



## *Local Programs Procedures*

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**LPP 01-07    Manual Update**  
**Subjects:    Project Labor Agreements/  
                  Metrication/  
                  Optional Contract Provisions**

Reference: *Local Assistance Procedures Manual (LAPM)*, Chapter 12, “Plans, Specifications, and Estimate” and LPP 99-04, “New Categorical Exemption/Categorical Exclusion/Programmatic Categorical Exclusion and Metrication.”

Effective Date: August 31, 2001    Approved: \_\_\_\_\_

TERRY L. ABBOTT, Chief  
Division of Local Assistance

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### **User-Friendly Features:**

- These Local Programs Procedures (LPP) have been formatted into new and/or revised pages that can be easily inserted into the *Local Assistance Procedures Manual (LAPM)*.
- Vertical lines shown in the outside margin clearly show changes both in content (revisions and additions) and format (page number).
- For quick reference to changes in the manual, the LPP number (LPP 01-07) appears at the bottom of pages that have been revised.
- A list of references is provided in this LPP.

These new procedures are incorporated in the electronic version of the LAPM. The LAPM can be found on the Division of Local Assistance Home Page on the Internet at: [www.dot.ca.gov/hq/LocalPrograms/](http://www.dot.ca.gov/hq/LocalPrograms/). Once there, click on “publications” and then click on “Local Assistance Manuals.”

### **PURPOSE**

The purpose of this LPP is to revise Chapter 12, “Plans, Specifications, and Estimate” of the LAPM as follows:

- Revise Section 12.10 to implement new policy prohibiting Project Labor Agreements in local agency contracts that use federal-aid funds;
- Update Section 12.6 regarding the use of metric units (this supersedes the last remaining portion, “Metrication,” of LPP 99-04 and that LPP is now superseded in its entirety), and;

**LPP 01-07**  
**Project Labor Agreements/Metrication/  
Optional Contract Provisions**  
**Page 2**

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- Update Section 12.11 to provide an Internet address pertaining to conceptual guidelines for A+B Bidding and Incentive/Disincentive (I/D) provisions.

**PROJECT LABOR AGREEMENT (PLA)**

EXISTING PROCEDURE

A Project Labor Agreement (PLA), also called a union agreement, is a contract between labor unions, contractors and governmental agencies. PLAs have been used in the past typically on large projects and on a limited basis.

NEW PROCEDURE

By Presidential Executive Order, PLAs are generally prohibited in federal-aid contracts after April 17, 2001. PLAs are only allowed if the FHWA Administrator exempts a particular project which must contain multiple contracts. In order to qualify, one or more of the prior contracts must have included a PLA and been awarded before February 17, 2001.

**METRICATION**

EXISTING PROCEDURE

Since July 1998, Caltrans Standard Plans, Standard Specifications, and Special Provisions have been published and made available in metric units only. Caltrans is no longer maintaining older versions of these documents (issued July 1992), which use English units.

NEW PROCEDURE

Off the State highway system, English or metric units may be used on local agency administered highway projects. Past English unit versions of the Caltrans Standard Plans, Standard Specifications, and Special Provisions cannot be referenced as part of an official construction contract unless:

- 1) The responsible charge engineer has determined that revisions or additions have not been made to the current metric version; or,
- 2) The responsible charge engineer has developed and incorporated an English units version of the new or revised Caltrans Standard Specifications and Plans, and Special Provisions into the contract documents.

Once the determination to use English units has been made, it should be noted in the project file.

For local agency administered highway projects on the State highway system, metric units must be used.

## **OPTIONAL CONTRACT PROVISIONS**

### EXISTING PROCEDURE

Cost/Time (A+B) Bidding and Incentive/Disincentive (I/D) provisions are each alternative methods of bidding. Often used together, the two methods have been shown to reduce the overall time required for completion of critical construction projects. The Internet Website address that was provided by Caltrans Engineering Service Center for sample I/D special provisions has become obsolete.

### NEW PROCEDURE

The sample I/D special provisions have been replaced by two Caltrans guidelines, the “Conceptual Guidelines for the Use of Cost/Time (A+B) Bidding Provision” and the “Conceptual Guidelines for the Use of Incentive and Disincentive (I/D) Provisions.” A new Internet Website address has been provided where these guidelines can be found.

## **REFERENCES**

- Presidential Executive Order 13202 “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” dated February 17, 2001 (Federal Register: February 22, 2001; Volume 66, Number 36, Presidential Documents, Pages 11225-11226)
- Presidential Executive Order 13208 “Amendment to Executive Order 13202 Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” dated April 6, 2001 (Federal Register: April 11, 2001; Volume 66, Number 71, Presidential Documents, Pages 18717-18718)

**CHAPTER 12 PLANS, SPECIFICATIONS & ESTIMATE****CONTENTS**

Section	Subject	Page Number
12.1	INTRODUCTION .....	12-1
	Definitions.....	12-1
12.2	PS&E PROCEDURES FOR MAJOR NHS PROJECTS.....	12-2
12.3	ENVIRONMENTAL PROCEDURES.....	12-2
	Compliance with Environmental Laws.....	12-2
	Preliminary Design .....	12-3
	Final Design.....	12-3
	Permits .....	12-3
	Documentation .....	12-4
12.4	METHOD OF CONSTRUCTION.....	12-4
	Contracting Method .....	12-4
	Force Account (Day Labor) .....	12-4
	Emergency Work.....	12-6
12.5	VALUE ANALYSIS.....	12-6
	Introduction.....	12-6
	Definitions.....	12-7
	Procedures .....	12-7
12.6	METRICATION .....	12-7
	Implementation .....	12-7
	Conversion to Metric Units.....	12-8
12.7	PLANS .....	12-8a
	Design Standards .....	12-9
	Design Exceptions .....	12-9
	Plan Sheet Signatures .....	12-9
	Standard Plans .....	12-9
	Erosion Control Plans.....	12-10
	Traffic Control Plans.....	12-10
	Transportation Management Plans.....	12-11
12.8	STANDARD SPECIFICATIONS.....	12-12
	Acceptable Standard Specifications and Special Provisions.....	12-12
	Caltrans Specifications on the Internet.....	12-13
	Sample “Boiler Plate” Contract Documents on the Internet	12-13
12.9	REQUIRED FEDERAL CONTRACT PROVISIONS.....	12-14
	General Federal Requirements.....	12-14
	Form FHWA 1273.....	12-14

# CONTENTS CONTINUED

Section	Subject	Page Number
	I. General .....	12-14
	II. Nondiscrimination .....	12-15
	III. Nonsegregated Facilities .....	12-16
	IV. Payment of Predetermined Minimum Wages .....	12-16
	V. Statements and Payrolls.....	12-17
	VI. Record of Materials, Supplies, and Labor .....	12-17
	VII. Subletting or Assigning the Contract .....	12-17
	VIII. Safety: Accident Prevention .....	12-18
	IX. False Statements Concerning Highway Projects .....	12-18
	X. Clean Air Act and Water Pollution Control Act .....	12-18
	XI. Debarment, Suspension and Ineligibility Certification .....	12-19
	XII. Lobbying Certification .....	12-19
	Contract Time .....	12-19
	Liquidated Damages .....	12-20
	Buy America .....	12-21
	Disadvantaged Business Enterprise .....	12-22
	Noncollusion Certification .....	12-23
	Federal Trainees (On-the-Job Training) .....	12-23
	Federal Wage Rates .....	12-25
	Relations with Railroad .....	12-25
	Changed Condition Clauses .....	12-26
	Differing Site Conditions Clause .....	12-26
	Suspensions of Work Ordered by the Engineer .....	12-26
	Material Changes in the Scope of the Work .....	12-27
12.10	RESTRICTED CONTRACT PROVISIONS .....	12-27
	Indian Preference .....	12-27
	Bonding and Prequalification .....	12-28
	Price Adjustment Clauses .....	12-28
	Project Labor Agreements .....	12-29
12.11	OPTIONAL CONTRACT PROVISIONS .....	12-29
	Alternate Bids .....	12-29
	Incentive/Disincentive (I/D) Provisions .....	12-30
	Quality-Price Adjustment Clauses .....	12-30
	Innovative Contracting Practices .....	12-31
12.12	MATERIALS AND EQUIPMENT .....	12-31
	Publicly-Owned Equipment .....	12-31
	Contractor-Purchases for Local Ownership .....	12-32
	Convict Produced Materials .....	12-32
	Local Preferences .....	12-32
	Warranty Clauses .....	12-32
	Proprietary Items .....	12-33
	Equipment Rental Rates .....	12-33

Under Caltrans' delegation authority, the responsibility of assuring that VE analysis has been performed shall be delegated to the local agency administering their project.

## DEFINITIONS

Project - A portion of a highway that a local agency proposes to construct, reconstruct, or improve as described in the preliminary design report or applicable environmental document. A project may consist of several contracts or phases over several years.

Value Engineering - The systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the project, reliably, and at the lowest life-cycle cost without sacrificing safety, necessary quality, and environmental attributes of the project.

## PROCEDURES

Local agencies must establish programs to assure that VE studies are performed on all federal-aid highway projects on the NHS with an estimated cost of \$25 million or more. This cost is the total cost of the project, from preliminary engineering through construction. Value engineering studies shall follow the widely recognized systematic problem-solving analysis process that is used throughout private industry and governmental agencies. Studies must be performed using multi-disciplined teams of individuals not personally involved in the design of the project. Study teams should consist of a team leader and individuals from different specialty areas, such as design, construction, environmental, planning, maintenance, right of way, and other areas depending upon the type of project being reviewed. Individuals from the public and other agencies may also be included on the team when their inclusion is found to be in the public interest.

For VE Studies of projects on the State Highway System, it is advisable to leave Caltrans' participation on the VE team.

This process concludes with a value analysis report that contains the approved recommendations. A copy of this report shall be forwarded to the District Value Analysis Coordinator (DVAC) in the district that is programming 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, Chapter 19 "Value Analysis" of the *Project Development Procedures Manual* may be used. The DVAC should be consulted for applicable sections.

## 12.6 METRICATION

### IMPLEMENTATION

The 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) mandated that all PS&Es for federal-aid construction projects use metric units after September 30, 1996.

However, the National Highway System Designation Act of 1995, signed by the President on November 28, 1995, eliminated the metric requirement. Caltrans has implemented the conversion to metric units for all projects on the State highway system. Caltrans design manuals, standard plans, and standard specifications have been converted to metric units. As of July 1, 1998, Caltrans stopped maintaining these documents in English units. Because Caltrans documents are no longer maintained in English units, past English versions of these documents cannot be referenced as part of an official construction contract unless:

1. The responsible charge engineer has determined that revisions or additions have not been made to the current metric version; or,
2. The responsible charge engineer has developed and incorporated an English units version of the new or revised Caltrans Standard Specifications and Plans, and Special Provisions into the contract documents.

Once the determination to use English units has been made, it should be noted in the project file.

**For projects on the State highway system, all local agency project PS&Es (even those using local funds) must be in metric units.** Although Caltrans encourages local agencies to proceed with their conversion to metric units, either English or metric units may be used for local federal-aid projects off the State highway system. Both units must be used in any environmental document.

During the continuing effort to transition to metric units, either English or metric units may be used when the local agency, or their consultant, prepares the final PS&E package for bridge retrofit projects. On the other hand, English units must be used when Caltrans' consultants prepare the final PS&E package for seismic retrofit design. Regardless of the units used, both the bridge and roadway units must be the same (see Chapter 7, "Seismic Safety Retrofit Program," of the *Local Assistance Program Guidelines*).

## CONVERSION TO METRIC UNITS

There are two ways to convert from English to metric units:

- "Soft" conversion -- a direct mathematical conversion to an exact or nearly exact metric equivalent; for example: a 12 foot lane can be "soft converted" to 3.658 meters.
- "Hard" conversion -- a rounded, rationalized, metric number that is convenient to work with and easy to remember; for example: the new metric standard lane width (see Chapter 300 of the Caltrans *Highway Design Manual*, 5th edition) is 3.6 meters.

The "hard" conversion approach to metric units has effectively resulted in many new "metric standards."

The Institute of Transportation Studies - University of California Berkeley (ITS), through the Cooperative Training Assistance Program (CTAP) and the Local Technical Assistance Program (LTAP), offers training courses in understanding metric conversion for local agencies. Also available through ITS are: AASHTO's *Guide to Metric Conversion*, Caltrans' booklet entitled *Getting into Metrics*, and CD-ROM metric training packages.

## 12.7 PLANS

Project plans shall 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.

A local agency may use the Caltrans *Drafting and Plans Manual* as a guide for preparing



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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 by 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 a 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.

## PROJECT LABOR AGREEMENTS

A Project Labor Agreement (PLA), also called a union agreement, is a contract between labor unions, contractors, and governmental agencies. Presidential Executive Order 13202 (signed February 17, 2001) was issued to limit executive branch agencies from using PLAs. Essentially, executive agencies may not require or prohibit contractors to enter into PLAs. Agencies also may not discriminate against contractors based on PLAs. In addition, despite the limits on executive agencies, contractors are not barred from freely agreeing to PLAs.

Executive Order 13202 was amended to settle concerns about existing PLAs on projects with multiple contracts. Amendments in Executive Order 13208 allow an agency to request an exemption to the use of PLAs only if the PLA was in effect before February 17, 2001.

Requests for exemption must be written and must include the PLA, specific bid information, and the reason why the agency believes the exemption should be granted. PLAs are allowed only if the FHWA Administrator exempts a project. Requests for exemption should be referred to the DLAE.

Executive Orders 13202 and 13208 are available online at the following websites:

[www.whitehouse.gov/news/releases/2001/02/20010221.html](http://www.whitehouse.gov/news/releases/2001/02/20010221.html)

[www.whitehouse.gov/news/releases/2001/04/20010406-1.html](http://www.whitehouse.gov/news/releases/2001/04/20010406-1.html)

## 12.11 OPTIONAL CONTRACT PROVISIONS

### 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.

### 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 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, an 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

A discussion of factors to consider when selecting and developing I/D projects is available in FHWA's *Contract Administration Core Curriculum* (2001) at the following website:

[wwwcf.fhwa.dot.gov/infrastructure/progadmin/contracts/coretoc.htm](http://wwwcf.fhwa.dot.gov/infrastructure/progadmin/contracts/coretoc.htm)

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 the following website:

[www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm](http://www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm)

## 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.

The 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 5 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 percent is delegated to the local agency.

A detailed discussion of the criteria (such as: typical critical physical properties, acceptance plans and pay schedules) to consider when developing price adjustment provisions is provided in FHWA's *Contract Administration Core Curriculum*.

## INNOVATIVE CONTRACTING PRACTICES

Neither the FHWA nor Caltrans have any intention of mandating the use of any of the innovative contracting practices cited below on local agencies. However, the FHWA is trying to develop a process nationwide through which states, local agencies and the industry can bring forth innovative 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” and “Design/Build” innovative contracting techniques are provided in the 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 the following website:

[www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm](http://www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm)

## 12.12 MATERIALS AND EQUIPMENT

### 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 local agency may approve the use of publicly-owned equipment when justified by a public interest finding. 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 shall have the option of providing or renting all or part of the equipment

Public agencies shall 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.

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## **CONTRACTOR-PURCHASES FOR LOCAL OWNERSHIP**

On all federal-aid construction projects, equipment purchased by the local agency or by a contractor with ownership transferred to the local agency 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.

## **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.

## **LOCAL PREFERENCES**

On all federal-aid construction projects, materials produced within the State or local area shall not be favored over comparable materials produced outside of the or 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. State or local preference provisions are not allowed on federal-aid project contracts.

## **WARRANTY CLAUSES**

For projects off the NHS, local agencies may include warranty provisions in construction contracts in accordance with procedures they have developed for their non-federal projects.

For projects on the NHS, local agencies may include warranty provisions, for exempt non-NHS projects, in construction contracts in accordance with the following conditions:

- Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for federal participation shall not be covered.

The checklist has been designed to facilitate this review by providing space for the local agency to indicate the page numbers of the appropriate federal provisions. This review will help the local agencies become familiar with the use of the checklist and the corresponding federal contract provisions. It will not, however, relieve the local agency of responsibility for compliance with all federal requirements.

## **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 local agency's "Request for Authorization" for the construction phase of a project will not be forwarded to the OLP for approval prior to acceptance by the DLAE.

## **SUBMITTAL OF PLANS, SPECIFICATIONS AND ESTIMATE (PS&E)**

As a minimum, local agencies will submit the contract special provisions and the preliminary estimate with the PS&E Certification Letter. At the discretion of the DLAE, a set of plans will also be required. The plan requirement may be waived based on past experience with the agency and the number of federal-aid projects the agency has completed previously. As soon as the project is advertised, the local agency shall furnish the DLAE one copy of the "as advertised" plans and special provisions or two copies if structures (bridges) are involved.

## **PROCESS REVIEW**

Process reviews of a random sample of the local agency PS&E packages will be conducted as needed. The process reviews will be conducted on a "post audit" basis.

Local agencies 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.

## **12.16 PROJECTS WITHOUT TRADITIONAL PS&E**

Some ISTEA projects, on or off the NHS, such as Congestion Mitigation and Air Quality (CMAQ) and Transportation Enhancement Activities (TEA) may consist of studies and other nonconstruction type projects. Examples include: Traffic Demand Management (TDM) studies relating to regional air quality, ride sharing, commuter incentives 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 local agency shall submit the following to DLAE

(see Exhibit 12-I):

- Workplan
- Budget, with schedule



- Consultant agreement
- “Request for Authorization” form (prior to consultant approval)

Unlike the traditional PS&E, these studies are submitted for preliminary engineering, only. The project workplan, budget, and consultant agreement are submitted in lieu of PS&E and a detailed estimate. If the project is part of a regional study done by a Metropolitan Planning Organization (MPO), then the local federal-aid portion of the workplan must be segregated to show the project costs associated with each local agency.

## 12.17 REFERENCES

The Civil Rights Act of 1964	23 CFR 230.111
ISTEA Section 1041(a)	23 CFR 627.1
ISTEA Section 1048(a)	23 CFR 627.3
STAA Section 165	23 CFR 627.5
23 USC 106(b)(2)	23 CFR 630.1010(a)(2)
23 USC 112	23 CFR 633
23 USC 113	23 CFR 771.113
23 USC 114	28 CFR 35
23 USC 140	29 CFR 1,3,5
23 USC 140(b)	29 CFR 1630
23 USC 315	29 CFR 1926
23 USC 324	41 CFR 60
40 USC 276 (a) Davis-Bacon & (c) Copeland Act	48 CFR 31 49 CFR 1.48
40 USC 333	49 CFR 20
23 CFR 200	49 CFR 21
23 CFR 230	49 CFR 23
23 CFR 230 A&D	

Presidential Executive Order 13202 “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects” dated February 17, 2001 (Federal Register: February 22, 2001; Volume 66, Number 36, Presidential Documents, Pages 11225-11226)

Presidential Executive Order 13208 “Amendment to Executive Order 13202 Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” dated April 6, 2001 (Federal Register: April 11, 2001; Volume 66, Number 71, Presidential Documents, Pages 18717-18718)

Caltrans Memorandum to “All District Directors” dated June 12, 2000; Subject: Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions