an apprenticeship committee. Part IV-4a, Apprentices and Trainees of Form FHWA-1273, permits apprentices to work for less than the prevailing wage rate provided they are registered in bona fide apprenticeship program.

If the contractor uses apprentices, the RE must:

a. Track apprentices used on the contract in daily reports

b. Ensure apprentice classifications are correctly identified on certified payrolls
c. Obtain and file written evidence from the contractor that apprentices are registered in an appropriate program
d. Confirm the ratio of apprentices to journeyman is not greater than permitted by the apprenticeship agreement

Apprentices lacking evidence of registration, and apprentices in excess of allowable ratios must be paid the journeyman wage.

Written evidence of registration can be provided with form DAS-1, Apprenticeship Agreement, or a letter from the Department of Apprenticeship Standards.

On Federal-aid projects, evidence of federal registration must be provided on U.S. Department of Labor Form ETA-671, Program Registration and Apprenticeship Agreement, or a letter from the United States Office of Apprenticeship providing notice of registration.

If the number of apprentices is specified in the special provisions, the contractor must submit for a work plan specifying:

a. Number of apprentices to be trained for each classification,
b. Training program to be used, and
c. Training start date for each classification.

The contractor must obtain approval of the plan before starting work. File a copy of the approved plan in the project records.

Task 7: Cross Check Daily Reports, Interviews, Payrolls and Wage Rates in Order to Determine Contractor and Subcontractor Compliance

Each month compare one of the employee interviews to the payroll record and daily reports for the week the interview was performed. Confirm that:

a. Employee was classified properly for the work the employee was doing at the time of the interview as described in the daily reports
b. Correct wage rate was paid for the proper classification
c. Overtime rate was paid for any work in excess of 8 hours in a day or 40 hours in a week, or for the first eight hours work on a seventh consecutive day

A single worker may perform many different tasks covered by more than one craft or classification during the course of a single day. In this situation, the contractor may break up the work into the different classification and pay accordingly, or it may pay the worker the highest applicable wage rate for the entire day. If the highest wage rate is paid for the entire day, separate entries in the payroll records are not required.

If you find payroll discrepancies through review, random confirmation, or worker complaints, see the CT Labor Compliance Policy Bulletin 11-01 for required follow-up steps.

Task 8: Document that the Required Posters and Wage Rates are Displayed at the Job Site

Document that the posters and wage rates are legible and posted in plain view where employees are not intimidated to read them. If the project has multiple locations without a single gathering place, the contractor may need to be creative, mounting them to the porta-potty or a sandwich board that can be easily moved.

A photograph of the display is a good way to document that the contractor was in compliance. If you are unable to take a photo, the engineer performing the verification must note compliance in the daily report. Place a copy of the photo or daily report in the project labor compliance file.

A checklist helpful for performing verification is available at: https://dot.ca.gov/programs/construction/labor-compliance/labor-compliance-posters.

Note that the laminated all-in-one posters many contractors purchase do not contain all the required information.

Task 9: Compare all Force Account (time and material) Billings to Certified Payrolls

Confirm the names of employees, wage rates, and hours listed on change order bills match information listed on the contractor's certified payrolls. If the documents do not show identical information, do not approve payment of the change order bill until the discrepancy is corrected.

Task 10: Take Action for Payroll Delinquencies, Discrepancies, and Inadequacies

If the Contractor Fails to Submit all Certified Payrolls, or Submits Incomplete Certified Payrolls

The RE must notify the contractor in writing which certified payroll documents are missing or inadequate, as well as withheld pay due to the contractor on the monthly progress payment. A withholding up to 10% of the payment is recommended a minimum of $1,000 and a maximum of $10,000. However, Part IV-3c, Payrolls and Basic Records of Form FHWA-1273 states contracting LPAs may cause the suspension of any further payments.

Make withholds separately for each payment period in which a new delinquency or inadequacy appears. When all delinquencies or inadequacies for a period have been corrected, release the withholdings covering that period on the next progress payment. Withholdings can only be taken once for each missing document and do not compound on each monthly estimate; see Labor Compliance Policy Bulletin 11-1 for required follow-up steps.

A sample letter titled, "Notice of Delinquent or Inadequate Certified Payroll Records," can be found at the Caltrans Labor Compliance website and used to notify the Contractor of certified payroll issues. Be sure to use LPA letterhead and modify the language as appropriate.

If the Contractor Refuses to Provide Payrolls

When the contractor does not comply with your request to submit missing or corrected payrolls, the issues become violations and are compiled into a wage case.

If the prime contractor refuses to submit certified payrolls, the RE must notify the contractor by certified mail that payrolls have not been received. The letter advises the contractor that they are in violation of the contract, and if payrolls are not submitted within 10 days of receipt of this letter, penalties will be assessed in accordance with California Labor Code Section 1776(g) in the $100 per worker for each calendar day the payroll has not been submitted. This type of penalty must be pre-approved by the Department of Industrial Relations prior to deducting any funds from the contractor. Process an administrative deduction in the full amount of labor compliance penalties on a monthly basis. These deductions are penalties and are not refundable to the contractor, regardless of the method used to obtain the payrolls. See CTCM Chapter 8: Labor Compliance for further discussion on this matter and consult your Labor Compliance Officer.

Which Workers are Covered by the Labor Provisions of the Contract

Every laborer or mechanic employed at the job site or site of work that performs part of the contract work is subject to the labor provisions of the contract. The laborer or mechanic may be either an employee of the prime contractor, an employee of an approved or listed subcontractor, or some other person or firm who furnishes on-site labor, including:

- Employees of equipment rental firms operating rented or leased equipment used in the work
- Owner-operators of general construction equipment such as graders, cranes, or excavators
- Firms that furnish engineering services, such as construction inspection, materials testing, and land surveying, regardless of whether that firm is hired by the contractor or the LPA
- Suppliers and fabricators who install manufactured products
- Corporate officers, supervisors, or foremen who, regularly and for a substantial period of time, perform journeyman work

The terms job site or site of the work as applied to labor compliance are not limited to the actual geographic location or limits of the project. These terms include any location or facility established for the sole or primary purpose of contributing to the specific project.

Typical examples include material sites, processing plants, fabrication yards, garages, or staging sites set up for the exclusive or nearly exclusive furtherance of work required by the project. Consult the Labor Compliance chapter of the CTCM for more information on Covered and Non-Covered employees.

16.9.2 Equal Employment Opportunity (EEO)

This section presents the requirements for administration of the nondiscrimination and EEO provisions of the contract.

California nondiscrimination and EEO requirements for public works contractors are located in Title VII, Civil Rights Act*;* Section 12990, Government Code; Title 2, Fair Employment and Housing Commission; Sections 8107 and 8203, California Code of Regulations. Part II: Nondiscrimination of Form FHWA-1273 calls the contractor's attention to these and other requirements.

State and federal laws mandate contractors working on public works contracts not discriminate based on race, religion, sex, color, national origin, age, or disability, and to take affirmative action to assure equal opportunity.

Role of the RE

The RE must perform the activities listed below:

- Discuss EEO requirements at the pre-construction meeting. The Federal-aid Contract Prejob Checklist found on the Caltrans Labor Compliance website is a helpful tool for developing a discussion outline. Portions of the checklist require modification to conform to your contract provisions, form numbers, and LPA policies.
- Perform employee interviews (see Task 5 under Labor Compliance).
- Verify EEO posters have been placed (see Task 8 under Labor Compliance). The contractor's EEO Officer must be listed by name in the posted policy.

- Review Form FHWA-1391. All contractors, including subs of any tier must submit this form to the RE. The requirement applies to all contractors who have Federal-aid contracts exceeding $10,000 and who worked any part of the last full week of July. The form shows the composition of the contractor's workforce by race and gender for each job category. Withhold $10,000 if the contractor fails to submit the form by the first week of August.
- Counter sign and submit Form FHWA-1391 to the DLAE; specific deadlines are communicated by the Office of Local Civil Compliance to the districts each year.

Report EEO Violations

In accordance with the U.S. Department of Labor Executive Order 11246, if you become aware of any possible violations of EO 11246 or 41 CFR 60, you have the authority and responsibility to notify the Office of Federal Contract Compliance Programs.

For California contact information: https://www.dol.gov/agencies/ofccp/contact/district-area-offices#California.

16.9.3 Disadvantaged Business Enterprises (DBE)

Federal regulations define DBE as firms that are for-profit small business concerns where at least 51% are owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

This section presents the requirements for administration of the DBE requirements of the contract. These guidelines apply to all federally-funded projects. The DBE requirements come from 49 CFR 26, Form FHWA-1273, Disadvantaged Business Enterprises, Part 1, and Exhibit 12-G: Required Federal-aid Contract Language.

49 CFR 26 requires that bidders take all necessary and reasonable steps to achieve a DBE goal, which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful (49 CFR 26 Appendix A). The required Federal-aid contract language in Exhibit 12-G requires the contractor meet the DBE goal shown in the project special provisions or submit documents that demonstrate adequate good faith efforts were made to meet the goal.

DBE Goal

The DBE goal is a percentage of the total contract value that must be performed by certified DBE contractors. The DBE program is designed to increase DBE participation on federally-funded contracts by ensuring nondiscrimination in the award and administration of Department of Transportation assisted contracts, creating a level playing field on which DBEs can compete fairly, and by helping remove barriers to the participation of DBEs.

DBE Commitment Form

Exhibit 15-G: Construction Contract DBE Commitment provides the RE with a listing of specific work to be done or materials to be furnished by specific DBEs and is based on information the contractor submitted during the bidding process. The commitment is the percentage of work on the contract that the bidder has committed to perform using certified DBE contractors or suppliers. The commitment may be less than, equal to, or greater than the goal depending on the bidder. However, the contractor must meet the DBE commitment, regardless of the contract

goal, or submit documents that demonstrates adequate good faith efforts were made to meet the goal. The RE will receive the approved DBE commitment form in the award package.

Role of the RE

The RE is responsible for monitoring and enforcing the DBE provisions of the contract. Therefore, the RE and support staff must have a working knowledge of 49 CFR 26 requirements. A good place to start is a complete review of Part 1: Disadvantaged Business Enterprises of Exhibit 12-G: Required Federal-aid Contract Language, found in the special provisions and the DBE section of the Standard Specifications.

Prevention of DBE violations is preferable to imposing penalties for non-compliance; to accomplish this, the RE must perform or delegate the following activities:

Before the Work

Activity 1: Review the DBE Provisions of the Contract and the DBE Commitment Form with the Contractor and Construction Staff at the Pre-Construction Meeting

Include DBE Utilization Requirements as a topic on the pre-construction meeting agenda. The Federal-aid Contract Prejob Checklist found on the Caltrans Labor Compliance website is a helpful tool for developing a discussion outline. Portions of the checklist require modification to conform to your contract provisions, form numbers and LPA policies. Ensure the field staff knows who should be performing DBE work. Be sure to emphasize the requirements for a DBE replacement, especially the requirement that written approval must be obtained prior to performing the work or payment will be withheld.

Activity 2: Compare the DBE Commitment Form (Exhibit 15-G) and the Contractor's Subcontracting Request (LAPM 16-B) prior to Approving the Subcontracting Request

Do not construe the DBE Commitment form as a request to subcontract as required by the contract specifications. The contractor must still submit a Subcontracting Request form listing the DBEs for approval. For details on approving the Subcontracting Request, see Item 2, under Approval of Subcontractors Prior to Starting Contracted Work in Section 16.7: Subcontractors, earlier in this Chapter. If the value of the DBE subcontractor's work exceeds the dollar figure threshold (half of one percent of the total bid, or $10,000, whichever is greater) specified in the Fair Practices Act, the DBE must also be listed on the subcontractor list.

Activity 3: Ensure any DBE subcontractor who wants to begin work has been approved on LAPM 16-B: Subcontracting Request (See Activity 2 above)

During the Work

Activity 4: Verify the DBE Performs a Commercially Useful Function (CUF)

A DBE performs a commercially useful function when it does all of the following (as per CFR 26.55(c)):

- Performs at least 30 percent of the total cost of its contract with its own work force and does not subcontract out portions of its contract work that are greater than normal industry practices for the type of work performed.
- Performs, manages, and supervises the work involved.
- Negotiates prices, determines quantity and quality, orders materials and supplies, pays for the materials and supplies, and installs the materials where applicable.
- The listed trucking DBE must own and operate at least one fully licensed, insured operational truck used on the contract.

A DBE firm does not perform a CUF if its role on the contract is limited to being an extra participant in a transaction or contract; through which funds are passed in order to obtain the appearance of participation.

The prime contractor must ensure that a DBE performs a CUF by performing periodic CUF evaluations as detailed and outlined in LAPM Chapter 9 (Section 9.7: DBE Participation on the Contract). FHWA tips for evaluating CUF are available at: https://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf.

At the same time, state and federal regulations require LPAs ensure work committed to a DBE is being performed by the correct firm, and that firm is performing a CUF.

- If the DBE is a subcontractor, document in the daily reports when the firm works. Include all details required in Section 16.8 of this Chapter: Engineer's Daily Reports. Cross-check the reports against the DBE Commitment form Exhibit 15-G to ensure the appropriate firm is performing the work or providing the materials.
- Confirm that certified payroll records have been received for the DBE. Refer to Task 4: Check all Certified Payrolls under "Resident Engineer's Role" in Section 16.9 of this Chapter: Employment Practice: Labor Compliance, EEO, DBE.
- If the DBE firm is a materials supplier, request the contractor provide documents such as delivery confirmation reports and canceled payment checks to confirm the DBE supplied the materials.
- If the trucking is part of the contractor's DBE commitment, identify trucking firms and drivers and associated items of work for each trucking firm on daily inspection reports. In addition, ensure the contractor submits Exhibit 16-Z1: Monthly DBE Trucking Verification by the 15th of the month for the previous month's trucking activities. If the prime contractor fails to submit the form, hold an administrative deduction for missing documents on the progress pay estimate. Randomly confirm the information on these forms by requesting copies of weighmaster certificates and canceled payment checks from the contractor. Cross-check the information against daily inspection reports as well.
- Do not pay for work unless it is performed or supplied by the DBE listed on the DBE Commitment form, unless a replacement was authorized prior to performance of the work. For information on the substitution process, refer to LAPM Chapter 9 (Section 9.8: Termination and Replacement of DBE Subcontractors).
- Review CUF evaluation forms, LAPM 9-J and LAPM 9-K, submitted by the prime contractor per LAPM Chapter 9, Section 9.7.
- Verify the accuracy of data provided by the prime contractor for CUF non-compliance.

If a DBE fails to perform a CUF, the LPA must take actions to enforce the contract. These actions can include:

- Deny or limit credit towards the contract DBE goal
- Require the prime contractor to terminate and replace the DBE to meet the goal on remaining work in accordance with LAPM Chapter 9, Section 9.8
- Withhold progress payments

For additional information on CUF and failure to comply, visit the USDOT website and FHWA's Federal-aid Essentials for Local Public Agencies.

Activity 5: Ensure Running Tally of Actual Attainments

For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects that are awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the prime contractor or consultant must now submit Exhibit 9-P to the LPA administering the contract. If the prime contractor or consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

Activity 6: Ensure Prompt Payments to DBEs

If contractor fails to promptly pay DBE firms or other subcontractors within 7 days of receiving a progress **payment** relating to that **subcontractor's** work notify your Labor Compliance Officer and take a performance failure withhold and do not release retainage owed to the prime contractor until corrected.

After the Work

Activity 7: Ensure Submittal of Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change

This form notifies the LPA if a DBE becomes decertified or a business entity becomes certified as a DBE before completing its work. The contractor must submit this form even if there were no changes in DBE certification.

Activity 8: Obtain and Verify the Accuracy of Exhibit 17-F: Final Report – Utilization of DBEs

Be sure the contractor submits the Final Report. If the form is not submitted within 90 days of contract acceptance withhold $10,000 on the next progress pay estimate per the federal requirements. Release the money only upon submission of the completed form. Confirm the form is complete and correct. The description of the work performed, the company performing the work, and the date the work was completed can be checked using the contract records. The contractor is to list the actual dollar amount paid to each entity and the date of the final payment to the entity. If actual DBE utilization (or item of work) was different than that approved at award, the contractor must provide an explanation. Examples of items the contractor would need to explain in writing includes why the names of subcontractors, work items, or dollar figures do not match the contractor's initial plan.

Activity 9: Compare the Final Report – Utilization of DBE to the DBE Commitment Form

Compare the contractor's original dollar commitment with the amount shown on the final DBE report. Review the contractor's calculations to verify the appropriate amount is credited for participation of DBE suppliers and truckers. Table 16-1 lists the criteria for crediting DBE supplier and trucker participation.

Activity 10: Withhold Payment if DBE Commitments were not met

If the contractor does not meet the DBE commitment, hold only the amount of contract funds necessary to meet the original DBE contract goal. If the contractor does not attain the original goal for reasons beyond their control, then no funds should be withheld. Examples of issues beyond the contractor's control are: if a change order eliminates a portion of an item originally designated to be performed by a DBE, or if the Engineer's Estimate overestimated the work shown on the plans. The subcontractor refusing to show up or not coordinating with the Prime contractor's schedule does not qualify as "beyond the contractor's control," as the contractor should have requested a substitution. If there is a change order, then the contract goal applies to the change order as well as the original contract. The Prime Contractor must make GFE to obtain additional work for the DBE participation. If no issues with the final utilization reports are identified, sign the final report. For federally-funded contracts, the signature of the RE provides written certification of DBE participation through onsite monitoring and record review activities. For additional information regarding DBE enforcement, replacements, violations, and penalties see Section 16.7: Subcontractors for more information pertaining to Approval of Subcontractors Prior to Starting Subcontracted Work.

Consult with your DBE liaison officer for questions on implementing enforcement activities.

Table 16-1: Disadvantaged Business Enterprise (DBE) Materials and Transportation

If the DBE is a …	And if the DBE …	The credit toward the DBE goal is …
Supplier	**manufactured** the materials*	100%
	acts as a **regular dealer*** (including bulk materials)	60%
	is **neither** a **manufacturer** nor a **regular dealer**	reasonable fees or commissions for the procurement and delivery
Trucking Company	uses trucks it **owns**, insures and operates using drivers it employs	100%
	uses trucks **leased** from another **DBE firm**, including owner-operator who is a certified DBE**	100%
	uses trucks **leased** from a **non-DBE firm**, as long as the **DBE firm** uses its own **drivers**	100%

Note: the determination above is made on a contract-by-contract basis.

* 49 CFR 26.55 (d)(6) defines manufacturer and regular dealer.

** A lease must indicate the DBE has exclusive use of and control over the truck. The leased truck may work for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use. The lease must be long term and not for the specific project.

16.10 Change Order (CO)

A change order (CO) is a legally binding document used to make changes to the original construction contract. COs are negotiated agreements with the contractor that affect the cost, time, design, or specification requirements, or a combination of the four.

The authority for LPAs to make changes to a contract is described in CTSS Section 4-1.05: Changes and Extra Work and in Section 3: Changes in Work of the Greenbook.

Any change to the approved plans or specifications, or the addition of work, must be covered by a change order. In addition, change orders are used for administrative purposes. The following are some of the reasons for writing change orders:

- To change contract plans, specifications, or both
- To describe the work and method of payment for work stipulated in the contract to be paid as extra work
- To describe the work and method of payment for unforeseen work to be paid as extra work
- To authorize a supplemental change order (an increase in extra work funds necessary to complete a previously authorized change order)
- To make payment adjustments
- To implement a value engineering change proposal (refer to Section 4-1.07 of the CTSS)
- To clarify terms of the contract
- To resolve disputes or potential claims

The RE usually determines the need for and initiates a change order. However, the contractor, other LPA units, outside LPAs, or individuals may request changes. If the CO is requested by the contractor, indicate Change Order Requested by Contractor on the Change Order. For changes requested by any person except the contractor, indicate Change Requested by Engineer.

Preliminary Considerations

When preparing to write a CO, consider the following:

- Is the proposed change order necessary to complete the work as contemplated at the time the plans and specifications were approved?
- Is the proposed work already covered in the contract?
- What is the overall impact on the planned work?
- Will the proposed change order affect or change the contractor’s planned method of performing the work?
- Will the ordered change cause a work-character change?
- Will the contract time be affected?
- What are the impacts of adjusting contract time?
- What methods of payment should be used?

- Are there sufficient contingency funds? If not, can additional funds be obtained soon enough to prevent delays?
- Does the proposed change adhere to the approved environmental document, existing permit conditions, utility obligations, and right-of-way agreements?

Any change in environmental mitigation commitments, permit conditions, agreements with resource LPAs, or the introduction of new social, environmental, or economic issues that need to be addressed under applicable federal, state, or local law should be referred to Caltrans District Local Assistance for further action. Changes in scope for ATP projects must be approved by Caltrans/CTC.

To avoid misunderstanding and to obtain full agreement, discuss with the contractor all elements of a change, including the method of compensation and the effect on time. Failure to identify elements requiring consideration may lead to protests.

16.10.1 Change Order Prior Authorizations

The LPA may make changes to a project and add extra work under CTSS Section 4-1.05: Changes and Extra Work and Section 2-7:Changes Initiated by the Agency of the Standard Specifications for Public Works Construction (Greenbook). The RE describes the change and extra work, the payment basis, and any time adjustment in a change order. The standard specifications further allow the resident engineer to order the contractor to start work before a change order is approved. This is done using a written authorization to proceed.

LPAs should have procedures for prior authorizations to proceed for those instances when change order work must begin before a change order is executed.

To ensure prompt payment for ordered extra work, the RE must reserve and advise the contractor of the change order number upon issuing an authorization to proceed for extra work. This will allow the contractor to submit change order bills while the change order is being processed. When prior authorizations are granted, the full change order must be immediately written and submitted to the contractor within 7 working days of the date of authorization to proceed.

The change order (extra work) bills must not be paid until the change order is fully executed and funded.

16.10.2 Change Order Documents

For each change order, the following documents must be prepared:

- The change order
- A memorandum explaining and justifying the change order

For many change orders, the following documents must also be prepared:

- PE stamped, signed, and dated revised plan sheets and Specifications
- Cost estimate calculations performed by the LPA, not the Contractor, supporting any agreed prices
- A time impact analysis justifying any time extensions

16.10.3 Writing the Change Order

The CO must be clear, concise, and explicit. If you have properly written the change order, an auditor should be able to understand what work was performed without further explanation from the LPA's staff. When appropriate, it must include the following:

a. Description of the Work to be Done

The change order must clearly describe added work or other changes to the contract. Include appropriate references to special provisions, contract plans, standard plans, or standard specifications. Decide whether a written statement clearly defines the proposed change or if plans or drawings need to be included.

On plans attached to a CO, show pertinent dimensions and the scale, or label the plans not to scale. When using existing plan sheets, clearly show the difference between the proposed (change order) work and the planned (original work). A simple sketch on a letter-sized sheet is adequate for some change orders.

Section 6735: Preparation, Signing, And Sealing of Civil Engineering Documents of the Professional Engineers Act requires all civil engineering plans and specifications that are permitted or that are to be released for construction must bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports must bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping.

Plans or specifications attached to a proposed CO must meet this requirement, with the exception that a licensed civil engineer does not need to sign revisions already covered by standard plans, standard specifications, standard special provisions, previously engineered drawings, or minor changes not requiring calculations or determinations by a licensed engineer.

The contractor normally chooses the means and method of performing extra work. However, if the method of payment is force account (time and materials), the method of work is subject to the RE's approval for labor, equipment, and materials. If for any reason the engineer wants to control the means method of performing the work, the method must be specified in the change order.

b. Location and Limits of the Work

Be as specific as possible when describing the location and limits of the work. If available, use stations, off-sets, and depths, as applicable. On smaller jobs without stations, use Post Miles, intersections, street addresses, or other identifying features that unambiguously defines the limits.

c. Applicable Specification Changes and References to Specifications

The specifications for bid item work already included in the contract will apply to added bid item work. You do not need to repeat or reference specifications for added work that is clearly shown to be bid item work. Include directly or by reference, the specifications for extra work paid for at an agreed price or at force account. The contractor must complete this extra work exactly as it is specified in the CO.

d. Method and Amount of Payment

When writing a change order, the RE often can choose the payment method for added or changed work. In other instances, for example, Section 12-1.03: Flagging Costs of the

CTSS, the method of payment is specified. The following lists, in order of preference, the payment methods to be used when no method is specified:

Method 1: Increases and Decreases in Bid Items at Bid Item Unit Prices

When paying for changes in planned work or for adding or reducing work, the RE will estimate the increases or decreases that will result from changed work initiated by the change order. The actual quantity paid for each bid item will be determined by the method specified for measuring each bid item quantity. Using existing bid items at bid prices preserves the integrity of the open and competitive process.

Increases and decreases (or estimated increases or decreases) in bid items at contract prices may be executed with the contractor's agreement or unilaterally, if necessary.

Method 2: Bid Item Unit Prices with a Payment Adjustment

The second method the RE must consider to pay for changes is the use of the bid items at bid prices plus a payment adjustment. A payment adjustment is a monetary increase or decrease applied to the unit price. Payment adjustments are most commonly used for work character changes and item quantity increases or decreases of more than 25%.

Payment Adjustments for Increased or Decreased Quantities

When a bid item quantity varies by more than 25%, determine the payment adjustment to the bid item unit price following CTSS Section 9-1.06: Changed Quantity Adjustments. The adjustment is the difference between the unit price and the unit cost of the total item pay quantity. For decreases, the department does not pay more than 75% of the bid item list.

Unless requested in writing by the contractor, do not adjust a bid item when the total pay quantity is less than 75% of the bid item list. You also do not need to adjust, unless requested in writing by the contractor, if the value based on the contract price for the units of work in excess of 125% is less than $5,000. When required, make payment adjustments for increased or decreased quantities as soon as the contractor completes work on a bid item. If a contract item quantity overruns in excess of 125% of the original quantity and the RE decides or chooses not to adjust the contract unit price, documentation (usually in the form of a Memo to File) must be contained in the project's (Change Order) file to explain why.

Payment Adjustments for Work-Character Change

Before work can be considered a work-character change, an ordered change to the plans or specifications must occur. If such an ordered change materially increases or decreases the unit cost of a bid item, then a work-character change has occurred. Do not eliminate a bid item and pay for the work at agreed price or force account unless the change is so extensive that the original item no longer applies. A payment adjustment providing for increased or decreased costs due to the work-character change allows the contract price to remain unchanged. The goal is to make a payment adjustment for the costs resulting solely from the change, while avoiding unfairly eliminating the contractor's profit in the original bid item, or paying for additional costs resulting from a contractor's bad bid price or from price escalations.

Additional information regarding payment adjustments, including other types of adjustments and how to calculate a payment adjustment, can be found in the CTSS / CTCM at the following locations:

- Section 9-1.15: Work-Character Changes, CTSS
- Section 9-1.06: Changed Quantity Payment Adjustments, CTSS
- Section 3-403A: Work-Character Changes, CTCM
- Section 3-904C: Work-Character Changes, CTCM
- Section 5-306C (2): Payment Adjustments, CTCM

Method 3: Extra Work at Agreed Prices (Unit or Lump Sum)

Pay for extra work at agreed prices under the following conditions:

- When no contract item or combination of items exist that apply to the changed or added work
- When the change is so extensive that the original item no longer applies

Agreed prices may be unit or lump sum. When writing the change order, agreed unit prices can be applied to an estimated number of units. Although the unit price remains fixed, the number of units paid may vary from the estimated number shown on the change order as determined by the actual work performed. Use agreed unit price when the quantity to be performed cannot be determined precisely such as, AC dike, traffic striped, HMA, etc.

Determining and Justifying the Agreed Price

After the extent of extra work has been determined, do the following:

- Perform, independent of the contractor, a force account cost estimate, including markups to determine a proposed agreed price.
- Request the contractor submit a proposed agreed price.
- Analyze the contractor's price for any errors or omissions and compare your cost estimate to the contractor's.
- If your force account analysis supports the price proposed by the contractor, write and process the change order.
- If your estimate does not support the contractor's proposed price discuss how and why your estimates differ. If you cannot come to an agreement, perform the work at force account.

It is not sufficient to just review a contractor's proposed price and decide it is reasonable without performing your own independent cost estimate calculations.

Documenting an Agreed Price

File with the contract records any calculations and supporting documentation used to determine agreed prices for extra work payment. If an initial discrepancy exists between the LPA's independent estimate and the contractor's proposal, be sure to document (in the Change Order file) the steps, iterations, and negotiations that resulted in the final agreed price. Documentation could include emails and/or revisions to the LPA's independent estimate to support the agreed price dollar amount shown on the CO.

Be sure all calculation pages are signed and dated by the person performing the calculations and the person checking the calculations. These calculations are subject to audit and must be in such a form that they clearly substantiate and justify the amount

paid for extra work. Loss of federal funding for the CO can occur if the LPA has not fully justified and documented any agreed prices.

In some instances, LPAs wish to use historical data, rather than force account calculations to support agreed prices; this must be done cautiously. The historical data must come from multiple sources and represent recent, like work, including similar quantities and constraints. A bid price for installing 100 units is unlikely to be representative of the cost to install 10,000 units of the same work. Similarly, the bid price to perform nighttime highway work is not reflective of the cost to perform the same work during the day on an urban arterial. Finding multiple recent sources that accurately represent like work is difficult. For this reason, the force account method is recommended.

When an agreed price is to be used to pay for extra work, the RE and the contractor must agree on compensation prior to performing the work. If there is no time to fully execute the change order before performing the work, be sure the agreement is documented in your written authorization to start the work. The contractor must execute the change order before payment can be made. Do not unilaterally process a change order that uses the agreed price method of payment.

Method 4: Extra Work at Force Account

Pay for extra work using the force account method under the following conditions:

- When methods one and two above cannot be used
- When the work cannot be estimated within reasonable limits of accuracy
- When the RE and the contractor are unable to agree on a unit or lump sum price for the work
- When the contractor refuses to sign a change order

Additional information regarding paying for extra work at force account can be found in CTCM Section 3-9: Payment and the contract specifications.

e. Any Adjustment to Time of Contract Completion

When change order work modifies the critical path and scheduled completion date of the accepted schedule, a time adjustment is warranted. A change order may specify a positive, negative, or no adjustment to contract time. If the controlling operation is unaffected, an extension of the contract time is not warranted.

Whenever you can estimate an adjustment to time with reasonable accuracy, try to reach an agreement with the contractor. Enter the amount of the time adjustment on the change order (including when there is no adjustment). Regardless of the amount of time actually required to perform the changed work, the agreed adjustment becomes binding on both parties.

Determining a Time Adjustment

For smaller projects request a revised schedule from the contractor to evaluate effects on the completion date. For larger projects, the contractor submits a time impact analysis (TIA) to the RE with each time adjustment request. A TIA illustrates the impact of each change on the scheduled completion date. Review the TIA for logic and duration impacts to determine the time adjustment, or construct an independent TIA to determine the time adjustment (CTSS Section 8-1.02D(8)).

File the calculations and other data used to determine any adjustments to time with the contract records.

Failure to justify and document a contract time adjustment can result in loss of federal funding.

Deferring a Time Adjustment

If you cannot determine or agree on an adjustment of time in the initial change order, you may defer the adjustment. When doing so, write deferred on the time adjustment line and include a time adjustment deferred clause in the change order. As soon as the change order work is completed, determine the appropriate time adjustment. Include the specific dates in the change order. If you cannot reach agreement with the contractor, issue a unilaterally approved supplemental change order adjusting time. Your objective is to resolve deferred time adjustments as soon possible. Timely resolution of time deferments allows the contractor to efficiently schedule remaining work to complete the project within the time limits.

The RE may not unilaterally decrease time unless this is permitted by the specifications. Otherwise, the contractor must agree to changes that reduce time. Without this agreement, you can do one of two things:

1. Do not recommend approval of the change if no benefit exists for the LPA.
2. If substantial benefits exist for the LPA, issue a unilaterally approved change order with no time adjustment.

For additional discussion of time of completion and adjustments to time, refer to Section 3-804: Time and Section 5-306D: Adjustments to Time of Completion of the CTCM.

16.10.4 Change Order Format

The intent is that the change order clearly specifies the work paid for by each payment method. The following describes the format:

- Describe the work or change that will cause increases and decreases to bid item quantities.
- Show the increases and decreases in bid item quantities. Include the percent change from the original quantity in the bid item list resulting from this change. Also, show the accumulated percent change to the original quantity in the bid item list resulting from all change orders to date.
- Include clauses regarding deferred or actual payment adjustments for overrun or under run situations resulting from actual or estimated increases or decreases in bid item quantities.
- Include clauses for adjustments or deferred payment adjustments due to any cause. Describe the work or change causing the adjustment or deferred adjustment. Show the amounts of adjustments if not deferred.
- Describe work to be paid as extra work at agreed price. Show the price as agreed. Agreed prices may be fixed unit prices and an estimated or actual number of units, or agreed prices may be fixed lump sums.
- Describe the work to be paid for as extra work at force account. Show the estimated cost of the extra work.

- Be sure to reference any attached drawings or documents (sheets __ and __ of ___).
- Show any time adjustment: + ___ days, -- ___ days, no time adjustment, or deferred time adjustment.
- Include time deferment or time adjustment clauses.

Example change orders can be found in CTCM Section 5-315; the examples follow a generally accepted format for writing change orders.

16.10.5 Change Order Memorandum

A change order memorandum is a one or two-page document that explains and justifies the change. While a change order answers the questions of what, where, how, and for how much, think of the memorandum as answering the question of why. If you have properly written the memorandum, an auditor should be able to understand the reasons for the work and the reasonableness of the compensation and time adjustments, without help from LPA staff.

The memorandum is intended for interagency use only. Do not send the memorandum to the contractor.

Include the following in the memorandum:

- In a few sentences, briefly state what the change order provides. Supplemental change orders should also include a description of the original change order. Do not repeat everything on the change order.
- Explain the need for the change, including the contractual basis of the change. When another unit or another LPA requests a change, the correspondence requesting the change should also justify the need for the change. Attach supporting letters to the memorandum.
- State the reasons a particular method of payment was chosen. Include a complete cost analysis, or state that the cost analysis is on file with the project records. State the method used in making the cost analysis.
- If the ordered change causes any work character change, explain the reasons. To substantiate any adjustment in compensation due, you may need to provide a summary of events leading up to the change.
- State the extent of coordination and concurrence with others: other units, LPAs, Caltrans, etc. if applicable.
- If prior approval of the change order has been obtained, state the name of the person who granted prior approval and the date.
- For a change order that is to be unilaterally approved, explain why the contractor will not sign or why the contractor's signature is not required. Attach a copy of any correspondence from the contractor regarding the change order.
- Include justification for a time adjustment. Describe the method used to determine the time adjustment. State the controlling activity during the delay period.

Whenever possible, and when resolving a previously deferred time adjustment, indicate the specific working days that experienced delay and represent the period of the time adjustment. By indicating the specific working days, you ensure other time adjustments do not cover the same time period. Specify if any portions of the work are nonparticipating (see LAPM Chapter 3: Project Authorization for more details regarding nonparticipating work).

16.10.6 Help Writing Change Orders and Change Order Memorandum

Examples of change orders and memorandums, as well as useful clauses can be found at the following websites:

- Change Order Standard Clauses: https://dot.ca.gov/programs/construction/change-order-information/change-order-standard-clauses
- Change Order Examples: https://dot.ca.gov/programs/construction/change-order-information/change-order-examples

Use these cookbook examples and standard clauses cautiously. The examples are for guidance and general format suggestion only. For instance, the examples contain assumptions that may or may not fit actual project situations. Also, the standard specifications and special provisions in use at the time the examples were written are the basis for the example change orders.

Do not assume that your project uses the same specifications. Base change orders on specifications in your contract. The Change Order chapter of the CTCM can be found at https://dot.ca.gov/-/media/dot-media/programs/construction/documents/policies-procedures-publications/construction-manual/sec5-3.pdf.

16.10.7 Participating and Nonparticipating: Federal-aid Segregation Determination on Change Orders

For a CO, the RE must identify and segregate the funds required from each source. CO work that is eligible for Federal-aid reimbursement is often called participating. A CO may be declared:

- Participating
- Participating in part
- Nonparticipating

In general, most changes are participating provided they are necessary to complete the project as originally contemplated at the time the plans and specifications were approved. A CO is participating in part when some of the work in the CO is eligible for reimbursement and some is not.

Following are some items which often are deemed nonparticipating:

- Work done prior to authorization of federal funds
- Work beyond the scope of work included in the project environmental document
- Work outside project limits as defined in the project authorization document
- Utility work that is not a result or purpose of the road or bridge work
- Payment for work done by an unapproved subcontractor
- Plant establishment periods of over three (3) years
- Adjustment of private facilities (signs, fences, sprinklers, etc.) unless included in a right-of-way (R/W) agreement or permit
- Work not on a properly designated route

- R/W obligation not programmed
- R/W obligation already compensated
- Work chargeable to other programs
- Maintenance work (except Demonstration Programs)
- Work not in accordance with approved specifications unless quality is not reduced
- Non-highway related work
- Work outside of LPA rules or limits
- Work done for COs which exceeds the authorized amount of federal funds
- Work over and above amount programmed
- Deviations from design standards
- Nonconforming materials
- Equipment rental rates in excess of those in the Equipment Rental Rate book
- Excessively expensive treatments that do not appear to be in the public interest

LPAs are strongly advised to contact their District Local Assistance Office to discuss the issue of participating vs. non-participating on proposed change orders. Federal requirements cannot be circumvented by classifying work as non-participating. For example, the LPA cannot avoid the requirements of the Buy America regulations by declaring the steel or iron products in a project non-participating. All questions regarding work eligibility for Federal-aid reimbursement can be directed to the DLAE for guidance.

16.10.8 Other Issues

Quantity Balancing Change Orders

Several LPAs, at or toward the end of a project, like to write a balancing change order, whereby all items for which the actual quantity placed differed from the original bid estimate quantity are captured and tabulated in a change order document. This is more of an accounting mechanism that enables the LPA to accurately update their contingency balance on the project. As such, a balancing change order is not required, but is permissible.

Material Delays

The contractor is responsible for the timely order and delivery of materials for the project. A delay in delivery of materials does not in itself generally support an extension of contract time. However, if an unusual market condition (i.e., an industry-wide strike, natural disaster, or area-wide shortage) occurs, a time extension may be in order.

Right of Way Delays

The FHWA policy generally does not permit participation in time extensions for delays due to the Right of Way Certification required from the LPAs prior to the FHWA project authorization. Whenever the railroad or utility is permitted to adjust its facilities coincidentally with contract operations, such activities must be clearly addressed in the contract provisions. All parties should understand that any interference by the railroad or utility to the contractor's operations generally will not constitute an allowable delay. In general, an extension of contract time due to R/W delays is very unusual and is the exception rather than the rule. For Federal-aid eligibility of an extension, it must be shown that:

- The construction work was delayed by the R/W, railroad, or utility difficulty.
- The contractor did everything required by the contract to minimize the delay.
- The LPA was unable to exercise effective control of the situation despite its best efforts.

Process reviews should be conducted by the COEs and the DLAE periodically to monitor approved change orders. If change orders are found to be ineligible during a process review, federal funds paid for the change order should be withdrawn from the project.

Equipment Rental Rates

Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not always readily available. A state subject to the FHWA's concurrence, may adopt an industry equipment rate guide or it may develop its own guide. In California, the guide is the Caltrans Labor Surcharge and Equipment Rental Rates book. Overtime, multiple shift, and delay factors apply to these rates as detailed in the guide.

Equipment rental rates paid in excess of those shown in the guide are not eligible for Federal-aid reimbursement.

16.11 Quality Assurance Program

A Quality Assurance Program (QAP) is a program that ensures the materials and workmanship incorporated into each construction project conform to the requirements of the contract plans and specifications including approved changes.

For federal construction projects, the LPA is required to have a QAP. Caltrans will not process a Request for Authorization for Construction without verification of an approved QAP. The QAP must be signed by the LPA public works director or, if the director is not registered, it must be delegated to the next highest registered Engineer. The QAP must be updated at least every five years. Copies of the approved QAP must be kept on file and available for state review.

The LPA is required to adhere to their QAP during the construction of the project, but a QAP is not part of the contract. A QAP can be thought of as a commitment by the LPA to FHWA.

The main elements of a QAP are a Materials Acceptance Program and an Independent Assurance Program that meets the criteria in 23 CFR 637.

Variations for Projects On or Off the SHS

The requirements of a QAP depend on whether the project is on or off the SHS.

For projects on the SHS, the LPA must adopt the Caltrans QAP detailed in the following manuals and guides:

- Caltrans Construction Manual
- Construction Manual Supplement for Local Agency REs
- Local Agency Structure Representative Guidelines
- Independent Assurance Manual

In addition, the current Caltrans Standard Specifications (CTSS) and Plans must be part of the Plans, Specifications and Estimate (PS&E). Test methods used must be as specified in the CTSS and special provisions.

For projects off the SHS, LPAs may adopt the Caltrans QAP described above or develop their own QAP conforming with the requirements of 23 CFR 637. For projects off the SHS and on the NHS, the LPA must use the current Caltrans or Greenbook Standard Plans and Specifications. Tests methods used may be either CTM, ASTM, AASHTO, or other nationally recognized test methods, but must be specified in the contract documents.

A template for LPAs developing their own QAP is available on the Construction Oversight Program website.

16.11.1 Materials Acceptance Program

The QAP for all LPA projects must include a Materials Acceptance Program used to determine the quality and acceptability of materials and workmanship incorporated into the project.

The Materials Acceptance Program should consist of the following:

- Frequency guide schedules for verification sampling and testing which will give general guidance to personnel responsible for the program and allow adaptation to specific project conditions and needs.
- Identification of the specific location in the construction or production operation at which verification sampling and testing is to be accomplished.
- Identification of the specific attributes to be inspected which reflect the quality of the finished product.

Testing and Sampling Frequency Tables

The RE must also ensure the minimum number of samples are taken and tests are performed as required by the adopted QAP's Testing and Sampling Frequency Table. Often a QAP will call for taking more samples than are used to perform tests. This is beneficial in the case of failing results. The RE can then go back and test additional samples to determine the exact limits of the failing material.

Test Data and Summary Logs

The RE must obtain test data and results from the lab in a timely manner and keep records of all samples and tests in the project files. The RE must keep a test results summary log for each test method performed more than once utilizing the adopted QAP's Acceptance Testing Results Summary Log. On larger projects, it may be necessary to keep multiple logs for the same test method, broken out by salient features such as compaction tests performed on the roadway structural section on one log, and those performed on structural backfill on a separate log. The use of a summary log facilitates the review of material sampling and testing by Caltrans and FHWA reviewing personnel. It also assists the RE in tracking the frequency of testing.

Failing Test

Whenever failing tests occur, sufficient additional acceptance tests must be taken to isolate the affected work. Documentation of the results of such additional tests must be included in the records, including a description of the corrective measures taken. Corrective action or retesting of failing tests must be noted in the remarks column of the test summary log. Documentation of the reason that materials represented by failing tests were incorporated into the project must be in the project files.

16.11.2 Independent Assurance (IA) Program

The other main element of a QAP program is the IA program. The following information regarding IA programs is directed to REs and construction management staff implementing the QAP during project construction. QAP developers and laboratory managers are directed to the Independent Assurance Manual for more detailed information on developing and maintaining an Independent Assurance Program.

The IA program consists of activities that are unbiased and are an independent evaluation of all the sampling and testing procedures used in the acceptance program. The requirements are defined in 23 CFR 637:

- Testing equipment be evaluated by using calibration checks and proficiency samples
- Testing personnel be evaluated by observation and proficiency samples

It is often said that an acceptance program tests the material, while an IA program tests the testers.

Certification of Sampling and Testing Personnel

All samplers and testers, including project, laboratory, and consultant personnel, must possess a current certificate of proficiency for the tests performed. A copy of the certificate must be in the project files. It is important that samplers as well as testers are certified to ensure the integrity of the sample and that the sample was taken at the right time, from the right location, using the correct method, and is properly labeled.

The Joint Training and Certification Program (JTCP) was established by Caltrans, LPAs, and industry to make the certification process more efficient and to obtain consistent, reliable quality testing. The JTCP offers training and certification in hot mix asphalt, soils and aggregates, and Portland cement concrete.

For CTMs not covered by the JTCP, Caltrans will still provide certification. When test methods not covered by the JTCP or Caltrans are used, certifications must be obtained from other acceptable organizations such as ACI, or the LPA/testing consultant may need to hire a second lab to perform IA. The process for qualifying sampling and testing personnel should be detailed in the LPA's Independent Assurance Program of the QAP.

IA sampling and testing is not to be used for determining quality and acceptability of material incorporated into the job. Such tests are used only for the purpose of determining the reliability of testing personnel.

Qualification of Laboratory

All laboratories providing testing services for projects located in California must:

- Possess a current certificate of qualification.
- Be under the responsible engineering management of a California registered Professional Engineer with experience in inspection and testing of construction materials. The Engineer must certify the results of all tests performed by laboratory personnel under his or her supervision.
- Maintain their laboratory testing equipment in accordance with recognized national calibration standards.
- Participate in one or all of the following:
    - AASHTO re:source Proficiency Sample Program

- Cement and Concrete Reference Laboratory (CCRL) inspection programs
- Caltrans Reference Sample Program

These proficiency sample testing programs conform to the FHWA requirement that each State Transportation Agency must participate in an approved laboratory inspection and comparative sample testing program.

All laboratories which use Caltrans' test methods must participate in the Caltrans Reference Sample Program. Upon request, if CTMs are being used, Caltrans Materials Engineers will qualify LPA's (or consultant's) laboratories. Caltrans IA staff will issue Form TL-0113: Caltrans Accredited Laboratory Inspection Report valid for one year. Those laboratories which do not use Caltrans test methods must participate in the AASHTO re:source and CCRL programs to fulfill proficiency sample testing program requirements.

Equipment Calibration

General

The LPA laboratory must calibrate field construction laboratory equipment and portable field test equipment (sand cones, scales, moisture test equipment, slump cones, air meters, etc.) prior to use on construction projects, and re-calibrate as frequently as required. The maximum interval between calibrations is one year. The LPA is responsible for calibration of laboratory testing equipment used for testing on LPA projects, whether or not the equipment is owned by the LPA, a consultant contractor, or sub-contractor. Consultant laboratory-supplied equipment must be calibrated by the consultant or LPA.

Calibration of test equipment must conform to CTCM Section 6-3. Two sections in the QAP manual describe the procedures that the IA personnel are to use when calibrating materials testing equipment. Upon proper calibration, a decal must be firmly affixed to each piece of calibrated equipment. Decal type and required information are specified in Appendix B of the Quality Assurance Program Manual. A manufacturer's or service contractor's decal is acceptable as long as the above-required information is readily available. Should such decal become unreadable or lost, then the equipment is to be re-calibrated as soon as possible. Where such equipment either requires repair or cannot be repaired, a timely repair or replacement must be secured.

Equipment Calibration - Nuclear gauge

All LPA's and/or consultant's nuclear gauges must be calibrated on National Institute for Standards and Technology (NIST) traceable blocks and have current calibration stickers.

Equipment Calibration - Materials Plants

Plants producing construction materials such as HMA, concrete, cement-treated bases, lean concrete bases, etc. must have a current CEM-4204: Material Plant Quality Program Acceptance Sticker or California Test 109: Method for Testing of Material Production Plants approval. This ensures the accuracy and suitability of the scales and meters used to proportion materials and is important to the uniformity and quality of the material. The Material Plant Quality Program can be found at https://dot.ca.gov/programs/construction/material-plant-quality-program.

16.11.3 Responsibilities of the RE

It is important that the RE read each contract and not assume a new contract has the same specifications as the last contract. The RE must ensure the correct criteria is used to determine if the material passed or failed. The passing criteria is found in the contract specifications, but in some cases, the specifications allow the contractor to submit mix designs which establish the criteria. For example, the contractor is allowed to submit gradation target values (TV) for HMA mix designs and chose X factors for concrete mix designs. Be sure mix designs are approved prior to work and that the lab and inspectors have been provided a copy of the approved mix design.

The RE must ensure the correct test method is used as specified in the contract. Verification and quality control testing must be performed in accordance with a recognized testing standard. While California Test Methods, the American Society for Testing and Materials (ASTM), and the American Association of State Highway and Transportation Officials (AASHTO) test methods are all acceptable test methods on LPA projects, the test method to be used must be specified in the contract documents at bid time. The RE or lab cannot change the test method during the project without first writing a CO and providing justification. The RE must ensure the correct version of the test method is used. When the specifications reference a test method by number, it indicates the test in effect on the date of the Notice to Bidders. This means the test methods for each project are fixed and are not necessarily the latest revisions.

- California Test Methods: http://www.dot.ca.gov/hq/esc/ctms/index.html
- ASTM Test Methods: http://www.astm.org
- AASHTO Test Methods: http://www.transportation.org

During project construction, the RE must verify that the IA program is being executed by performing the following tasks:

- Obtaining Certifications of all Sampling and Testing Personnel
- Obtaining Qualifications of all laboratories
- Verifying equipment is calibrated

Acceptance of Unprocessed and Processed Soils and Aggregates

The acceptance of processed and unprocessed soils and aggregates includes verification sampling, testing, and inspection, and, in special cases, may include the results of quality control sampling and testing. Examples of unprocessed materials include sand, rip rap, subgrade, and embankment and backfill materials. Examples of processed materials include aggregates, bases, PCC, and HMA. The contract and the QAP combine to ensure the quality of the soils and aggregates entering the project.

Generally, the contract will specify what criteria the material must meet, and what test method will be used to determine if the material met or failed the criteria; the QAP will specify the minimum number of samples to be taken and tests to be performed to ensure the material has met the criteria, and where the material will be sampled. Sometimes, the contract documents will specify the frequency and location of the sampling and testing, overriding the QAP.

Mix Design Approval and Checking

Mix designs must be submitted by the Contractor and include the name of the material plant, the product name, a mix design ID number, and item of work in which it is to be used. The RE must

review and approve the mix design in writing. A copy of the approved mix design must be placed in the files. Field inspectors must verify that the mix delivered to the job site matches the approved mix design. The inspector must place a check mark adjacent to the mix ID shown on the weigh tag and initial the tag. Tags are to be collected at the point of delivery to the jobsite.

Acceptance of Minor Quantities of Materials without Testing

If stated in the LPA's QAP, relatively minor quantities of construction materials may be accepted without testing provided the following 3 conditions are met:

1. Visual examination of the material is performed.
2. The manufacturer or supplier has recently furnished similar materials found to be satisfactory using normal sampling and testing requirements.
3. The manufacturer (or supplier in the case of HMA or concrete) provides certification that the material furnished complies with the contract specifications.

The following list suggests approximate maximum quantities of materials that may be accepted under the conditions indicated above:

- Aggregates other than for use in Portland Cement Concrete; not to exceed 100 tons per day nor more than 500 tons per project
- Bituminous mixtures (includes HMA); not to exceed 50 tons per day (sample at Engineer's discretion if project total is less than 500 tons)
- Bituminous material (includes Asphalt); not to exceed 100 gallons per project

Acceptance of Manufactured or Fabricated Materials

The acceptance of manufactured and fabricated materials is most frequently based on one of the following three methods:

Source Inspection

Source inspection is the inspection, sampling, and testing of manufactured and prefabricated materials at locations other than the job site. It is most commonly performed on materials involving structural integrity or safety to the public, such as precast pre-stressed concrete members, structural steel, and poles for electrical systems. The purpose is to ensure that structural materials comply with contract requirements regarding raw materials, fabrication processes, personnel certification, and in-process quality control testing.

The LPA determines which materials will be source inspected. For a list of manufactured or prefabricated materials that are commonly source inspected for Caltrans projects, see Table 6-2.1, Inspection of Fabricated and Manufactured Materials of the Caltrans Construction Manual. Resources to assist in the development of a Source Inspection Program can be found at: https://mets.dot.ca.gov/manuals/SIGLA/.

Source inspection is performed by the LPA or a qualified consultant. Caltrans no longer provides source inspection services for projects off the SHS. Caltrans may provide source inspection for projects on the SHS if terms are detailed in a cooperative agreement or encroachment permit. For more details on the inspection procedures, refer to CTCM Section 6-3: Field Tests and the Office of Structural Materials Practices and Procedures (OSMPP) manual.

Due to the costs incurred when traveling to inspect materials sourced far from the job site, CTSS Section 6-2.01E: Source Inspection Expense Deductions provides the details for deductions to be taken when applicable.

Verification at the source of fabrication does not guarantee acceptance at the job site. Table 6-2.1 referenced above also includes items that must be checked or rechecked at the job site to ensure that the materials are acceptable. The RE must inspect the material upon arrival to be sure it meets the requirements of the specifications and is undamaged by shipping and handling. The RE must obtain and file the source inspectors report.

Materials Accepted on the Basis of Authorized Materials List

The CTSS identifies some materials that must be on an authorized materials list. The list is available at: https://dot.ca.gov/programs/engineering-services/authorized-materials-lists. For contracts using the CTSS, the RE must verify the materials furnished are shown on the appropriate authorized materials list before the material is used on the project. Materials shown on the authorized materials list may also require a certificate of compliance or sampling and testing for acceptance.

Materials Accepted by Certificate of Compliance

The LPA may permit the use of certain manufactured products, materials, or assemblies accompanied by a Certificate of Compliance (COC) prior to sampling and testing, provided these products, materials, or assemblies do not involve structural integrity or safety to the public. Additionally, these items must have a history of having met specifications based upon previous sampling and testing. The manufacturer of the products, materials, or assemblies must sign the COC and state that the included materials and workmanship conform in all respects to the project specifications. The contract documents must specify which materials require the Contractor to submit a COC. The RE is responsible for ensuring that a COC is furnished with each lot of these materials delivered to the work site. Materials Requiring a Certificate of Compliance Per the Caltrans Standards Specifications and Materials Requiring a Certificate of Compliance Per the Greenbook are lists of materials for which the contractor must submit a COC per the respective project specifications. The COC must be furnished before the material is incorporated into the work and include:

- Project number
- Certified material lot number matching lot tags affixed or stenciled to the released materials
- Manufacturer's signature
- A statement that the material complies with the specifications of the contract

All materials accepted on the basis of a signed COC must be documented in the inspector's daily reports. Inspect the material upon arrival to be sure it meets the requirements of the specifications and is undamaged by shipping and handling before accepting. Manufactured products, materials, or assemblies used on the basis of a COC may be sampled again at the job site and tested at any time during the life of the contract. Items found not in conformance with contract requirements must be rejected whether in place or not.

A COC for each item must be kept in the RE's file.

Materials Requiring a Buy America Certification

Iron or steel products, manufactured products, and construction materials permanently incorporated into the project must comply with Buy America requirements per 23 CFR 635.410 and Section 70914 of the Build America, Buy America (BABA) Act. All iron or steel products must be delivered with a COC stating all manufacturing processes involved in the production of the products occurred within the United States. These processes include:

- Rolling
- Extruding
- Machining
- Bending
- Grinding
- Drilling
- Coating
- Welding
- Smelting

In addition to the COC requirements mentioned earlier in this section, a Buy America COC must also include the mill markings or heat numbers. All manufacturing processes for construction materials as defined in 2 CFR 184.6 must occur in the United States. Contractors must provide certificates of compliance with each project delivery for all construction materials used for the projects. Manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to 2 CFR 184.6. Minor additions of articles, materials, supplies, or binding agents to these construction materials do not change the categorization of the construction material.

The Buy America requirements apply to the entire construction contract if any Federal-aid money has been authorized for any phase of the project, not just the construction phase. This policy is applicable to all phases of a project (such as design, environmental, right-of-way, or construction) covered under the National Environmental Policy Act (NEPA) document, regardless of the funding sources. Therefore, the LPA cannot circumvent the Buy America requirement by declaring that the material is being paid for with the non-federal portion of the funding.

Buy America does not apply to temporary materials not permanently incorporated into the project such as temporary steel used in falsework, sheet piling, or shoring. Buy America requirement does not apply to recycled steel nor pig iron and processed, pelletized, and reduced iron ore manufactured outside the United States. A minimal use of foreign iron or steel is allowed provided that the total cost of iron and steel products as delivered to the project site is less than $2,500 or 0.1 percent of the total contract amount, whichever is greater. The LPA must track the amount of incorporated foreign iron or steel as the work proceeds to ensure that the minimal use threshold amount is not exceeded at any point in the contract. Once the cumulative value reaches the minimum threshold limit, then all additional installed materials must be of domestic origin. Supporting documentation for this minimal use must be on file in the project records (i.e., invoices, including the cost of transportation).

Waiver of Buy America Requirements for De Minimis Costs

In addition to the minimal use of foreign iron and steel allowed there is a De Minimis Waiver which can waive the application of FHWA's Buy America requirements for manufactured products and construction materials under a single project for which the total value of non-compliant Manufactured Products and Construction Materials is no more that the lesser of $1,000,000 or 5% percent of the total applicable costs for the project, including any agency furnished materials.

The percent threshold is calculated based on the following formula:

(total value of non-compliant construction materials and manufactured products) / total applicable project costs (steel, iron, construction materials and manufactured products)

This threshold is based on the actual cost of the steel, iron, construction materials, and manufactured products, not just the anticipated cost of those materials. In other words, the applicable project costs only include total actual material costs and does not include excluded materials as part of this total.

As with iron or steel products, the LPA must track the amount of incorporated foreign materials as the work proceeds to ensure that the minimal use threshold amount is not exceeded at any point in the contract. This includes any change orders impacting the applicable project costs. Once the cumulative value reaches the minimum threshold limit, then all additional installed materials must be of domestic origin. Supporting documentation for this minimal use must be on file in the project records (i.e., invoices, including the cost of transportation).

To assist in the calculation of the De Minimis Cost for a project, a spreadsheet tool is available as a resource. The tool requires that the agency provide agency furnished material cost information of applicable Buy America materials to use in the calculation of the De Minimis Cost for the project. It is recommended that the spreadsheet tool be made available to the contractor and submitted to the RE early in the contract for review and approval.

The LPA's failure to comply with Buy America provisions will result in the loss of federal funding for not only the applicable contract items, but may potentially include all federal funding authorized for the construction phase of the project based on potential circumstances. In the event an after-the-fact discovery of non-compliant foreign materials occurs, the LPA must expeditiously inform their DLAE, who will coordinate with FHWA to determine the appropriate resolution.

Material QA Costs

Material inspection, testing and sampling costs are eligible to be charged to the construction engineering phase of the project.

LPAs using the Greenbook (as outlined in Section 4-1.3.3) can select a consultant laboratory to sample and test materials at distant locations. This specification allows for the LPA to have the contractor pay for the costs of this service; however, the contractor must not select or exercise authority over the consultant laboratory.

Records

All material records of samples, tests, material releases, and certificates of compliance for a given project must be incorporated into the project file. It is recommended that this file be organized as described in Section 16.3: Maintaining Project Records of this chapter. The complete project file must be available at a single location for inspection by Caltrans and FHWA personnel at any time during the construction project. The file must be available at the LPA administrative office for at least three years following the date of final voucher. When two or more projects are being furnished materials simultaneously from a single plant, it is not necessary to secure separate samples for each project; however, individual test reports are to be supplied to complete the records for each project.

Materials Certification

Upon completion of construction, the RE must complete LAPM 16-E: Final Materials Certification and submit a copy to the DLAE. All materials incorporated into the work which do not conform to the project specifications must be explained and justified on LAPM 16-E, including changes by virtue of change orders.

16.12 Environmental Stewardship

The National Environmental Policy Act (NEPA) mandates that steps be taken to prevent or eliminate damage to the environment. This is accomplished through the environmental processes detailed in LAPM Chapter 6: Environmental Procedures. Furthermore, the LPA is responsible for complying with applicable state and local laws, obtaining necessary permits, and ensuring that mitigation commitments are fully incorporated into the Plans, Specifications and Estimate, and implemented during construction. This section outlines the RE's responsibilities to fulfill these requirements.

16.12.1 Responsibilities of the RE

The responsibility to ensure that all environmental mitigation commitments are incorporated during construction falls on the RE. First, the RE must double check that no mitigation commitments were inadvertently omitted from the PS&E, then the RE must ensure that the commitments are properly executed during construction, and third, the RE must ensure that the execution was adequately documented.

At the start of each project, to ensure no mitigation commitments were omitted from the PS&E, the RE must obtain and read the key documents related to environmental mitigation for the project, including:

1. The approved project environmental document. This document will have been signed by Caltrans and will be one of the following three types:
    - Categorical Exclusion (CE)
    - Finding of No Significant Impact (FONSI)
    - Record of Decision (ROD)
2. The Environmental Commitments Record (ECR). The ECR is a tool for tracking and documenting the completion of all mitigation commitments. It is developed during the PS&E phase and compiles all terms, conditions, and mitigation measures required by all the environmental permits, approvals, and agreements from resource and regulatory agencies.

    The ECR usually comes in a spreadsheet format and includes the following:
    - A brief description of the commitment
    - The name and page number of the document requiring the commitment (for example: Fish and Wildlife Permit, page 24)
    - The phase in which the commitment will be executed (R/W, PS&E, or Construction)
    - The name of the LPA person certifying that the commitment was completed and the date

    If the project has no mitigation commitments, it is helpful if the project development team note this on a blank ECR in the project file.
3. All environmental permits, approvals, and agreements from resource and regulatory agencies; not all projects will have these documents.

Before construction begins, check if any mitigation commitments were inadvertently omitted from the PS&E. If yes, write a change order to include them. Check the permit dates and obtain extensions if necessary. Consult the LPA person in responsible charge, the LPA environmental liaison, and the design team, as needed. Bring the environmental commitments to the attention of the contractor and LPA staff at the pre-construction meeting. Environmental commitments might include using biological or archeological monitors, temporary fencing, relocating plants or animals, or enforcing dust and noise control, among other things. Be sure the contractor includes mitigation commitments in the project schedule, if appropriate.

During construction, ensure the contractor is complying with all requirements and document compliance using the assistant RE daily reports and photographs. Other documentation might include letters approving the monitors, sign-in sheets from required crew trainings, and copies of required reports or surveys. Sign and fill in the dates on the ECR (or equivalent) as mitigation commitments are completed. If the contractor is not complying with the mitigation commitments, document and take action. Actions might range from letter writing to payment withholdings to project suspension. Consult your contract and permits.

After project acceptance, confirm all monitoring reports and post-construction mitigation reports were submitted to permitting agencies, if applicable. Certify on the ECR (or equivalent) that all mitigation commitments have been completed and documented.

16.13 Progress Payments, Accounting Procedures and Payment Records

Progress payments are compensation to the prime contractor for the value of work completed during a covered period. Contract language generally calls for progress payments to be made at least once each month as the work progresses.

The LPA may request reimbursement for project costs incurred from Caltrans, who in turn requests reimbursement from FHWA. The reimbursement request is typically based on the progress payment made to the contractor. The progress payment is based on an estimate prepared by the engineer. Each estimate reflects the total contract item work completed during the pay period, extra work bills submitted for approved change order work, materials on hand, deductions, and withholds.

Since FHWA may only participate in the actual, allowable, and allocable costs of a project, it is essential the estimate supporting the reimbursement request be based on accurate quantities. CFR 635.123: Determination and Documentation of Pay Quantities requires that each state Department of Transportation have procedures in place which provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the state for all federal–aid projects, including those administered by LPAs. This section outlines those procedures.

16.13.1 Procedures

State-administered projects and projects on the SHS must follow the procedures outlined in the CTCM. LPA-administered projects must use a similar accounting system. The essential elements of the system are: 1) source documents, 2) contingency balance tracking, and 3) estimate of the final cost of work.

Source Documents

Source documents are the original documents, data, and records containing the details to substantiate a transaction entered in an accounting system. Source documents are the

permanent record sheets that create a clear and easily followed accounting trail from the total pay quantities in the proposed final estimate, back to the first measurement or calculation for each bid item; and for extra work at force account payments back to records and costs substantiating performance of the work.

The most common source documents are:

Contract Item Quantity Calculation Sheets

Contract Item Quantity Calculation sheets, also known as Q sheets, support and document item payments made to the contractor each month. A separate quantity calculation sheet must be prepared for each contract item being paid for each progress payment. For example, if in the month of May, payments were made on 12 contract items, there should be 12 separate item calculation sheets.

Each Q sheet must clearly record the following:

- The appropriate bid item number
- The location of the work or installation (sta., depth, offset, etc.)
- The measurements and calculations performed to determine the quantity actually performed by the contractor to be paid (this requirement applies equally to lump sum items)
- The source of any figure, calculation, or quantity shown on the source document (field count or measurement, scale weight, planned dimension)
- The name, date, and signature of the person preparing the document
- The name, date, and signature of the person who independently checked the document and calculations

Additional Q sheet requirements and considerations:

- Q sheets must be produced by the LPA not by the contractor.
- Quantities should be measured in accordance with the method directed in the measurement or measurement and payment clauses in the contract specifications for each bid item. For more information about measuring quantities for specific bid items, refer to CTCM Chapter 4: Construction Details.
- Calculation sheets should be checked as soon as practicable, but in any event, prior to payment of a final estimate.
- The quantity paid-to-date shown on the estimate for a bid item must agree with the sum of the quantities on all the source documents for that item.

An example of a quantity calculation sheet is available at: https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/coe/quantity-calc-sheet.docx

Weight Tickets

Weight tickets, sometimes referred to as load slips, are used to support both item quantity payments made by weight and extra work paid at force account. Weight tickets must be collected at the point of delivery and validated by a representative of the administering LPA. This is accomplished by the LPA employee signing or initialing the load slip upon delivery to indicate the represented material was used in the work (this is also the time to check the proper mix design or specified material has been delivered). If applicable, on the load slip, indicate any

quantity of material not included for payment, such as unused or wasted material. When a determination is made to reduce the quantity, advise the contractor's foreman or superintendent of the amount and reason for the reduction. In the daily report, document the reduction and the name of the contractor's employee who you advised of the reduction.

Consider organizing Q sheets and weight tickets by bid item so an easily followed audit trail exists. Total and bundle the tickets by each day worked, and place in the project files.

Daily Reports

Daily reports are required to support quantity calculation sheets and force account payments. See Section 16.8: Engineer's Daily Reports of this manual for information on producing adequate daily reports.

Material Invoices

Payment for material purchased for extra work paid at force account must be supported by a copy of the vendor's invoice whenever possible. If no individual invoice is available, as in the case of materials taken from contractor's stock, a copy of the mass purchase invoice may be used as support. If no invoice is available to support unit purchase prices, submit a statement with the change order bill. In the statement, explain how the unit prices were verified.

Any invoices the contractor submits must represent the material actually used.

Material on Hand

A material on hand but not incorporated into the work is eligible for a progress payment if:

1. Compliant with other Contract parts
2. Material cost exceeds either of the following:
   2.1. $50,000
   2.2. $25,000 if the requestor is certified as one or more of the following:
      2.2.1. DBE
      2.2.2. Small business as certified by Department of General Services, Office of Small Business
3. Purchased
4. Invoice is submitted
5. Stored within the LPA and you submit evidence that the stored material is subject to the LPA's control
6. Protected from weather and contamination
7. Water pollution control measures are established and maintained
8. Requested on Caltrans form (CEM-5101) or LPA equivalent

CTCM Section 3-906E: Materials on Hand contains related guidance.

Change Order Extra Work Billings

Payments for change order work must not be made until the change order is approved/ executed.

Force Account Cost Calculations

These calculations consist of adding specified markups to the actual cost of labor, equipment, and material used to perform the extra work. The contractor must submit bills covering each

change order for each day that force account extra work is performed. Compare the force account bills submitted to:

- Labor and equipment hours shown on the daily reports (Tentative Agreements from the Contractor, i.e., with Contractor's letterhead, are not valid for approving payment for Extra Work Bills)
- Material quantities shown on the daily reports
- Prevailing wage rates and payrolls
- Equipment rental rates in the official rental rate book
- Material invoices supplied

Keep a copy of the approved force account bill and the supporting documents in the project files.

Contingency Balance Tracking

The contingency balance must be updated each month to reflect item overruns and approved change order work.

Estimate of the Final Cost of Work

An anticipated changes sheet must be kept in the project files where the current estimated probable final cost of the work is recorded.

16.13.2 Approval of Progress Pay Estimates and Reimbursement

The RE is responsible for the accuracy of a progress pay estimate. By approval, the RE verifies the quantities are correct, and the data submitted conforms to these policies.

The progress pay estimate, all invoices, and supporting documentation are submitted to the DLAE as part of the Invoice Package (see LAPM Chapter 5: Invoicing). CTCM, Chapter III, Section 3-9: Payment is a good reference document to assist LPAs in organizing their accounting system for a typical Federal-aid project.

16.14 Safety Provisions

Federal and state laws establish occupational safety and health standards with which all employers must comply. These laws basically require an employer to provide a safe place of employment i.e., one that is reasonably free from danger to life, or health.

16.14.1 Procedures

The contractor will be required under the contract specifications to comply with safety rules and regulations (see Form FHWA-1273 section titled Safety - Accident Prevention). The Construction Safety Orders of the California Division of Industrial Safety apply to all Federal-aid contracts.

In administering this part of the contract, the engineer is required to verify the contractor properly provides a safe work environment for its workmen. Under no circumstances should the contractor be instructed orally or in writing on how to correct a deficiency. The unsafe condition should simply be identified as well as the specific regulation involved if it is known. In carrying out the responsibilities of assuring safety compliance as a contract requirement, the following guidelines should be used:

1. Imminent Hazard - These are conditions that, if not corrected, would likely result in an accident causing severe or permanently disabling injury, or death.

   When an imminent hazard is found to exist or when the contractor permits repeated occurrences of a hazardous condition, the RE should take the following steps:

   a. Advise the contractor verbally of the condition and the need for immediate correction.

   b. Remove all employees from the hazardous exposure.

   c. Have the contractor remove all personnel not necessary to make the corrections. Complete all necessary abatement actions.

   d. If the contractor complies, document the incident in the contract's Safety Diary with appropriate references in the RE's Diary.

   e. If the contractor does not comply, shut-down the affected operation(s). Document the condition(s) and your action taken in writing. Whenever it is necessary to shut-down a contractor's operation, the LPA Construction Safety Coordinator and the Division of Occupational Safety and Health (Cal/OSHA) should be notified of the hazardous condition and the actions taken. Diaries giving all details leading up to the suspension and copies of orders by the RE and/or the Division of Occupational Safety and Health should be maintained in the contract files (Category 6 if Caltrans' filing system is used).

2. Dangerous Conditions (Serious Hazards) - These are conditions that do not present an immediate danger to workers but if not corrected could result in a disabling injury and possibly death or could develop into an imminent hazard.

   When a dangerous condition (sometime referred to as a serious hazard) is found to exist, the RE should take the following steps:

   a. Advise the contractor verbally of the condition and the need for timely correction. If appropriate, set a compliance deadline.

   b. Remove state and consultant employees from the hazardous exposure.

   c. If the contractor complies, document the incident in the contract's Safety Diary with appropriate references in the RE's Diary.

   d. If the contractor does not comply, consider ordering the shut-down of affected operation(s). Document the condition(s) and your action taken in writing. If the operation is ordered to be shut-down, proceed in the same manner as described for an imminent hazard.

3. Minor or Non-Serious - These are conditions that could result in minor injuries or that may be classified as a threat to health.

   When a non-serious or minor condition is found to exist, the RE should take the following steps:

   a. Advise the contractor verbally of the condition and the need for correction.

   b. If the contractor complies, document the incident in the contract's Safety Diary.

   c. Protect state and consultant employees from exposure.

d. If the contractor fails to correct the condition or permits its repeated occurrence, the Construction Safety Coordinator should be notified.

16.14.2 Citations & Information Memorandum

Cal/OSHA issues citations if, during an inspection, they observe an employee exposed to an unsafe or unsanitary condition. Citations may also be issued in situations where an employee exposure can be shown to have occurred even though it was not observed during the course of the inspection. Every citation will identify the violation and the gravity of the violation (serious, general, or regulatory).

In addition to the authority of issuing citations, Cal/OSHA has the authority to prohibit entry into an unsafe area or to use unsafe equipment (Labor Code Section 6325) when an imminent hazard exists. The violation of this type of order is a misdemeanor.

When an actual exposure cannot be demonstrated, but a condition is found to exist that would be a violation if an exposure where to occur, then Cal/OSHA may issue an Information Memorandum. To allow an employee to be exposed to a condition identified in an Information Memorandum constitutes a willful violation of the Safety Orders.

Should a contractor receive a citation, shut-down order (yellow tag), or an Information Memorandum, the Construction Safety Coordinator should be notified. The RE should react to the Cal/OSHA action as outlined in the previous section. The level of action will be based on the severity as determined by Cal/OSHA.

16.15 Traffic Safety in Highway and Street Work Zones

The LPA must ensure adequate consideration is made for traffic safety in highway and street work zones on all Federal-aid construction projects.

16.15.1 Procedures

The LPA must develop and implement procedures consistent with the requirements of this section and LAPM Chapter 12: Plans, Specification & Estimate (Section 12.6: Plans) that will contribute to the safety of motorists, bicyclists, pedestrians, and construction workers on all Federal-aid highway construction projects. For each construction project, the LPA's procedures must include, but not be limited to the following:

1. Temporary Traffic Control (TTC) Plan
    - Before work begins, traffic control plans, when developed for handling traffic through a construction or maintenance project, must be approved by the Engineer of the LPA or authority having jurisdiction over the highway. TTC plans may range in scope from a very detailed plan designed solely for a specific project, to a reference of standard plans or manuals. The degree of detail in the TTC plan depends on the project complexity and traffic interference with construction activity.
    - TTC plans must be developed for all projects and included in the plans, specifications and estimates (PS&Es).
    - The TTC plan must comply with Part 6: Temporary Traffic Control of the California Manual on Uniform Traffic Control Devices (CA MUTCD).

- The scope of the TTC plan must be determined during the planning and design phases of a project.
- Per the CA MUTCD, the TTC plans must be prepared by a person who understands the fundamental principles of TTC and work activities to be performed. For those agencies using the Greenbook, it specifies the preparer must be a Registered Civil or Traffic Engineer.
- The design, selection, and placement of TTC devices for a TTC plan must be based on engineering judgment.
- Provisions may be incorporated into the project bid documents that enable contractors to develop an alternate TTC plan. This alternate or modified plan must have the approval of the engineer of the LPA prior to implementation.

2. Responsible Person - The LPA should designate a qualified person at the project level who should have the primary responsibility and sufficient authority for assuring the TTC plan and other safety aspects of the contract are effectively administered. While the project or RE may have this responsibility on large complex projects, another person should be assigned at the project level to handle traffic control on a full-time basis. This individual's name should be included in the Resident Engineer Contract Administration Checklist (see Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist) if the RE is not given this responsibility.
3. Training - All individuals responsible for the development, design, implementation, and inspection of traffic control should be adequately trained. Flaggers must be trained as per the Construction Safety Orders in the California Code of Regulations (Title 8, Division 1, Chapter 4, Subchapter 4, Article 11, Section 1599: Flaggers).
4. Accident Analysis - The LPA should analyze construction and maintenance work site accidents for the purpose of correcting deficiencies which are found to exist on individual projects and to improve the content of future traffic control plans.
5. Pay Items - The method of payment for traffic control items should be described in the project specifications.

16.16 Contract Disputes and Claims

All Federal-aid projects must include contract provisions containing administrative procedures for dealing with contractor claims. Claim procedures must be included in a LPA's contract special provisions or standard specifications. These procedures must allow for the proper treatment of the following two conditions:

1. Protests or potential claims that have not been resolved during the progress of the work and which have been restated as claims with the return of the proposed final estimate.
2. Situations wherein the first notification of any problem is a claim submitted with the return of the proposed final estimate.

The procedures in the contract claims provisions must not be bypassed or modified through the use of change orders.

This section provides guidance to timely address and resolve contract disputes and claims. This section applies to all Federal-aid projects.

16.16.1 Background

A contract dispute is a disagreement between the contractor and the LPA, often over the need to revise the contract, which is generally for additional time or compensation. Among other things, disputes stem from disagreements in the interpretation of plans, specifications, bid proposals, material handouts, and field conditions. Administrative disputes also occur and may include the following:

- Contract item quantity payments
- Changed quantity payment adjustments
- Administrative deductions and withholdings
- Extra work: labor, equipment, and materials

Disputes become claims when the contractor lists disputes as exceptions to the proposed final estimate.

16.16.2 Claims Avoidance

Claims avoidance is the most prudent step an RE can take to minimize the number and the size of claims. Claims are minimized or avoided if the RE appropriately engages with the contractor and properly administers the contract. Be knowledgeable about the contract documents, policies, and procedures, including federal and state laws applicable to the proper administration of the contract. Maintain a respectful relationship with the contractor throughout the project.

When disputes occur, try to resolve them as early as possible, in accordance with the contract, and at the lowest responsible level. Take the following suggested actions to resolve disputes and minimize claims:

- Communicate with the contractor
- Define the critical issues
- Gather the facts
- Review appropriate contract specifications and documents
- Determine responsibilities
- Consult subject matter experts
- Work within the contractual constraints
- Communicate your position timely
- Provide clear reasons when no merit exists
- Compensate the contractor promptly when merit exists
- Document resolution and elevate, if appropriate

The inclusion of formal Partnering in the contract may help reduce disputes, or aid in early resolution (see CTSS Section 5-1.09: Partnering). Section 5-1.43: Potential Claims and Dispute Resolution of the Standard Specifications requires the contractor to minimize and mitigate the impacts of disputed work or events.

Section 5-5: Delays of the Greenbook obligates the contractor to avoid losses due to delays by the judicious handling of forces, equipment, or plant.

Alternative Dispute Resolution (ADR) techniques can also be included in the contract provisions to help resolve disputes and claims. ADR is any method of resolving disputes other than by litigation. Techniques include negotiation, mediation, disputes review board (DRB), mini-trial, and arbitration. These methods vary by the amount of assistance from outside sources and the amount of decision responsibility taken away from the disputing parties.

- Negotiation - Negotiation occurs when parties resolve the issues themselves, usually at the project level. The LPA's administrative processes would also be considered as negotiation.
- Disputes Review Board (DRB) - A DRB is a standing 3-person committee created specifically for the project which meets on a regular basis to review and resolve all disputes before they become formal claims. Both parties choose a member who represents them and selects the third member. The operating procedures are described in the contract and the operating costs are shared by both parties. Written decisions are rendered by the board however, the decisions are typically non-binding.
- Mediation - Mediation consists of using a neutral party as a catalyst to depersonalize the dispute. The mediator does not decide the dispute, but instead tries to facilitate communication and help the parties achieve compromise and settlement. Mediation is normally non-binding.
- Mini-Trial - A mini-trial is a settlement process in which each party's counsel presents a summary of their respective cases, including any evidence and witnesses, to a panel. The panel consists of senior officials of the LPA and the contractor, plus a neutral official. The officials have authority to settle the dispute. FHWA also has a representative at the mini-trial who has the authority to approve any settlement reached by the parties. Mini-Trials are non-binding.
- Arbitration - Arbitration is a proceeding in which the dispute is resolved based on fact and law, by one or three arbitrators. The arbitrators are chosen by the parties. Although decisions may or may not be binding and without appeal, in almost all cases, the arbitration decision is accepted by both parties. Usually, the only cases carried on to litigation are those that involve a point of law. Arbitration is permitted under the State Public Contract Code.

Specifications are available at California Department of Transportation Standard Specifications website; for more information contact the DLAE.

16.16.3 Claim Procedures and Contract Provisions

During the Project

For projects using Caltrans Standard Specification during the course of the project and up to receiving the proposed final estimate, the contractor must submit a contract dispute or protest in the form of a Request for Information (RFI). If the RFI leads to a dispute, the contractor must follow the three-part potential claim process specified in the contract. The three parts of the potential claim process begins with Exhibit 16-UI: Initial Potential Claim Record, Exhibit 16-US: Supplemental Potential Claim Record, and Exhibit 16-UF: Full and Final Potential Claim Record. Ensure that on all claims-related documents, the date and time of receipt and the name of the person who received it are noted. Ensure the RFI and potential claim documents are complete

and timely. If the information is incomplete, notify the contractor and request the contractor resubmit the document with the complete information within the required timeframe.

Relevant portions of the Caltrans Standard Specifications include, but are not limited to:

- Section 5-1.06: Protests
- Section 5-1.42: Requests for Information
- Section 5-1.43: Potential Claims and Dispute Resolution

Relevant portions of the Standard Specifications for Public Works Construction, also known as the Greenbook, include, but are not limited to:

- Section 3-4: Changed Conditions
- Section 3-5: Disputed Work

LPAs should always review relevant portions of their special provisions.

Additional guidance on responding to RFIs and potential claims on properly documenting the dispute resolution process can be found in the following sections of the Caltrans Construction Manual:

- Section 3-521: Requests for Information and Potential Claim Records
- Section 5-403: Requests for Information and Potential Claim Records

Sample dispute response clauses are located in the Caltrans Construction Manual (Section 3-521E: Sample Dispute Response Clauses) including sample responses for the following topics:

- RFI to Protest Differing Site Condition
- RFI to Protest a Time Adjustment Determination in a Change Order
- RFI to Protest a Weekly Statement of Working Days
- Potential Claim Record

After the Proposed Final Estimate

LPAs must diligently pursue the satisfactory resolution of claims within a reasonable period of time. It is important to follow your contract claims process to ensure the process is completed within the statutory requirement of 240 days. If the contractor has diligently pursued and exhausted the administrative procedures specified in the contract, the contractor is entitled to file for arbitration of its claims 240 days after contract acceptance, even if the LPA has not issued a claims determination. The LPA is not required to give advance notification to the DLAE or FHWA of the details of claims unless estimated defense and/or settlement costs would require an increase in the amount of federal funds authorized for the project.

Claims that involve difficult, complex, or novel legal issues should be brought to the attention of the DLAE. The DLAE will contact the FHWA for assistance, if appropriate. The DLAE may provide limited engineering and administrative assistance in the claim defense, depending on the complexity and size of the claim, as well as the availability of Caltrans staff resources.

16.16.4 False Statements Concerning Highway Projects

This section applies to all Federal-aid highway construction projects.

18 U.S.C.1020 is an anti-fraud statute originating from the Federal-Aid Road Act of 1916. The making or use of false statements is a felony, punishable by fine of not more than $10,000, or imprisonment of not more than five (5) years, or both. Making or using false claims for the purpose of obtaining payment against federal funds, will subjects violators to forfeiture of $2,000 for each violation.

This section specifically provides that willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of federal law and requires that the false statements poster, Form FHWA-1022, be posted on the project.

The LPA is to conduct investigations on complaints and review records that are potentially vulnerable to fraud. It is also the LPA's responsibility to furnish the prime contractor with the required poster (Form FHWA-1022) and to ensure it is posted accordingly.

16.16.5 Federal-aid Participation

The eligibility for and extent of Federal-aid participation, up to the amount of federal funds authorized for the project, in a contract claim should be determined by the LPA in accordance with the following:

a. Contract claim defense costs which are directly allocable to a Federal-aid project but not including general administrative and other overhead costs, are reimbursable up to the federal statutory share. Such costs are reimbursable at the same participation rate as the related construction project.

b. Federal funds will participate in contract claim awards to the extent that any contract adjustments made are supported and have a basis in terms of the contract and applicable state law, as fairly construed. Further, the basis for the adjustment and contractor compensation should be in accord with prevailing principles of public contract law.

c. Federal funds can participate in interest associated with a claim if three conditions are met:

   - The interest must be allowable by statute or specification
   - The interest is not the result of delays caused by dilatory action of the LPA or contractor
   - The interest rate does not exceed the rates provided for by statute or specification

d. Acts of LPA employees involved in contract administration and contract plan preparation matters which subsequently give rise to claims, are reimbursable to the extent the actions are reasonable and within the standards of the profession. Federal funds will not participate if it has been determined that LPA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual LPA practices in project design plan preparation or contract administration.

e. Federal funds will not participate in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by the LPA

to an opposing party in litigation; and in tort, inverse condemnation, or other claims erroneously styled as claims under a contract.

f. In those cases where LPAs receive an adverse decision in an amount more than the LPA can support prior to the decision, or settles a claim in an amount more than the LPA can support, the contract claim award is eligible for Federal-aid participation up to the appropriate federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:

- The DLAE was consulted and concurred with the proposed course of action
- All appropriate courses of action have been considered
- The LPA pursued the case diligently and in a professional manner

16.16.6 Additional Funds

If contract claim defense and/or award costs will exceed the amount of federal funds authorized for the project, the LPA should contact the DLAE for assistance. For regionally programmed Federal-aid funds (Regional Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, etc.) the Regional Transportation Planning Agency (RTPA) or Metropolitan Planning Organization (MPO) must be involved in authorizing additional funds. For state discretionary funds, HQ DLA will make the determination. Many of these programs may also require California Transportation Commission (CTC) approval for the additional funds. The Local Assistance Program Guidelines (LAPG) should be consulted for procedures for obtaining funding from the various Local Assistance funding programs.

Generally, the LPA must take action to settle the claims that are deemed to have merit first, and then initiate the request for the additional funds. However, if estimated claim defense costs alone will exceed available funds, approval for the additional claim defense costs may be obtained in advance, depending on the funding program. If approval is received, the DLAE will initiate authorization of the additional federal funds upon receipt of a Request for Authorization, and copies of a revised finance letter and detail estimate. It is important to note that while additional funds may be authorized and obligated, reimbursement of costs is still subject to the standards described in this manual. Upon resolution of all contract claims, if additional federal funding is required, the DLAE will review the documentation and recommend the appropriate action depending on program constraints and the circumstances of the claim settlement. The adequacy of the LPA's project supervision and inspection, including the keeping of proper records, will be considered in this determination.

16.16.7 Invoices

Claim defense costs are considered construction engineering if incurred before the final invoice and should be included in progress billing invoices prepared and submitted to Caltrans (see LAPM Chapter 5: Invoicing).

Contract claim awards are billed as construction contract costs. These costs are usually not known until the final invoice is prepared. Claims award costs are included in the Final Invoice, Final Detail Estimate, and reported on the CO Summary. These documents are included in the mandatory Report of Expenditures submitted to the DLAE (see LAPM Chapter 17: Project Completion). Documentation of approvals from the appropriate fund manager for additional funds, if required, should also be included in the Report of Expenditures.

Upon receipt of the Report of Expenditures, the DLAE will accept the LPA certification regarding the accuracy of the reported costs and approve payment after verifying the project was completed in accordance with the scope described in the project authorization.

16.16.8 Documentation

The LPA must document the determination of participation by providing in writing the following:

- Legal and contractual basis for the claim
- Cost data supporting any payment made
- Other facts supporting the award or settlement

Federal-aid participation should be supported by an audit of the contractor's actual costs unless costs can be substantiated with project records, or an audit would not be cost-effective.

Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to the consideration of the award or settlement. The LPA must include in its documentation a legal opinion from its counsel providing the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved. All contract records must be retained by the LPA for a minimum period of three years from the date of the final voucher.

16.16.9 Recovery of Compensatory Damages

The federal share pertaining to the recovery of compensatory damages should be equivalent to the federal share of the project(s) involved. In cases where LPAs affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents, the project(s) from which the claim(s) arose should be credited.

16.17 Final Inspection and Contract Acceptance

16.17.1 Final Inspection

A final inspection of the work must be conducted by the LPA prior to final completion and before project verification by the DLAE. Any punch list items and/or corrective actions resulting from the inspection must be completed by the contractor before expiration of the contract time. The LPA representative must also take this time to review the project Environmental Commitments Record, confirming and documenting that the mitigation measures the contractor was responsible for were completed.

Upon successful completion of any punch list items and/or corrective actions undertaken by the contractor, the LPA representative should complete LAPM 16-F: Final Inspection Form and forward it to the Caltrans DLAE for verification. The LPA representative signing the Final Inspection Form must be one with authority for accepting the completed contract on behalf of the LPA and authorizing final payment to the contractor.

Timely submittal of LAPM 16-F: Final Inspection Form to the DLAE is encouraged as DLAE inspection prior to contract acceptance may provide an opportunity for the LPA to direct the contractor to complete corrective actions prior to final payment and acceptance of the contract.

Upon receipt of LAPM 16-F: Final Inspection Form, the DLAE will review the project site to verify the project was constructed in accordance with the scope and description of the project in the

authorization documents. Any safety, design, or construction deficiencies that are identified will be promptly brought to the attention of the LPA for correction. Upon satisfactory review the work, the DLAE will sign LAPM 16-F: Final Inspection Form and transmit a copy to the LPA.

16.17.2 Contract Acceptance

The RE recommends contract acceptance once it is determined that the work is completed in accordance with the requirements of the Standard Specifications, special provisions, plans, and approved changed orders.

16.18 Construction Oversight Program

For locally administered Federal-aid highway projects off the State Highway System, construction oversight reviews is performed by Caltrans Local Assistance Construction Oversight Engineers (COEs). DLAE staff may participate in the reviews, if available.

16.18.1 Types of Reviews

The purpose of construction oversight reviews is to verify LPA compliance with Federal-aid construction contract administration requirements. These reviews may be conducted prior to the start of the construction contract, during construction, and/or after the completion of the construction contract as described below. The objective is to perform at least one review on all projects.

Preliminary Construction Review

The purpose of the preliminary construction review is to provide supplementary oversight and guidance regarding construction contract administration to the LPA on a Federal-aid construction project prior to the start of contract work. Preliminary reviews will be performed on selected Federal-aid projects requiring a greater degree of oversight. The following factors may be used when selecting projects for preliminary review:

- High cost and/or complex projects
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained LPA personnel
- Per request by the LPA or DLAE for additional assistance

During preliminary construction reviews, the COE will meet with the LPA's construction contract administration team and discuss project record documentation requirements using the Pre-Construction Review Checklist. The COE will also explain new policies or procedures, discuss available training, and highlight common problem areas and the means to avoid them. The timing of this type of review is targeted for after bid opening, but prior to beginning construction.

Mid-Construction Review

Mid-construction reviews will be performed on selected Federal-aid construction projects. Factors to be considered in determining which projects to review include:

- High cost and/or complex projects
- Projects administered by agencies with previous sanctions/findings
- Projects that did not have a preliminary construction review

- Duration of the project
- Project location

During these reviews, the COE will meet with the LPA's resident engineer and review the project records. The Mid-Constriction Review Checklist serves as the basis for this review. Any major deficiencies will be identified, and the LPA will be notified of the deficiencies (see Review Findings below). The timing of this type of review is targeted for 40% to 60% of construction completion but should not take place until the LPA has processed at least one progress payment to the contractor.

Post Construction Review

Post construction reviews will be performed on a case-by-case basis. Projects that did not receive a preliminary or mid-construction review, or had major deficiencies identified during a mid-construction review, are candidates for a post construction review. The purpose of the post construction review is to verify that federal and state requirements for construction contract administration have been met, and to ensure that major deficiencies noted during mid-construction reviews have been fully resolved in conformance with an accepted corrective action plan. The Post-Construction Review Checklist serves as the basis for this review. Accepted corrective action plans will also be utilized in the review. Any further major deficiencies will be identified, and the LPA will be notified of the deficiencies (see Review Findings below).

16.18.2 Review Findings

Results of the construction oversight reviews will be forwarded to the LPA and the DLAE within two weeks. Any major deficiency identified during a review will require development of a corrective action plan by the LPA in consultation with the district within 30 days of receipt of the major deficiency notification. Major deficiencies are those errors of commission or omission, which violate federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

Corrective action plans will identify actions the LPA will take to address each major deficiency noted. Corrective actions may include modifications of LPA policies and procedures, and participation in training to address systemic related deficiencies, while project-specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal ineligibility notices against the project or LPA.

16.19 References

18 USC 1020
https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partI-chap47-sec1020

23 CFR 637
https://www.ecfr.gov/current/title-23/part-637

29 CFR 5.7(b)
https://www.ecfr.gov/current/title-29/subtitle-A/part-5/subpart-A/section-5.7

41 CFR 60
https://www.govinfo.gov/content/pkg/CFR-2018-title41-vol1/xml/CFR-2018-title41-vol1-part60.xml

48 CFR Part 31
https://ecfr.io/Title-48/cfr31_main

Bridge Construction Records and Procedures Manual. V 1
https://dot.ca.gov/programs/engineering-services/manuals/bridge-constr-records-proc-manual-vol1

California Department of Transportation Standard Specifications
https://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications

California Division of Industrial Safety - Construction Safety Orders
https://www.dir.ca.gov/title8/sub4.html

California Information Practices Act (Civil Code Sections 1798, et seq.)
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CIV&division=3.&title=1.8.&part=4.&chapter=1.&article

California Public Contract Code Chapter 4
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=1.&chapter=4.&article=

California Public Records Act (Government Code Section 6253)
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=6253

Caltrans Construction Contract Standards
https://dot.ca.gov/programs/design

Caltrans Construction Manual
https://dot.ca.gov/programs/construction/construction-manual

Caltrans Labor Compliance Website
https://dot.ca.gov/programs/construction/labor-compliance

Federal Aid Contract Prejob Checklist
https://dot.ca.gov/-/media/dot-media/programs/construction/documents/labor-compliance/prejob-checklists/2021-02-federal-aid-contract-accessible-form-a11y.pdf

Federal Aid Programming Guide
https://www.fhwa.dot.gov/construction/contracts/0635asup.cfm

FHWA Technical Advisory, Construction Contract Time Determination Procedures
https://www.fhwa.dot.gov/construction/contracts/t508015.cfm

Form FHWA-1273 Contract Provisions
https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf

Local Agency Resident Engineer Construction Manual Supplement
https://dot.ca.gov/-/media/dot-media/programs/construction/documents/policies-procedures-publications/construction-manual/cm-supplement-lare-a11y.pdf

Local Agency Structure Representative Guidelines
https://dot.ca.gov/-/media/dot-media/programs/construction/documents/policies-procedures-publications/lasr-guidelines.pdf

Partnering with Caltrans
https://dot.ca.gov/programs/construction/partnering

US DOT, FHWA, Contract Administration Core Curriculum
https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm

Chapter 17 **Project Completion**

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Exhibits

Exhibit 17-A: Cover Letter and Federal Report of Expenditures Checklist
Exhibit 17-E: Sample Change Order Summary
Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise and First-Tier Subcontractors
Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise for On-Call Contracts
Exhibit 17-H: Cover Letter and Final Report of Expenditures Checklist (PE Only)
Exhibit 17-I: Cover Letter for the Report of Completion of Structures
Exhibit 17-J: Report of Completion of Structures on Local Streets and Roads
Exhibit 17-K: Sample Report of Completion of Right of Way Expenditures
Exhibit 17-L: Sample Report of Expenditures for Force Account Projects
Exhibit 17-M: Final Project Expenditure Report
Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 17 **Project Completion**

17.1 Introduction

This chapter covers the topic of project completion and is to be used mainly as a guide for administration of Federal-aid contracts by Local Public Agencies (LPAs) under a Local Agency-State Agreement. The Resident Engineer (RE) should be familiar with the contents of this chapter, LAPM Chapter 15: Advertise and Award Project, and LAPM Chapter 16: Administer Construction Contracts before administering such contracts.

When a locally sponsored project funded with Federal-aid is within the State R/W and the State (Caltrans) is the administering agency, the Caltrans Construction Manual is used in lieu of these procedures.

17.2 As-Built Plans

On locally administered contracts the RE must provide the DLAE a set of original record drawings of all structure work with As-Built corrections, or a clear, readable, black-line copy of the original tracings with As-Built corrections. The As-Built corrections must be made by the engineer responsible for structure work. Each sheet of the As-Built plans must be clearly identified with an As-Built stamp. All plan sheets, whether they contain changes or not, must have (at a minimum) the name of the RE, the Construction Contract Acceptance date, and the Contract Number. These must be forwarded by the DLAE to the Division of Structures with a copy of Exhibit 17-J: Report of Completion of Structures on Local Streets and Roads. These must be returned to the LPA after microfilming, if requested. As-Built corrections for the roadwork portion of the plans should be recorded in accordance with LPA requirements.

17.3 Final Report of Expenditures (FROE)

The LPA is responsible for preparing and submitting to the DLAE the final report documents which collectively constitute the Final Report of Expenditures (FROE). This report provides key information required to initiate timely project closure and payment. The Report of Expenditures must be submitted within six months of project completion or completion of the last federally-reimbursable phase if no federal funds are utilized for Construction. If the submittal deadline occurs in the year funds will lapse, the FROE must be submitted to the DLAE by April 1 of that year. If timely submittals are not received, Caltrans may initiate actions discussed under Section 17.5: Consequences for Non-Compliance.

The FROE must be signed by the public employee in responsible charge of the project.

Federal-aid Projects

For Federal-aid projects, the FROE includes, as a minimum, the following documents:

- Exhibit 17-A: Cover Letter and Federal Report of Expenditures Checklist - Identifies all mandatory documents to be included in the FROE. This checklist must be submitted by the LPA with the report of completion. Copies of all documents included in the report of expenditures must be maintained on file at the LPA for any future audits as specified in the Master Agreement and Program Supplement, and to serve as verification that contractor labor requirements were met.
- Final Invoice – Final Invoice should conform to the format in LAPM 5-A: Local Agency Invoice. Submit one original. The Final Invoice must agree with the Final Detail Estimate.

Note: Even if all funding has been disbursed a final zero dollar amount invoice must be submitted

- Exhibit 15-M: Final Detail Estimate – The format of the final detail estimate is the same as presented in LAPM Chapter 15: Advertise and Award Project (Section 15.6: Award Package) except that it must be labeled Final and show the total of previous progress payments plus the final invoice. If claims are still pending, the final detail estimate should not be prepared until the claims are resolved. The final detail estimate must agree with the final invoice. State costs (e.g., state material testing) should not be included in the final detail estimate prepared by LPA. Once claims are settled, the final invoice and a final detail estimate must be submitted to the DLAE as part of the FROE.
- Exhibit 17-E: Sample Change Order Summary – The Change Order Summary should conform to sample format. This is required regardless of whether or not change orders were made during the course of the contract. If there were none, please note none. Additionally, the following mandatory items of information must also be included on this form:

    1. Liquidated Damages – Indicate the liquidated damage days charged (calendar days) if any, the amount per day, and the total amount charged. Refer to LAPM Chapter 16: Administer Construction Contracts (Section 16.17: Contract Disputes and Claims). If there were no liquidated damages, please note none. Liquidated damages must also be shown on the Final Invoice and Final Detail Estimate.
    2. Contractors Claims – Refer to LAPM Chapter 16: Administer Construction Contracts (Section 16.17: Contract Disputes and Claims). If there were no contractor's claims, please note none.
    3. Date of Acceptance

- Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors; Exhibit 17 F-1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-Call Contracts – These forms must be completed and signed, and they must be in conformance with the requirements in LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises. The completed forms must be submitted to the DLAE or OSE (SHS projects) with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts).
- Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change – This form must be completed, signed, and submitted to the DLAE or OSE (SHS projects) with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts). If no change, state so.
- Exhibit 17-H: Cover Letter and Final Report of Expenditures Checklist (PE only) – This form must be submitted (in place of Exhibit 17-A) by the LPA to the DLAE for projects authorized for Preliminary Engineering (PE) only and not advancing to right of way acquisition or construction award.
- Exhibit 17-I: Sample Cover Letter for the Report of Completion of Structures and Report of Completion of Structures on Local Streets and Roads and Exhibit 17-J: Report of Completion of Structures on Local Streets and Roads – This report is to be forwarded by

the DLAE to Caltrans Division of Engineering Services, Office of Structures Maintenance and Investigations Local Assistance Branch, for projects which include a bridge or other major structure. This information is necessary to incorporate all bridges into the statewide inventory and maintenance management system. (Include two (2) copies in the Report of Expenditures).

- Exhibit 17-K: Report of Completion of Right of Way Expenditures – Projects with Right of Way expenditures require additional information in the Report of Expenditures. When the project is complete, a summary of the progress payment requests is submitted on Exhibit 17-K. This claim should be submitted when final right of way costs are known in order to expedite audit of the claim and reimbursement. The report must also include the following:

  1. A parcel list.
  2. Final maps (those that come with Right of Way Certification if not previously sent).
  3. A breakdown of Right of Way costs (with participating costs shown separately). The total participating costs should equal the Participating Costs to Date as shown on the Final Progress Requests (Forms FM 1592A).
  4. Final Invoice for Right of Way – The invoice must be prepared on an agency letterhead; each phase must include:
     a. All agency and project identification shown on the form including the Local Agency-State agreement number.
     b. Dates and amounts of funding authorized for Incidental and Capital Outlay.
     c. Period of expenditures (dates) for Incidental and Capital Outlay.
     d. Cost breakdown for Incidental and Capital Outlay as follows:
        - Total Cost to Date
        - Rental Income
        - Nonparticipating Cost to Date
        - Subtotal – Participating Costs
        - Participating Cost Previously Claimed
        - Subtotal – Change in Participating Posts
        - Reimbursement Ratio
        - Amount of this Claim
        - Invoice Total

- Force Account Projects – Projects with Force Account work also require a Report of Expenditures. These projects are usually emergency relief type and include emergency repair work. Other Federal-aid projects may incorporate all, or a part of the project to be built using the force account method. A completed example of a Report of Expenditures for a project including Force Account Work is included in Exhibit 17-L: Sample Report of Expenditures for Force Account Projects. For more information on force account procedures, see LAPM Chapter 12: Plans, Specifications & Estimate (Section 12.4: Method of Construction).

The DLAE must perform a review of these documents for correct format and obvious errors and/or omissions. Upon verification that the FROE is complete, the DLAE must forward it to Caltrans Local Programs Accounting (CLPA) for processing.

State-Funded Projects

For state-funded projects the LPA must complete Exhibit 17-M: Final Project Expenditure Report. The report with the final invoice attached will be submitted to the DLAE.

Note: These programs were intended under the blueprint legislation as state-only funded projects. However, due to varying circumstances of the state budget each year, and the variations of the State Highway Account, Caltrans at times may require projects in these programs to utilize Federal-aid funds. When this occurs, the FROE must be completed as described under Federal-aid projects above.

The DLAE will verify project completion as described for state-authorized Federal-aid projects, sign the report and forward to HQ Division of Local Assistance.

17.5 Consequences for Non-Compliance

Sanctions may be imposed by Caltrans on LPAs that are found in noncompliance with the reporting requirements listed above in Section 17.4: Final Report of Expenditures.

If there is a discrepancy between the Final Invoice and Final Detail Estimate, the LPA is notified by phone that a discrepancy exists, and their payment will be delayed until it is resolved. If the problem cannot be resolved within (180) days, CLPA must bill the LPA for all expenditures made on this project. If the LPA does not pay the accounts receivable bill within thirty (30) days, CLPA must initiate action with the State Controller to offset funds due the LPA.

If the LPA has previously included in their billing, items not reimbursable by the FHWA or over-billed progress payments that exceed the Final Estimates, the LPA must be billed for the overpayment. The LPA must pay the State's accounts receivable bill within thirty days or CLPA must initiate action with the State Controller to offset funds due the LPA. The same policy must apply to those recommendations from Process Review Reports on applicable findings or the improper utilization of Disadvantaged Business Enterprises.

17.6 References

23 CFR 635 Subpart D
http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0635d.htm

23 CFR 637 Subpart B
http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0637b.htm

23 CFR 640.113
https://www.gpo.gov/fdsys/pkg/CFR-1999-title23-vol1/pdf/CFR-1999-title23-vol1-sec640-109.pdf

49 CFR 26
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Caltrans Construction Manual
https://dot.ca.gov/programs/construction/construction-manual

FHWA Construction Administration Group
http://www.fhwa.dot.gov/programadmin/contracts/index.htm

FHWA Construction and Maintenance
http://www.fhwa.dot.gov/construction/

Chapter 18 **Maintenance**

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Exhibits

Exhibit 18-A: Maintenance Review Checklist
Exhibit 18-B: Sample Resolution
Exhibit 18-C: City-County Road System EDP Input Form HCC 342
Exhibit 18-D: Mileage of Maintained Roads

All LAPM Exhibits are located at:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Chapter 18 **Maintenance**

18.1 General Requirements

23 U.S.C.116 states that the State Transportation Department (Caltrans) is responsible for maintaining or causing to be maintained, any project constructed with Federal-aid funds and all bridges carrying Federal-aid routes. Responsibility for maintaining local Federal-aid projects is passed on to the Local Public Agency (LPA) as stated in the Local Agency-State Master Agreement (see LAPM Chapter 4: Agreements). The annexation, by a city, of territory in the county that contains all or a part of a Federal-aid project transfers the maintenance responsibility of that project to that city. This responsibility is expected to be enforced during the service life of the project.

23 U.S.C.116 also provides that if the federal authorities find that any completed project is not properly maintained such fact must be called to the attention of Caltrans. If the project is under LPA jurisdiction and is not put in proper condition within 90 days after written notification by Caltrans, approval of further Federal-aid projects for the LPA will be withheld until the project is put back in proper condition.

Streets and Highways Code (SHC) Section 823.5 outlines Caltrans' authority to perform the required maintenance should the LPA having the responsibility fail to do so. In such case, Caltrans must notify the State Controller of their maintenance expenditures on such street or highway. The State Controller must then deduct from future apportionments to such county or city, the amount certified by the Director of Caltrans from the Highway Users Tax Account in the Transportation Tax Fund and place such amount in the State Highway Account (SHA).

LPA projects that are on the State Highway System (SHS) that will create a maintenance responsibility must be covered in a Caltrans maintenance agreement, or an amendment to an existing maintenance agreement. This policy is contained in the Caltrans Project Development Procedures Manual (PDPM) and LAPM Chapter 2: Roles and Responsibilities.

These agreements are to be executed preferably during the project development process and no later than the start of construction.

Maintenance includes not only the preservation of the general physical features of the roadway, roadside, and surfacing, but also the preservation of all safety and regulatory features, devices and appurtenances built into the project. No safety features, devices, and appurtenances paid for with federal funds are to be removed, eliminated, or decreased in effectiveness without the prior approval of the governing entity of the jurisdiction in which the project is located.

18.2 Bridge Inspection

Bridges located on public roads, under the jurisdiction of the LPA, whether or not they were constructed with federal funds are inspected by the State at approximately two-year intervals. The inspection is conducted in accordance with the National Bridge Inspection Standards and Caltrans Maintenance Manual. The LPA may conduct their own inspection in accordance with the above standards, using their own forces or consultants.

During the initial investigation and report writing stage, bridges are analyzed to determine their load carrying capacity. If necessary, posting recommendations are made at that time. If subsequent investigations indicate that posting may be required or revised because of deterioration, neglect, or other causes, additional analyses are made. Additional studies and

analyses may be made at any time by the State at the LPA's written request. The LPA will receive two copies of the written Bridge Report.

18.3 Maintenance Monitoring

Caltrans is responsible for the administration of the Local Assistance program and must review the condition of local Federal-aid roads for general compliance with the provisions of this section. The primary concern of the maintenance review is whether Federal-aid highway projects are maintained at an acceptable level of physical integrity and operation. Should an unsatisfactory condition be observed which threatens the integrity of the project that was constructed with federal funds, it should be brought to the attention of the appropriate local officials so that corrective measures may be taken in time to avoid an official action from the federal authorities.

LPA compliance with maintenance requirements will be verified through program and process reviews. The District Local Assistance Engineer (DLAE) should perform maintenance reviews if/when requested, when deficiencies are identified, prior experience with the LPA, or as part of program/process reviews. Exhibit 18-A: Maintenance Review Checklist is used for the maintenance review.

All deficiencies must be discussed with the LPA and adequate time allotted to correct the condition. Major deficiencies left uncorrected should be discussed with HQ DLA to determine what further action should be taken. Comments and follow-up actions should be included on the Maintenance Review Checklist where appropriate.

18.4 County Road System

The SHC confers upon the Board of Supervisors of the various counties the authority, duties, and limitations that have to do with the establishment and maintenance of the county road system. The SHC also places certain duties upon Caltrans with respect to the county roads, requiring cooperation between the counties and Caltrans in some areas and allowing it, or making it optional in others. This cooperative effort is carried on between the County Road Commissioners and the District Directors, acting through authorized assistants, all subject to administrative review and correlation of effort by the Division of Research, Innovation and System Information (DRISI).

Certification of Maintained Mileage

As required by the State Controller, one of the duties of Caltrans is to certify the maintained mileage of county roads in each county. The State Controller currently requires certification each month (SHC Section 2121). Collection of data for and implementation of this duty, including the certification to the State Controller, has been delegated to Caltrans DRISI. The main object of this activity is to supply the information necessary for distribution of Highway User's Tax Funds in accordance with SHC Section 2104.

Procedures for accurately reporting and certifying the county road mileage figures have evolved and certain rules have been adopted. These steps involve the necessity for official action by counties and documentation thereof. To prepare the monthly certificate, Caltrans is constantly engaged in the collection and tabulation of road information and in maintaining the records and maps necessary for this purpose and for other activities.

Mileage Eligible for Certification

It is important that the maintenance status of county roads be determined under uniform rules because the miles maintained is an important factor in apportioning Highway User's Tax monies. In approximately half of the smaller counties, each mile added to a county's road system increases its annual apportionment above that which it would otherwise receive. Each such increase decreases the amount available for apportionment to all counties based on vehicular registration.

For the purpose of certification to the State Controller, it has been established that a maintained county road must meet all the following criteria:

1. An existing road actually maintained by the county or its agent (planned, unbuilt roads are not considered eligible)
2. Traversable by ordinary automobile except for seasonal closure by snow, or occasional closure to accommodate repair or reconstruction (otherwise, non-traversable roads are not considered to be maintained)
3. Have become county roads through due legal processes (they cannot become county roads through mere public use or because of arbitrary opinion)
4. Open to the general public (roads from which the public is barred do not qualify)
5. Public alleys that function like public roads can qualify as public roads. These alleyways would never be classified functionally high enough to be eligible as a Federal-aid highway
6. Be located outside of incorporated cities. The Collier Burns Act, which originated the mileage certification requirement contained in Section II states the following: The Department of Public Works shall certify the total maintained mileage of County roads in unincorporated territory.

The SHC has since provided two exceptions to criteria No. 5: (1) in any city that has not held an election of municipal officers in 10 years (Section 2004.5), and (2) in any county which has since January 1, 1961, adopted a county highway bond issue (Section 1732). The first exception applies only to Hornitos, Mariposa County; Markleeville, Alpine County; Meadowlake, Nevada County; and the second exception applies to Santa Clara County.

A road which is on a county line, or which crosses a county line, may be maintained by one of the counties and be eligible for inclusion in that county's maintained system, even though it may be in the other county; provided there is an agreement certified to by resolutions of the Boards of Supervisors of both counties. Copies of these resolutions should be forwarded to DRISI.

Boundary line road mileage may be divided among the agencies involved in any manner agreeable to the agencies, but the sum of the various lengths should equal the total length of the road. Dividing a roadway down the centerline is acceptable, but it is preferable to divide the road transversely in segments.

Each LPA's tabulation will indicate the mileage claimed by the different agencies within the termini shown with an asterisk indicating as non-add the mileage not claimed by the reporting agency. The LPA that does not claim the mileage should omit such roadway segment from the tabulations. Alternatively, if Exhibit 18-C: City-County Road System EDP Input Form HCC 342 is used, there should be an asterisk indicating as non-add the mileage not claimed by the reporting agency. The use of form HCC 342 is optional, and at the sole discretion of the reporting agency.

To ensure consistency among all LPAs, roads will be measured through intersections regardless of the overlapping of mileage thus caused. Roads terminating at an intersection with another road will be measured from the intersection of centerlines, except where roads terminate at a state freeway. In the latter case, the mileage will be to the end of county maintenance.

Certification Procedures

SHC Section 2121 reads as follows:

a. In May of each year, each county shall submit to the Department any additions or exclusions from its mileage of maintained county highways, specifying the termini and mileage of each route added or excluded from its county maintained roads. The Department shall either approve or disapprove each such inclusion or exclusion. A county may appeal any disapproval as provided in Section 74. The Department shall certify county mileage figures to the Controller, as required. No appeal shall affect any apportionment made by the Controller pending the determination of the appeal. If, on appeal, additional mileage is allowed the county, the Department shall immediately certify the corrected figure to the Controller, and the same shall be used for subsequent apportionments.

b. Upon relinquishing any state highway or portion thereof to a county, the Department shall immediately certify to the Controller the mileage so relinquished and the same shall immediately be added to the county's maintained mileage of county roads for purposes of subsequent apportionment.

Action Required of the Counties

While the law permits the counties to propose their annual mileage revisions at any time during May, such action should be taken very early in the month to give Caltrans adequate time to complete an orderly and accurate June 30 certification for the beginning of the new fiscal year.

The counties should alertly claim at the time of their May submittals all mileage properly claimable because there is no provision in the law for adding maintained mileage during other months, except for state highway relinquishments. New frontage roads and others of a similar nature, which are accepted from the state for maintenance by the county under an agreement are not relinquishments and must await the following May before being added to the county's certified mileage. The county should claim in May any additions that would become effective on the following July 1 because of any provision of law, or by reason of agreement previously entered.

Example: County A and County B have previously agreed through due process that a certain boundary road now maintained and claimed by County B must, after the 30th of June be maintained by County A. County A should pick up this mileage on its May submittal. Thus County B must drop the above-mentioned boundary road when County A takes over. One exception to this rule is a county road to be taken for maintenance by Caltrans as a state highway effective July 1. Such roads are to be kept on a county's list of maintained roads for gas purposes until the following June 30.

Another deletion that should be shown on the May changes is the mileage that will be lost to cities, because of annexations during the period since last June 30. California Government Code (GOV) Section 57384 is worded in such a manner as to cause the counties to continue maintenance of roads in newly incorporated territory through June 30 following the

incorporation. It will be expected that the counties will, in each May, delete all maintained mileage in areas incorporated since the previous June 30.

Each County Road Commissioner will present to the DLAE, corrected mileage figures for his/her county; the submittal is to be in the form of a resolution by the Board of Supervisors supported by corrected maps and tabulations. The resolution should be in the general form shown as Exhibit 18-B: Sample Resolution and should contain all the recitals indicated therein. The resolution must be supported by the following document as attachment:

- Attachment – Consisting of one complete set of the previous years' HPMS or EDP tabulation of Maintained County Roads with all changes marked in color. Any color contrasting sharply with the printing may be used except orange, which is reserved for any corrections found necessary by the district. The changes will be so noted. Examples of some changes include extended roads, deleted roads or deleted portions of roads, and changed descriptions, names, or numbers.

Counties desiring not to use Caltrans EDP tabulations may use their own, provided a complete list of the changes and a complete tabulation showing the revised system are submitted.

This attachment may be submitted electronically or in hard copy to the DLAE and the total mileage thereon must agree with the mileage certified on the Board of Supervisor's resolution.

Action Required of the District

The DLAE should check the resolutions, maps, and tabulations against each other and against the record of the month-to-month changes prior to submitting them to headquarters.

Necessary changes in the county's EDP tabulations should be corrected in orange to show the correct mileage following agreement upon any necessary changes. Some counties prefer, in lieu of furnishing the revised EDP list for Exhibit B, to furnish a separate list of additions and deletions of mileage. Such separate lists are acceptable, provided they contained all required descriptive data. In such cases, the county will furnish a complete updated copy of its tabulation.

After all resolutions, maps, and tabulations have been checked, each district will submit a mileage certification to DRISI not later than June 15, but preferably earlier. This certification will list the correct total mileage of maintained county roads in each county in the district. It is not necessary that the tabulations be forwarded with the district's certification. They may be held pending completion of necessary changes.

The district's certification will be used as the basis of Caltrans' certification to the State Controller for use in calculating SHC Section 2103 monthly apportionment to the counties from the Highway User's Tax Fund over the ensuing fiscal year. Since, in many counties, each mile of increase means more income, the need for accuracy is apparent, as well as the necessity for promptness of the submittal. Even though a county does not receive funds on a mileage basis, the prompt submittal of its maintained mileage changes is essential to maintain accurate mileage figures for other purposes.

Action Required of Headquarters

The mileage reported annually by the districts, adjusted for known changes occurring during the period of their preparation, or for obvious errors and oversights, will be combined in Caltrans' July 1 certification to the State Controller.

As an illustration of the mileage tabulation for the certification to the State Controller, see Exhibit 18-D: Mileage of Maintained Roads. The tabulation includes the net changes from the previous month's mileage. In order that the districts and counties may maintain accurate records, a copy of the combined mileage certification is sent to each district.

Month-to-Month Mileage Changes

On the first working day of each month, DRISI compiles a new tabulation of mileage for each county as of the last working day of the preceding month. The new tabulation is transmitted to the State Controller with a certificate similar to the July 1st certification. This tabulation is similar to the June 30 tabulation, except that the plus and minus mileage figures are generally minor in nature, being limited as noted and discussed hereafter.

Errors in Previous Certifications

To correct errors in previous certifications, the maintained mileage of any county may be changed in any monthly certification to the Controller. The county, district may initiate these changes, or by DRISI at the time the error is discovered. Errors discovered by the county or the district should be mutually verified and agreed upon before being submitted to DRISI for review and appropriate action.

Relinquished State Highways

Mileage relinquished from the SHS by the California Transportation Commission (CTC) is added by DRISI to the maintained mileage of the counties concerned. Upon receipt of assurance from headquarters Right of Way Program, the relinquishments become effective. Addition of relinquished mileage is one possible source of error in mileage certification.

Mileage Involved in Undercrossing and Overcrossing of State Highways

A complication in mileage sometimes occurs where county roads carry across state freeways via a separation structure. County roads carried across the freeways via separations, within the state's right of way, are not relinquished to local jurisdiction, yet they are included as a county responsibility in maintenance agreements and are eligible for inclusion in the county's maintained mileage. The relocation of a county road at its crossing of a freeway may result in either a decrease or an increase in the length of the county road. Such changes will not be made until May, following completion of the state highway construction project.

Functional Classification Updates

LPAs submit annually their Maintained Mileage Reports to Caltrans District Coordinators. The Maintained Mileage Report should accurately summarize in tabular format, the existing functional classification system of roadways. The District Coordinator reviews and forwards the information to the HPMS Branch at Caltrans Headquarters. If there are discrepancies between the Maintained Mileage Report and the California Road System (CRS) maps, the approved CRS maps take precedence.

Functional Classification Change Requests, which include CRS maps, are submitted separately from the tabular Maintained Mileage Reports. LPAs may submit Functional Classification Change Requests to their DLAE year-round. Functional Classification Guidelines provide the procedure for submittal of appropriate documentation: https://dot.ca.gov/programs/research-innovation-system-information/office-of-highway-system-information-performance/functional-classification.

The DLAE reviews and forwards the information to the Highway System Engineering (HSE) Branch at Caltrans Headquarters. FHWA reviews and provides final approval for functional classification change requests by stamping and signing the CRS maps.

18.5 References

California Government Code, Section 57384
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=57384

California Manual on Uniform Traffic Control Devices
https://dot.ca.gov/programs/safety-programs/camutcd

Caltrans Maintenance Manual
https://dot.ca.gov/programs/maintenance/maintenance-manual

National Bridge Inspection Standards
https://www.fhwa.dot.gov/bridge/nbis.cfm

Project Development Procedures Manual
https://dot.ca.gov/programs/design/manual-project-development-procedures-manual-pdpm

Streets and Highways Code
https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=SHC

Title 23, United States Code
https://www.ecfr.gov/current/title-23

Chapter 20 **Audits and Corrective Actions**

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Chapter 20 **Audits and Corrective Actions**

20.1 Introduction

This chapter provides the following expectations:

- When an audit is conducted by the Caltrans Internal Audits Office (CIAO) and the Independent Office of Audits and Investigations (IOAI)
- potential findings and sanctions
- common deficiencies
- recommended internal controls to improve compliance

Compliance is inclusive of state and federal regulations, the Master Agreement, the Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines (LAPG), California Transportation Commission grant requirements, and all other applicable regulations.

In order to reduce the risk of audit findings and deficiencies in the administration of state and federal funding, Local Public Agencies (LPA) should keep an on-going dialog with and consult their District Local Assistance Engineer (DLAE). It is also strongly recommended for LPAs to develop, update, and maintain written policies and procedures in the following areas including, but not limited to:

- Adoption of LAPM Chapter 10 as required in Section 10.1.10 for architectural and engineering consultant procurement
- Grant or contract management
- Direct and indirect cost development and charging procedures
- Financial management systems for invoicing and labor
- Construction administration

Caltrans Internal Audits Office

CIAO was established to evaluate and improve the effectiveness of governance, risk management, and internal control processes. CIAO tracks single audit report compliance, reviews and accepts Indirect Cost Allocation Plans, and conducts Pre-Award and incurred cost (project) audits.

Independent Office of Audits and Investigations

Senate Bill 1 of 2017 and the Stewardship and Oversight Agreement between the Federal Highway Administration and Caltrans require IOAI to ensure LPAs spend funds from Caltrans in compliance with applicable state and federal requirements. IOAI reviews the LPA's policies and procedures, and conducts audits and investigations of activities involving funds passed-through from Caltrans to LPAs.

20.2 Audit Process

The audit process can be defined as the on-site review and examination of a process or quality system to ensure compliance to requirements. Some audits may have special administrative purposes, such as auditing documents, risk, performance, or following up on completed corrective actions. These audits ensure accountability in managing transportation funds administered by LPAs.

Current Audits Performed

- Incurred (Project) Cost: CIAO and IOAI perform these audits to determine if costs billed to Caltrans are allowable.
- Indirect Cost Allocation Plan (ICAP) /Indirect Cost Rate Proposal (ICRP): IOAI or a contractor may perform these audits to determine whether the LPA's ICAP or ICRP are presented in accordance with 2 CFR 200 and LAPM Chapter 5.
- Pre-Award: CIAO performs this audit to determine the compliance of LPAs applying for a Master Agreement to administer state and federal funded projects before agreement are signed with Caltrans.
- Other: CIAO and IOAI may perform various other types of audits or reviews as necessary.

Audit Activities

Auditors generally use the below processes and timelines when performing audits:

- Contact the LPA to schedule the audit.
- Send a formal engagement letter, which outlines the objective of the audit. If specific documentation is required in advance of fieldwork, auditors will correspond with the LPA accordingly.
- An entrance conference is held on the first day of fieldwork to discuss the scope of the audit, audit objectives, schedules, and identification of some of the documents and records that will be reviewed during audit fieldwork.
- Fieldwork is performed; auditors will keep the auditee informed of any deficiencies identified during fieldwork.
- Once fieldwork is completed, an exit conference is conducted to discuss potential audit findings.

Audit Report

- Auditors will develop a Draft Audit Report providing clear and sufficient evidence justifying the audit findings and recommendations.
- The auditee will have five (5) business days to formally respond to the draft audit findings.
- Based on the LPA's response, the draft audit findings are either sustained, modified, or deleted.
- The audit report is finalized and issued to Caltrans, and the LPA receives a copy also.

IOAI may also contract out audits to another state agency to perform such as the California Department of Finance; each State Agency's audit procedures may slightly vary.

Please refer to Figure 20-1: Audit Process Flowchart for a visual of the typical audit process.

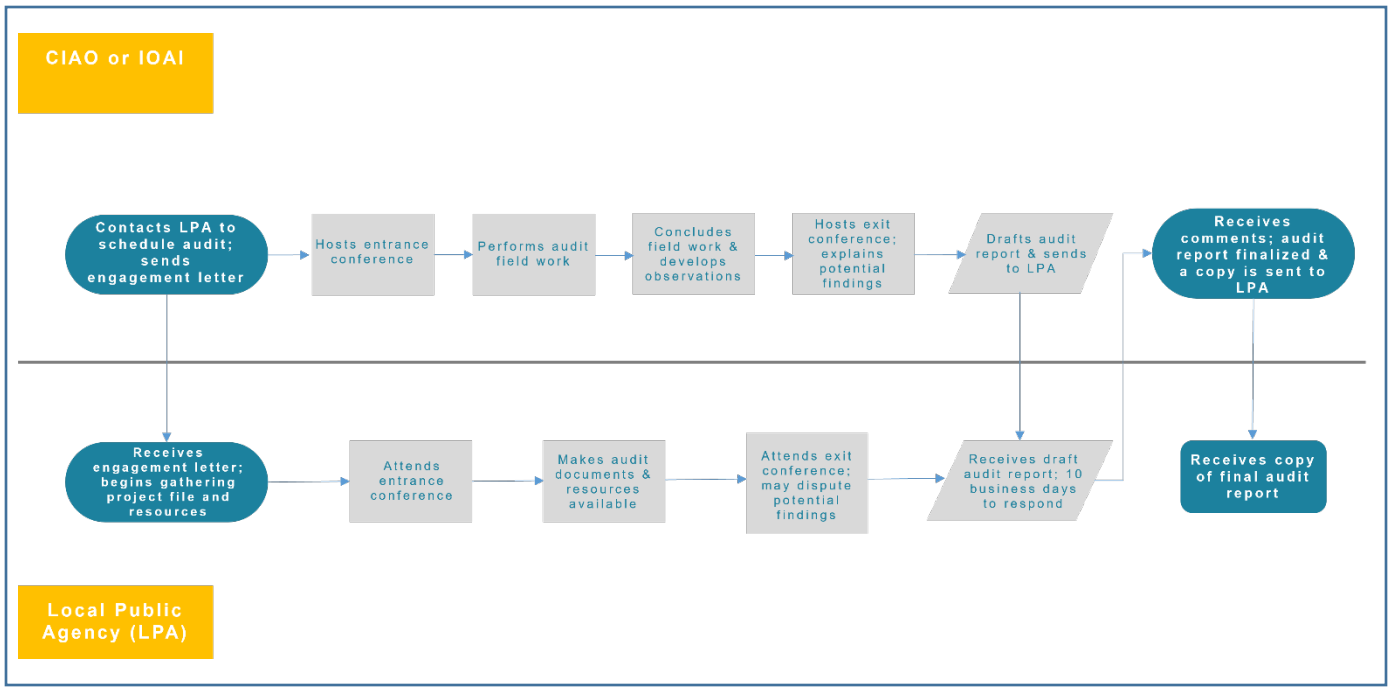


Figure 20-1: Audit Process Flowchart

20.3 Audit Findings

Findings are the results of an audit based on evidence about how the LPA's operations, administration of funding, processes, and/or control systems do not comply with required regulations and agreed-upon policies. Audit findings may be qualitative, which contend with an LPA's procedures and capability to comply with regulations and policies. Audit findings may also be quantitative, which determine an LPA had misappropriated funds that will be recommended for reimbursement to Caltrans.

Examples of common audit findings include, but are not limited to the major areas of:

- Procurement of consultant contracts
- Contract and grant management administration
- ICAP/ICRP direct and indirect cost pools
- Unallowable costs reimbursed
- Invoice and labor costing

For a list of the most common detailed audit findings, and best practices to avoid these deficiencies, please visit https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/audit/common-deficiencies-and-best-practices.pdf.

20.4 Single Audit Report Packages

Any LPA that expends $1M or more for all types of federal funds in an LPA's fiscal year must submit a Single Audit Report (SAR) package to the Federal Audit Clearinghouse (https://secure.login.gov/), State Controller's Office (https://dep.sco.ca.gov/), and Caltrans (CaltransFederalFundAward@dot.ca.gov).

CIAO's website contains a "Single Audit Determination List" that allows organizations to check their SAR status by fiscal year. This List may be used to certify the SAR or Exemption Letter was received by Caltrans.

The SAR package consists of:

- Financial statements such as those contained within a Consolidated Annual Financial Report
- Schedule of Expenditures of Federal Awards
- Schedule of findings and questioned costs
- Summary schedule of prior year findings
- Corrective action plan in response to all findings and questioned costs
- Reports including:
  - Opinion on financial statements
  - Internal control over financial reporting and compliance
  - Compliance for each major program

If the SAR has a finding involving federal funds passed-through Caltrans to the LPA, CIAO will issue a Management Decision pursuant to 2 CFR 200.513(c) to determine if the finding has been resolved. If the finding has not been resolved within about two months, Caltrans will issue a corrective action plan (CAP) letter requiring the LPA to implement actions to reduce the risk of the finding from recurring. Corrective actions are typically due within three months from the date of the CAP letter dependent upon the complexity and the number of unresolved findings.

20.5 Exemption Letters

If the LPA expends less than $1M for all types of federal funds in a fiscal year, the LPA will need to submit an exemption letter to the State Controller's Office (singleaudits@sco.ca.gov) and the Caltrans Federal Funds Award inbox (CaltransFederalFundAward@dot.ca.gov). The email must be a PDF on letterhead that identifies the exempt Fiscal Year, certifies exemption reason, and contain a fiscal manager/officer signature.

For examples of an exemption letter, please refer to: https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/audit/Exemption-Letter-Example.docx

20.6 Caltrans Role

Depending on the type of audit, CIAO or IOAI will send the final audit report to Caltrans and copy the LPA. As a part of its oversight responsibilities, Caltrans will develop corrective actions in response to the audit findings and recommendations and will ensure the corrective actions are implemented by the LPA. Within approximately 120 days from receipt of the final audit report, the Division of Local Assistance (DLA) endeavors to send the LPA a Corrective Action Plan (CAP) letter. DLA staff will introduce themselves, discuss the corrective actions in greater detail, and advise LPA staff of deadlines for submittal after the issuance of the CAP letter.

The CAP letter identifies specific actions the LPA must perform to mitigate audit findings from recurring in order to close out the audit. These corrective actions will strengthen LPA internal controls and improve the ability to comply with State and federal regulations, and contract provisions.

Corrective actions are typically due within five months from the date of the CAP letter. It is the LPA's responsibility to take initiative and perform the corrective actions to ensure the LPA can meet the deadlines within the CAP letter. Below are examples of common corrective actions that are prescribed in the CAP letter.

- Develop or update procedures; these must be reviewed by DLA prior to implementation and adoption.
- If training is required, it must be taken and performed, and a list of attendees or training certification must be submitted to DLA.
- If the LPA must reimburse funds to Caltrans, Caltrans will initiate an invoice to the LPA, and the LPA must make repayment.
- On a case-by-case basis, DLA may consider new documentation submitted by the LPA that will substantiate questioned and disallowed costs in the final audit report as eligible for reimbursement.

If the LPA does not make a good faith effort to submit corrective actions as required within the CAP letter, Caltrans may invoke sanctions as prescribed in Section 20.7 of this chapter. Once all corrective actions and deficiencies have been corrected and implemented, a Final Determination Letter is sent to the LPA, sanctions (if applicable) will be removed, and the audit is closed. DLA endeavors to have the audits closed out within one year.

Please refer to Figure 20-2: Corrective Action Flowchart for a visual of the typical corrective action process.

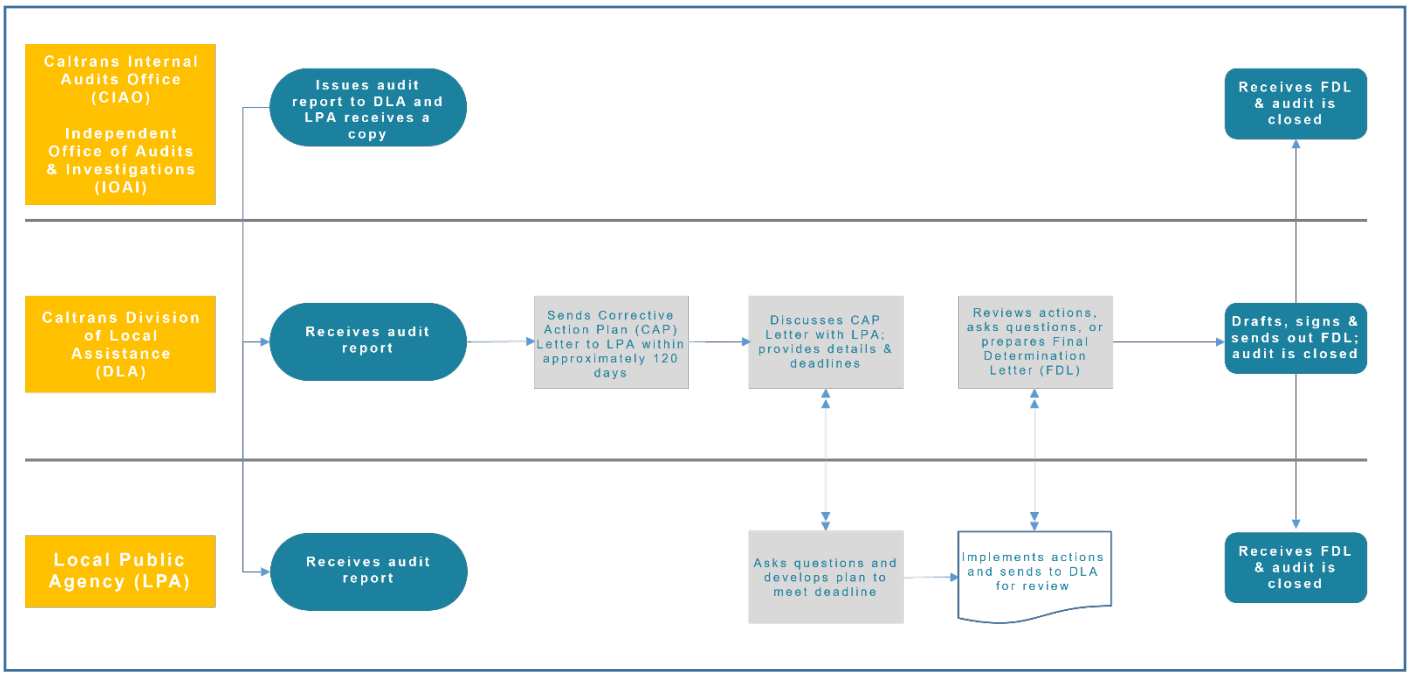


Figure 20-2: Corrective Action Flowchart

20.7 Sanctions

As stated in Section 20.6, the auditee is responsible to develop and implement corrective actions to mitigate all deficiencies identified in the CAP letter. Failure to implement required corrective actions by the deadline stated in the CAP letter may result in Caltrans imposing a sanction. Failure to submit a SAR package or exemption letter will also result in a sanction. Caltrans will be responsible for notifying the LPA of sanctions imposed in writing and the steps for removing these sanctions. There will be no appeals for any sanction applied.

Sanctions may consist of those available within 2 CFR 200.339 and the following examples including, but not limited to:

- Request reimbursement of questioned and/or disallowed cost(s).
- Do not authorize new federal funds and do not recommend State allocations until corrective actions are implemented.
- Suspend the LPA's Master Agreement with Caltrans.
- Stop the project and project reimbursements if the audit is interim.
- Withhold State and federal funding until the deficiency is corrected.

20.8 References and Links

2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1

Caltrans Internal Audits Office
https://dot.ca.gov/programs/audits

Division of Local Assistance Audit Resources
https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/audit-resources

Independent Office of Audits & Investigations
https://ig.dot.ca.gov/